

State of Arkansas  
93rd General Assembly  
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As Engrossed: H2/25/21 H4/5/21

# A Bill

HOUSE BILL 1388

By: Representative Penzo

By: Senator B. Ballinger

## For An Act To Be Entitled

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

### Subtitle

TO PROVIDE FOR VOLUNTARY POST-ADOPTION CONTACT AGREEMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

*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;

(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; and

(I) Include the following statements in bold type:

"1. This agreement shall only enter into force upon the entry of 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. Each party acknowledges that he or she has entered into this agreement knowingly, voluntarily, and without duress or coercion.

4. 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."

(c)(1) A court shall make a finding 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) The court shall not require execution of a post-adoption contact agreement under this section as a condition for granting an adoption.

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

(1) In writing;

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

and

(3) Verified by a notary public.

(e)(1) A post-adoption contact agreement does not give any party any

rights enforceable in the courts of this state.

(2)(A) The parties may seek to resolve a dispute arising from a post-adoption contact agreement through a mediator certified by the Arkansas Alternative Dispute Resolution Commission.

(B) In resolving the dispute, the mediator certified by the commission:

(i) Shall resolve the issue in a manner that is in the best interests of the minor and does not undermine the parental authority of the adoptive parent; and

(ii) 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.

(C) If mediation fails, the adoptive parents shall have the final decision as to what they deem is in the best interest of the minor.

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

/s/Penzo

APPROVED: 4/22/21