

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 90*

Short Title: Post-Adoption Contacts.

(Public)

Sponsors: Senators Kinnaird; Allran, Atwater, Bingham, Dorsett, and Weinstein.

Referred to: Judiciary 1 (Civil).

February 12, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW AN ADOPTIVE PARENT AND A BIRTH RELATIVE TO
3 ENTER INTO A WRITTEN AGREEMENT TO PROVIDE FOR
4 POST-ADOPTION CONTACT AND COMMUNICATION AS RECOMMENDED
5 BY THE JOINT LEGISLATIVE STUDY COMMISSION ON CHILDREN AND
6 YOUTH AND TO MAKE OTHER CONFORMING STATUTORY CHANGES.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Chapter 48 of the General Statutes is amended by adding a
9 new Article to read:

10 "Article 11.

11 "Post-Adoption Contacts.

12 "**§ 48-11-100. Definitions.**

13 For purposes of this Article, the following definitions apply:

- 14 (1) Birth relative. – The biological parent, grandparent, sibling, or any
15 other member of an adoptee's biological family related to the adoptee
16 by blood or marriage.
17 (2) Post-adoption contacts agreement. – A voluntary written agreement
18 that allows specifically described post-adoption contact.
19 (3) Post-adoption contacts. – Visitation, communication, or any other
20 contact or conveyance of information regarding an adoptee.

21 "**§ 48-11-101. Post-adoption contacts agreement; terms; conditions.**

22 (a) A prospective adoptive parent and a birth relative may enter into a
23 post-adoption contacts agreement before or at the time a decree of adoption is granted.
24 A biological parent who has not reached 18 years of age shall have legal capacity to
25 enter into a post-adoption contacts agreement and shall be as fully bound by the
26 agreement as if the biological parent had attained 18 years of age.

27 (b) A post-adoption contacts agreement may include the following provisions:

- 28 (1) Visitation between the adoptee and a birth relative.

- 1 (2) Communication, including the exchange of letters and telephone
2 contact between the adoptee and a birth relative.
- 3 (3) The sharing of information about the adoptee or the birth relative by
4 parties to the agreement.
- 5 (c) A post-adoption contacts agreement shall include the following in bold type:
- 6 (1) The failure of an adoptive parent, birth relative, or the adoptee to
7 follow the terms of this agreement or modifications to the agreement
8 shall not be grounds for setting aside a final order of adoption.
- 9 (2) A disagreement between the parties or litigation brought to enforce,
10 modify, or terminate this agreement shall not affect the validity of the
11 adoption or serve as a basis for orders affecting the custody of the
12 adoptee.
- 13 (3) The parties agree, in good faith, to participate in mediation or other
14 appropriate dispute resolution proceedings to resolve any dispute that
15 may arise relating to the agreement.
- 16 (4) A court will not act on a motion to modify, enforce, or terminate this
17 agreement unless the petitioner has participated or attempted to
18 participate in good faith in mediation or other appropriate dispute
19 resolution proceedings to resolve any dispute.
- 20 (d) A post-adoption contacts agreement is enforceable only if it is approved by a
21 district court judge and incorporated in a court order signed by a district court judge.
- 22 (e) In approving a post-adoption contacts agreement, the court shall make each of
23 the following findings of fact:
- 24 (1) The parties to the agreement have appeared before the court
25 personally, unless the court, for good cause, waives the requirement
26 that the parties appear personally.
- 27 (2) Each adoptive parent has consented to the granting of post-adoption
28 contact.
- 29 (3) The birth relative has acknowledged in writing that the birth relative
30 understands that the final order of adoption is irrevocable regardless of
31 whether the adoptive parent fails to abide by the post-adoption
32 contacts agreement.
- 33 (4) The adoptive parent has acknowledged in writing that the adoptive
34 parent understands that the post-adoption contacts agreement, when
35 approved by the court, grants the birth relative the right to seek
36 enforcement in court of the post-adoption contacts specified in the
37 agreement.
- 38 (5) The court has determined that the adoptee's best interests would be
39 served by approving the post-adoption contacts agreement.
- 40 (f) The court may approve a post-adoption contacts agreement after considering
41 the following conditions and making findings of fact regarding each condition:
- 42 (1) Whether there is a significant emotional attachment between the
43 adoptee and the birth relative to whom the agreement gives
44 post-adoption contacts or that the adoptee is part of a sibling group to

1 whom post-adoption contacts are being granted and it is in the
2 adoptee's best interests to be treated similarly to his or her siblings.

3 (2) Whether the adoptee, if the adoptee is 12 years of age or older,
4 consents to the post-adoption contacts agreement.

5 (3) Whether the county department of social services or the licensed
6 child-placing agency that placed the adoptee for adoption, or in the
7 case of a direct placement adoption, the agency making the report to
8 the court under G.S. 48-2-501, has reviewed the post-adoption contacts
9 agreement and either recommended approval of the agreement or
10 stated in writing its reasons for not recommending approval.

11 (4) Whether the adoptee is represented by a court-appointed guardian ad
12 litem who has reviewed the post-adoption contacts agreement and
13 either recommended approval of the agreement or stated in writing the
14 guardian ad litem's reasons for not recommending approval.

15 (g) The Administrative Office of the Courts may adopt rules and shall prescribe
16 and supply forms for establishing a civil action pursuant to this section.

17 (h) The entire record of a proceeding involving approval, modification,
18 enforcement, or termination of a post-adoption contacts agreement under this Article
19 shall not be a matter of public record. The clerk of court shall maintain the record of the
20 proceeding separately from other records and withhold the record from public
21 inspection. The record may be examined only by order of the court, by the parties to the
22 post-adoption contacts agreement, or by their attorneys or guardians ad litem.

23 **"§ 48-11-102. Modification, enforcement, and termination.**

24 (a) A party to a post-adoption contacts agreement may file a new civil action in
25 district court for the purpose of modifying, enforcing, or terminating a post-adoption
26 contacts agreement after the party has participated or attempted to participate in good
27 faith in mediation or other appropriate dispute resolution proceedings to resolve any
28 dispute.

29 (b) In a proceeding under this section, the court may modify a post-adoption
30 contacts agreement if the court finds by a preponderance of the evidence either of the
31 following:

32 (1) There has been a substantial change of circumstances and the
33 modification is necessary to serve the best interests of the adoptee, and
34 the modification would not enlarge, expand, or increase the amount of
35 contact permitted by the post-adoption contacts agreement, place new
36 obligations on the adoptive parent, or undermine the adoptive parent's
37 authority.

38 (2) The parties to the agreement, including the adoptee, if the adoptee is
39 12 years of age or older, have agreed to the modification.

40 (c) The court may enforce a post-adoption contacts agreement in a proceeding
41 under this section if the court finds by clear, cogent, and convincing evidence that
42 enforcement of the post-adoption contacts agreement is in the best interests of the
43 adoptee and enforcement would not enlarge, expand, or increase the amount of contact

1 permitted by the post-adoption contacts agreement, place new obligations on the
2 adoptive parent, or undermine the adoptive parent's authority.

3 (d) The court may terminate a post-adoption contacts agreement in a proceeding
4 under this section if the court finds by clear, cogent, and convincing evidence that
5 termination of the post-adoption privileges agreement is in the best interests of the
6 adoptee or the parties to the agreement, including the adoptee if the adoptee is 12 years
7 of age or older, have agreed to terminate the agreement.

8 (e) In any proceeding under this section to modify, enforce, or terminate a
9 post-adoption contacts agreement, the court may receive documentary evidence or
10 written reports to support modification, enforcement, or termination of the agreement.
11 No testimony or evidentiary hearing shall be required unless the court finds after review
12 of the documentary evidence or written reports that a hearing is necessary to determine
13 the issues raised in the motion before the court. The court shall not order further
14 investigation or evaluation by any public or private agency or individual absent a
15 finding by clear, cogent, and convincing evidence that the best interests of the adoptee
16 may be protected or advanced only by the inquiry and that the inquiry would not disturb
17 the stability of the adoptee's home to the detriment of the adoptee.

18 (f) The court shall not award monetary damages. However, the court may award
19 attorneys' fees and costs to the prevailing party if the court, in its discretion, determines
20 that it would prevent frivolous or harassing litigation.

21 **"§ 48-11-103. Effect of failure to comply.**

22 The court shall not set aside a decree of adoption, revoke a written consent to an
23 adoption, rescind a relinquishment, or modify an order to terminate parental rights or
24 any other prior court order for failure of a birth relative, an adoptive parent, or an
25 adoptee to comply with any or all of the original terms of or subsequent modifications
26 to the post-adoption privileges agreement."

27 **SECTION 2.** G.S. 48-1-100 reads as rewritten:

28 **"§ 48-1-100. Legislative findings and intent; construction of Chapter.**

29 (a) The General Assembly finds that it is in the public interest to establish a clear
30 judicial process for adoptions, to promote the integrity and finality of adoptions, to
31 encourage prompt, conclusive disposition of adoption proceedings, and to structure
32 services to adopted children, biological parents, and adoptive parents that will provide
33 for the needs and protect the interests of all parties to an adoption, particularly adopted
34 minors.

35 (b) With special regard for the adoption of minors, the General Assembly
36 declares as a matter of legislative policy that:

- 37 (1) The primary purpose of this Chapter is to advance the welfare of
38 minors by (i) protecting minors from unnecessary separation from their
39 original parents, (ii) facilitating the adoption of minors in need of
40 adoptive placement by persons who can give them love, care, security,
41 and support, (iii) protecting minors from placement with adoptive
42 parents unfit to have responsibility for their care and rearing, and (iv)
43 assuring the finality of the adoption; and

1 (2) Secondary purposes of this Chapter are (i) to protect biological parents
2 from ill-advised decisions to relinquish a child or consent to the child's
3 adoption, (ii) to protect adoptive parents from assuming responsibility
4 for a child about whose heredity or mental or physical condition they
5 know nothing, (iii) to protect the privacy of the parties to the adoption,
6 and (iv) to discourage unlawful trafficking in minors and other
7 unlawful placement activities.

8 (c) In construing this Chapter, the needs, interests, and rights of minor adoptees
9 are primary. Any conflict between the interests of a minor adoptee and those of an adult
10 shall be resolved in favor of the minor.

11 (d) This Chapter shall be liberally construed and applied to promote its
12 underlying purposes and policies.

13 (e) Nothing in this Chapter shall be construed to prevent an adoptive parent and a
14 birth relative from entering into a post-adoption contacts agreement as provided in
15 Article 11 of this Chapter."

16 **SECTION 3.** G.S. 7B-1100 reads as rewritten:

17 **"§ 7B-1100. Legislative intent; construction of Article.**

18 (a) The General Assembly hereby declares as a matter of legislative policy with
19 respect to termination of parental rights:

20 (1) The general purpose of this Article is to provide judicial procedures for
21 terminating the legal relationship between a juvenile and the juvenile's
22 biological or legal parents when the parents have demonstrated that
23 they will not provide the degree of care which promotes the healthy
24 and orderly physical and emotional well-being of the juvenile.

25 (2) It is the further purpose of this Article to recognize the necessity for
26 any juvenile to have a permanent plan of care at the earliest possible
27 age, while at the same time recognizing the need to protect all
28 juveniles from the unnecessary severance of a relationship with
29 biological or legal parents.

30 (3) Action which is in the best interests of the juvenile should be taken in
31 all cases where the interests of the juvenile and those of the juvenile's
32 parents or other persons are in conflict.

33 (4) This Article shall not be used to circumvent the provisions of Chapter
34 50A of the General Statutes, the Uniform Child-Custody Jurisdiction
35 and Enforcement Act.

36 (b) Nothing in this Article shall be construed to prevent the court in a proceeding
37 under this Article for termination of parental rights from approving a post-adoption
38 contacts agreement as provided in Article 11 of Chapter 48 of the General Statutes."

39 **SECTION 4.** G.S. 7B-1110(a) is amended by adding a new subdivision to
40 read:

41 " ...

42 (5a) Whether or not the prospective adoptive parent and the birth relative,
43 and the adoptee if the adoptee is 12 years of age or older, intend to
44 enter into a post-adoption contacts agreement and the impact of that

1 agreement on the best interests of the child regarding termination of
2 parental rights of the parent. For purposes of this subdivision, the term
3 'birth relative' shall have the same meaning as defined in
4 G.S. 48-11-100(1)."

5 **SECTION 5.** G.S. 7B-1112 reads as rewritten:

6 **"§ 7B-1112. Effects of termination order.**

7 (a) An order terminating the parental rights completely and permanently
8 terminates all rights and obligations of the parent to the juvenile and of the juvenile to
9 the parent arising from the parental relationship, except that the juvenile's right of
10 inheritance from the juvenile's parent shall not terminate until a final order of adoption
11 is issued. The parent is not thereafter entitled to notice of proceedings to adopt the
12 juvenile and may not object thereto or otherwise participate therein:

13 (1) If the juvenile had been placed in the custody of or released for
14 adoption by one parent to a county department of social services or
15 licensed child-placing agency and is in the custody of the agency at the
16 time of the filing of the petition or motion, including a petition or
17 motion filed pursuant to G.S. 7B-1103(6), that agency shall, upon
18 entry of the order terminating parental rights, acquire all of the rights
19 for placement of the juvenile as the agency would have acquired had
20 the parent whose rights are terminated released the juvenile to that
21 agency pursuant to the provisions of Part 7 of Article 3 of Chapter 48
22 of the General Statutes, including the right to consent to the adoption
23 of the juvenile.

24 (2) Except as provided in subdivision (1) above, upon entering an order
25 terminating the parental rights of one or both parents, the court may
26 place the juvenile in the custody of the petitioner or movant, or some
27 other suitable person, or in the custody of the department of social
28 services or licensed child-placing agency, as may appear to be in the
29 best interests of the juvenile.

30 (b) Nothing in this section shall be construed to prevent the parent and the
31 prospective adoptive parent from entering into a post-adoption contacts agreement in
32 accordance with Article 11 of Chapter 48 of the General Statutes."

33 **SECTION 6.** G.S. 1-301.2(b) reads as rewritten:

34 "(b) Transfer. – Except as provided in subsections (g) and (h) of this section, when
35 an issue of fact, an equitable defense, or a request for equitable relief is raised in a
36 pleading in a special proceeding or in a pleading or written motion in an adoption
37 proceeding, the clerk shall transfer the proceeding to the appropriate ~~court~~ court;
38 provided that, when an issue of fact, an equitable defense, or a request for equitable
39 relief is raised in a pleading or written motion in an approval of a post-adoption contacts
40 agreement under Article 11 of Chapter 48 of the General Statutes, the clerk shall
41 transfer the proceeding to domestic court, and the court shall ensure that the identity of
42 the parties to the agreement and the proceeding are confidential. In court, the
43 proceeding is subject to the provisions in the General Statutes and to the rules that apply
44 to actions initially filed in that court."

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SECTION 7. This act is effective when it becomes law.