

Hall of the House of Representatives
93rd General Assembly - Regular Session, 2021
Amendment Form

Subtitle of House Bill No. 1388

TO PROVIDE FOR VOLUNTARY POST-ADOPTION CONTACT AGREEMENTS.

Amendment No. 1 to House Bill 1388

Amend House Bill No. 1388 as originally introduced:

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code Title 9, Chapter 9, Subchapter 2, is amended to add an additional section to read as follows:

9-9-225. Voluntary post-adoption contact agreement.

(a) In an adoption proceeding concerning a minor who is not in the custody of the Department of Human Services, a prospective adoptive parent may voluntarily enter into a written agreement with a birth parent of the minor concerning post-adoption exchange of information, communication, or other contact between the birth parent and the minor if:

(1) The birth parent has executed either a consent to adoption or relinquishment of parental rights;

(2) An order terminating the parental rights of the birth parent has not been entered by the court; and

(3) A final decree of adoption has not been entered by the court.

(b)(1) A post-adoption contact agreement may address one (1) or more of the following:

(A) The post-adoption sharing of information concerning the minor, birth parent, or adoptive parent;

(B) Post-adoption communication between the minor and the birth parent; or

(C) Post-adoption visitation between the minor and the birth parent.

(2) A post-adoption contact agreement shall not address custody of the minor.

(3) A post-adoption contact agreement shall:

(A) Be in writing;

(B) Be signed by all prospective adoptive parents and the birth parent entering into the agreement;

(C) Be verified by a notary public who certifies that each acknowledging party entered into the agreement knowingly and voluntarily, and without duress or coercion;



(D) State that the agreement complies with the requirements of this section;

(E) Be an independent contract and incorporated but not merged into the final decree of adoption;

(F) Describe the:

(i) Form and frequency of the information to be exchanged or the communication or contact to occur as agreed to by the parties to the agreement;

(ii) Degree of supervision, if any, that is required; and

(iii) Grounds, if any, for terminating the agreement in whole or in part;

(G) Include a statement acknowledging that:

(i) The post-adoption contact agreement does not impair the ability of a party to the agreement to change his or her place or state of residence;

(ii) The adoptive parent's judgment concerning the minor is in the best interest of the minor;

(iii) One (1) of the adoptive parents may terminate the contact with the birth parent in whole or in part at any time if an adoptive parent determines that the contact is not in the best interest of the minor; and

(iv) The parties to the post-adoption contact agreement have not relied on any representations other than those contained in the agreement;

(H) Not be deemed a condition precedent to a consent to adoption, relinquishment of parental rights, or entry of an adoption decree;

(I)(i) Be enforceable after the:

(a) Birth parent executes the consent to adoption or relinquishment of parental rights; and

(b) Court enters a final decree of adoption.

(ii)(a) The identity of a party to a post-adoption contact agreement does not need to be disclosed in the agreement in order for the agreement to be enforceable.

(b) A party to a post-adoption contact agreement whose identity is not disclosed in the agreement shall designate an agent for service of process in this state; and

(J) Include the following statements in bold type:

"1. This agreement shall only enter into force upon the entry of the final decree of adoption and if the agreement has been incorporated, but not merged, into the final decree of adoption.

2. After the entry of a final decree of adoption, an adoption cannot be set aside due to the failure of an adoptive parent, a birth parent, or the minor to follow the terms of this agreement or a later modification to this agreement.

3. All parties understand that a disagreement between the parties or litigation brought to enforce or modify this agreement shall not serve as a basis for any orders affecting the custody of the minor.

4. All parties understand that a court will not act on a petition to enforce or modify this agreement unless the parties have first participated in mediation with a mediator certified through the Arkansas

Alternative Dispute Resolution Commission administered through the Administrative Office of the Courts.

5. Each party acknowledges that he or she has entered into this agreement knowingly, voluntarily, and without duress or coercion."

(c)(1) A separate post-adoption contact agreement shall be executed for each birth parent who opts to enter into the agreement with the prospective adoptive parents.

(2) The court may approve post-adoption contact between the minor to be adopted and a nonparental birth relative of the minor if a significant emotional attachment existed between the minor and the nonparental birth relative before the adoption.

(3) A nonparental birth relative who is not a birth parent shall not have standing to enter into, enforce, or modify a post-adoption contact agreement.

(d)(1) A court shall enter an order approving a post-adoption contact agreement before finalizing the adoption if the court finds that the agreement:

(A)(i) Is in the best interest of the minor to be adopted.

(ii) In determining the best interests of the minor, the court may consider the preferences of the minor if the minor's consent to the adoption is required;

(B) Contains terms that are fair and reasonable;

(C) Meets the requirements of this section; and

(D) Has been entered into knowingly and voluntarily by all parties to the agreement, and without duress or coercion.

(2) Upon approval, the court shall order the post-adoption contact agreement to be incorporated but not to be merged into the final decree of adoption.

(3) The court shall not require execution of a post-adoption contact agreement under this section as a condition for granting an adoption.

(e)(1) The court having jurisdiction over the adoption proceeding shall retain jurisdiction to enforce a post-adoption contact agreement under this section.

(2) The Uniform Child-Custody Jurisdiction and Enforcement Act, § 9-19-101 et seq., shall not apply to the enforcement of a post-adoption contact agreement.

(3)(A) A party to a post-adoption contact agreement may file a petition to enforce the agreement with the court having jurisdiction over the adoption proceeding.

(B) Specific performance of the terms of the agreement shall be the sole remedy for breach of agreement.

(C) The following shall not be ordered as a remedy for breach of a post-adoption contact agreement:

(i) Damages;

(ii) An order affecting custody; or

(iii) An order setting aside the adoption.

(D) A petition to enforce a post-adoption contact agreement shall be a new and independent action filed with the court having jurisdiction over the adoption proceeding.

(E) The petitioner of a petition to enforce a post-adoption contact agreement shall submit proof of the following to the court:

(i) The parties have sought mediation through a mutually agreed-upon mediator certified by the Arkansas Alternative Dispute Resolution Commission; and

(ii) Either:

(a) The parties are unable to resolve the issue in a manner that is in the best interests of the minor and does not undermine the parental authority of an adoptive parent;

(b) The respondent has refused mediation; or

(c) The parties are unable to agree on a mediator without court intervention.

(F) The court shall appoint a mediator certified by the commission if the parties cannot agree on a mediator to resolve the issue in a manner that is in the best interests of the minor and does not undermine the parental authority of an adoptive parent.

(G)(i) In a proceeding to enforce a post-adoption contact agreement, the court shall consider the following:

(a) Whether each party has performed his or her duties under the agreement in good faith;

(b) Whether reasonable alternatives to fulfill the terms of the agreement without ordering mandatory compliance have been exhausted; and

(c) Whether enforcement is in the best interest of the minor and does not undermine the parental authority of an adoptive parent.

(ii) A determination concerning the enforcement of the agreement by the court shall be by clear and convincing evidence.

(H)(i) In a proceeding to enforce a post-adoption contact agreement, the court may consider the preferences of the minor in determining the best interest of the minor if the minor is at least twelve (12) years of age.

(ii) The court may appoint an attorney ad litem for the minor in accordance with Supreme Court Administrative Order No. 15.

(I) A court may suspend enforcement of a post-adoption contact agreement if the court finds that one (1) or more terms of the agreement are not in the best interest of the minor.

(J) A modification of a post-adoption contact agreement shall be:

(i) In writing;

(ii) Signed by each party to the post-adoption contact agreement;

(iii) Verified by a notary public; and

(iv) Filed with the court having jurisdiction over the adoption proceeding.

(K) A post-adoption contact agreement under this section concerning a minor to be adopted shall not be enforceable when the minor attains eighteen (18) years of age.

(L) Unless otherwise provided under this section or by a law, an agreement concerning post-adoption contact with a minor who is being adopted is not binding on the parties to the adoption proceeding."

The Amendment was read _____
By: Representative Penzo
JNL/JNL - 02-23-2021 16:11:18
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Chief Clerk