

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

As Engrossed: H2/25/21

# A Bill

HOUSE BILL 1388

5 By: Representative Penzo  
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## 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 minor who is not in the  
23 custody of the Department of Human Services, a prospective adoptive parent  
24 may voluntarily enter into a written agreement with a birth parent of the  
25 minor concerning post-adoption exchange of information, communication, or  
26 other contact between the birth parent and the minor 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 minor, birth parent, or adoptive parent;



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

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

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

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

8 (A) Be in writing;

9 (B) Be signed by all prospective adoptive parents and the  
10 birth parent 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 adoptive parent's judgment concerning the  
31 minor is in the best interest of the minor;

32 (iii) One (1) of the adoptive parents may terminate  
33 the contact with the birth parent in whole or in part at any time if an  
34 adoptive parent determines that the contact is not in the best interest of  
35 the minor; 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 "1. This agreement shall only enter into force upon the entry of  
17 the final decree of adoption and if the agreement has been incorporated, but  
18 not merged, into the final decree of adoption.

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

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

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

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

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

36 (2) The court may approve post-adoption contact between the

1 minor to be adopted and a nonparental birth relative of the minor if a  
2 significant emotional attachment existed between the minor and the  
3 nonparental birth relative before the adoption.

4 (3) A nonparental birth relative who is not a birth parent shall  
5 not have standing to enter into, enforce, or modify a post-adoption contact  
6 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 minor to be adopted.

11 (ii) In determining the best interests of the minor,  
12 the court may consider the preferences of the minor if the minor'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 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 minor 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 minor 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; and

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

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

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

1 age.

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

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

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

9 (i) In writing;

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

12 (iii) Verified by a notary public; and

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

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

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

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22 /s/Penzo  
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