

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

HOUSE BILL 1388

5 By: Representative Penzo
6

For An Act To Be Entitled

8 AN ACT TO PROVIDE FOR VOLUNTARY POST-ADOPTION CONTACT
9 AGREEMENTS; AND FOR OTHER PURPOSES.
10

Subtitle

11 TO PROVIDE FOR VOLUNTARY POST-ADOPTION
12 CONTACT AGREEMENTS.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code Title 9, Chapter 9, Subchapter 2, is amended
20 to add an additional section to read as follows:

21 9-9-225. Voluntary post-adoption contact agreement.

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

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

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

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

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

35 (A) The post-adoption sharing of information concerning
36 the child, birth parent, or adopting parent;



1 (B) Post-adoption communication between the child and the
 2 birth parent; or

3 (C) Post-adoption visitation between the child and the
 4 birth parent.

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

7 (3) A post-adoption contact agreement shall:

8 (A) Be in writing;

9 (B) Be signed by the adopting parent and birth parent
 10 entering into the agreement;

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

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

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

18 (F) Describe the:

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

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

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

26 (G) Include a statement acknowledging that:

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

30 (ii) The adopting parent's judgment concerning the
 31 child is in the best interest of the child;

32 (iii) One (1) of the adopting parents may terminate
 33 the agreement with the birth parent in whole or in part at any time if an
 34 adopting parent determines that the agreement is not in the best interest of
 35 the child; and

36 (iv) The parties to the post-adoption contact

1 agreement have not relied on any representations other than those contained
 2 in the agreement;

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

5 (I)(i) Be enforceable after the:

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

8 (b) Court enters a final decree of adoption.

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

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

15 (J) Include the following statements in bold type:

16 "Post-adoption Contact Agreement

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

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

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

27 4. All parties to this agreement understand that a court will
 28 not act on a petition to enforce or modify this agreement unless the parties
 29 have first participated in mediation with a mediator certified through the
 30 Arkansas Alternative Dispute Resolution Commission administered through the
 31 Administrative Office of the Courts.

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

34 (c)(1) A separate post-adoption contact agreement shall be executed
 35 for each birth parent who opts to enter into the agreement with an adopting
 36 parent.

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

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

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

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

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

14 (B) Contains terms that are fair and reasonable;

15 (C) Meets the requirements of this section; and

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

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

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

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

26 (2) The Uniform Child-Custody Jurisdiction and Enforcement Act,
 27 § 9-19-101 et seq., shall not apply to the enforcement of a post-adoption
 28 contact agreement.

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

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

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

36 (i) Damages;

1 (ii) An order affecting custody; or

2 (iii) An order setting aside the adoption.

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

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

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

11 (ii) Either:

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

15 (b) The respondent has refused mediation; or

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

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

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

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

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

29 (c) Whether enforcement is in the best
 30 interest of the child and does not undermine the parental authority of an
 31 adoptive parent; and

32 (d) Any other relevant information.

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

35 (H)(i) In a proceeding to enforce a post-adoption contact
 36 agreement, the court may consider the preferences of the child in determining

1 the best interest of the child if the child is at least twelve (12) years of
 2 age.

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

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

8 (J) A modified post-adoption contact agreement shall be:

9 (i) In writing;

10 (ii) Signed by each party to the modified agreement;

11 and

12 (iii) Filed with the court having jurisdiction over
 13 the adoption proceeding.

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

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

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