

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE DRS75162-LU-1 (11/13)

Short Title: Post-Adoption Privileges.

(Public)

Sponsors: Senator Kinnaird.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN ADOPTIVE PARENT AND A BIRTH RELATIVE TO
ENTER INTO A WRITTEN AGREEMENT TO PROVIDE FOR
POST-ADOPTION CONTACT AND COMMUNICATION.

The General Assembly of North Carolina enacts:

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

"Article 11.

"Post-Adoption Privileges.

"§ 48-11-100. Definitions.

For purposes of this Article, the following definitions apply:

- (1) Birth relative. – A biological parent, grandparent, sibling, or any other member of the child's biological family related to the child by blood or marriage.
- (2) Post-adoption privileges agreement. – A written agreement between an adoptive parent, a birth relative, and a child, if the child is 12 years of age or older, to allow specifically described post-adoption privileges.
- (3) Post-adoption privileges. – Visitation, communication, or any other contact or conveyance of information regarding a child who has been adopted.

"§ 48-11-101. Post-adoption privileges agreement; terms; conditions.

(a) An adoptive parent, a birth relative, and a child, if the child is 12 years of age or older, may enter into a post-adoption privileges agreement before or at the time a decree of adoption is granted.

(b) A post-adoption privileges agreement shall include the following:

- (1) Provisions for visitation between the child and a birth relative.

- 1 (2) Provisions for other forms of communication including the exchange
2 of letters and telephone contact between the child and a birth relative.
- 3 (3) Provisions for sharing information about the child by parties to the
4 agreement.
- 5 (4) The following warnings in bold type:
- 6 a. After the adoption petition has been granted by the court, the
7 adoption shall not be set aside due to the failure of an adoptive
8 parent, birth relative, or the child to follow the terms of this
9 agreement or modifications to the agreement.
- 10 b. A disagreement between the parties or litigation brought to
11 enforce, modify, or terminate this agreement shall not affect the
12 validity of the adoption or serve as a basis for orders affecting
13 the custody of the child.
- 14 c. A court will not act on a petition to modify, enforce, or
15 terminate this agreement unless the petitioner has participated
16 or attempted to participate in good faith in mediation or other
17 appropriate dispute resolution proceedings to resolve any
18 dispute.
- 19 (c) The court may approve a post-adoption privileges agreement only if all of the
20 following conditions are satisfied:
- 21 (1) The court finds that there is a significant emotional attachment
22 between the child and the person or persons to whom the agreement
23 gives post-adoption privileges.
- 24 (2) The child, if the child is 12 years of age or older, consents to the post-
25 adoption privileges agreement. However, the court may waive the
26 requirement for the child's consent if the court finds that the child is
27 not capable of consenting or that the child should not be required to
28 consent because consenting would not be in the child's best interest.
- 29 (3) The county department of social services or the licensed agency
30 placing the child for adoption or in the case of a direct placement
31 adoption, the agency making the report to the court pursuant to G.S.
32 48-2-501 recommends the granting of post-adoption privileges.
- 33 (4) The child is represented by a court-appointed guardian ad litem and the
34 guardian recommends the granting of post-adoption privileges unless
35 the court finds that the appointment of a guardian ad litem is not
36 necessary to protect the child's best interest.
- 37 (5) Each adoptive parent consents to the granting of post-adoption
38 privileges.
- 39 (6) The adoptive parent and the birth relative execute a post-adoption
40 privileges agreement and file the agreement with the court.
- 41 (7) The post-adoption privileges agreement includes an acknowledgment
42 by the birth relative that the adoption is irrevocable regardless of
43 whether the adoptive parent fails to abide by the post-adoption
44 privileges agreement.

1 (8) The post-adoption privileges agreement includes an acknowledgment
2 by the adoptive parent that the agreement, when approved by the court,
3 grants the birth relative the right to seek enforcement in court of the
4 post-adoption privileges specified in the agreement.

5 (9) Any other factors the court deems appropriate in determining whether
6 the child's best interests would be served by granting post-adoption
7 privileges.

8 (d) A post-adoption privileges agreement is enforceable only if it is approved by
9 the court and signed by a district court judge.

10 **"§ 48-11-102. Modification, enforcement, and termination.**

11 (a) A birth relative or an adoptive parent may file a new civil action in district
12 court for the purpose of modifying, enforcing, or terminating a post-adoption privileges
13 agreement.

14 (b) In an action under this section, the court may modify, enforce, or terminate a
15 post-adoption privileges agreement if the court finds that the party seeking relief has
16 participated or attempted to participate in good faith in mediating the dispute giving rise
17 to the action or the court determines that the modification or termination is necessary to
18 serve the best interests of the adopted child.

19 (c) The court shall not award monetary damages.

20 **"§ 48-11-103. Effect of failure to comply.**

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

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

27 **"§ 48-1-100. Legislative findings and intent; construction of Chapter.**

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

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

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

43 (2) Secondary purposes of this Chapter are (i) to protect biological parents
44 from ill-advised decisions to relinquish a child or consent to the child's

1 adoption, (ii) to protect adoptive parents from assuming responsibility
2 for a child about whose heredity or mental or physical condition they
3 know nothing, (iii) to protect the privacy of the parties to the adoption,
4 and (iv) to discourage unlawful trafficking in minors and other
5 unlawful placement activities.

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

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

11 (e) Nothing in this Chapter shall be construed to prevent an adoptive parent, a
12 birth relative, and a child, if the child is 12 years of age or older, from entering into a
13 post-adoption privileges agreement as provided in Article 11 of this Chapter."

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

15 "**§ 7B-1100. Legislative intent; construction of Article.**

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

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

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

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

31 (4) This Article shall not be used to circumvent the provisions of Chapter
32 50A of the General Statutes, the Uniform Child-Custody Jurisdiction
33 and Enforcement Act.

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

37 **SECTION 4.** This act is effective when it becomes law.