

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 209

Short Title: Post-Adoption Privileges.

(Public)

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

Referred to: Judiciary II.

February 24, 2005

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.

5 The General Assembly of North Carolina enacts:

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

8 "Article 11.

9 "Post-Adoption Privileges.

10 **§ 48-11-100. Definitions.**

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

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

19 **§ 48-11-101. Post-adoption privileges agreement; terms; conditions.**

20 (a) An adoptive parent and a birth relative may enter into a post-adoption
21 privileges agreement before or at the time a decree of adoption is granted.

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

- 23 (1) Provisions for visitation between the adoptee and a birth relative.
24 (2) Provisions for other forms of communication including the exchange
25 of letters and telephone contact between the adoptee and a birth
26 relative.
27 (3) Provisions for sharing information about the adoptee by parties to the
28 agreement.
29 (4) The following warnings in bold type:

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

1 (9) Any other factors the court deems appropriate in determining whether
2 the adoptee's best interests would be served by granting post-adoption
3 privileges.

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

6 **"§ 48-11-102. Modification, enforcement, and termination.**

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

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

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

16 **"§ 48-11-103. Effect of failure to comply.**

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

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

23 **"§ 48-1-100. Legislative findings and intent; construction of Chapter.**

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

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

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

39 (2) Secondary purposes of this Chapter are (i) to protect biological parents
40 from ill-advised decisions to relinquish a child or consent to the child's
41 adoption, (ii) to protect adoptive parents from assuming responsibility
42 for a child about whose heredity or mental or physical condition they
43 know nothing, (iii) to protect the privacy of the parties to the adoption,

1 and (iv) to discourage unlawful trafficking in minors and other
2 unlawful placement activities.

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

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

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

11 **SECTION 3.** G.S. 7B-1100 reads as rewritten:
12 "**§ 7B-1100. Legislative intent; construction of Article.**

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

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

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

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

28 (4) This Article shall not be used to circumvent the provisions of Chapter
29 50A of the General Statutes, the Uniform Child-Custody Jurisdiction
30 and Enforcement Act.

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

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