

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE DRS35200-LU-18 (01/31)

Short Title: Post-Adoption Contacts.

(Public)

Sponsors: Senator Kinnaird.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW AN ADOPTIVE PARENT AND A BIRTH RELATIVE TO ENTER  
3 INTO A WRITTEN AGREEMENT TO PROVIDE FOR POST-ADOPTION CONTACT  
4 AND COMMUNICATION AND TO MAKE OTHER CONFORMING STATUTORY  
5 CHANGES.

6 The General Assembly of North Carolina enacts:

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

9 "Article 11.

10 "Post-Adoption Contacts.

11 "**§ 48-11-100. Definitions.**

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

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

20 "**§ 48-11-101. Post-adoption contacts agreement; terms; conditions.**

21 (a) A prospective adoptive parent and a birth relative may enter into a post-adoption  
22 contacts agreement before or at the time a decree of adoption is granted. A biological parent  
23 who has not reached 18 years of age shall have legal capacity to enter into a post-adoption  
24 contacts agreement and shall be as fully bound by the agreement as if the biological parent had  
25 attained 18 years of age.

26 (b) A post-adoption contacts agreement may include the following provisions:

- 27 (1) Visitation between the adoptee and a birth relative.  
28 (2) Communication, including the exchange of letters and telephone contact  
29 between the adoptee and a birth relative.  
30 (3) The sharing of information about the adoptee or the birth relative by parties  
31 to the agreement.

32 (c) A post-adoption contacts agreement shall include the following in bold type:

- 33 (1) 'The failure of an adoptive parent, birth relative, or the adoptee to follow the  
34 terms of this agreement or modifications to the agreement shall not be  
35 grounds for setting aside a final order of adoption.'



- 1           (2) 'A disagreement between the parties or litigation brought to enforce, modify,  
2 or terminate this agreement shall not affect the validity of the adoption or  
3 serve as a basis for orders affecting the custody of the adoptee.'
- 4           (3) 'The parties agree, in good faith, to participate in mediation or other  
5 appropriate dispute resolution proceedings to resolve any dispute that may  
6 arise relating to the agreement.'
- 7           (4) 'A court will not act on a motion to modify, enforce, or terminate this  
8 agreement unless the petitioner has participated or attempted to participate in  
9 good faith in mediation or other appropriate dispute resolution proceedings  
10 to resolve any dispute.'
- 11       (d) A post-adoption contacts agreement is enforceable only if it is approved by a district  
12 court judge and incorporated in a court order signed by a district court judge.
- 13       (e) In approving a post-adoption contacts agreement, the court shall make each of the  
14 following findings of fact:
- 15           (1) The parties to the agreement have appeared before the court personally,  
16 unless the court, for good cause, waives the requirement that the parties  
17 appear personally.
- 18           (2) Each adoptive parent has consented to the granting of post-adoption contact.
- 19           (3) The birth relative has acknowledged in writing that the birth relative  
20 understands that the final order of adoption is irrevocable regardless of  
21 whether the adoptive parent fails to abide by the post-adoption contacts  
22 agreement.
- 23           (4) The adoptive parent has acknowledged in writing that the adoptive parent  
24 understands that the post-adoption contacts agreement, when approved by  
25 the court, grants the birth relative the right to seek enforcement in court of  
26 the post-adoption contacts specified in the agreement.
- 27           (5) The court has determined that the adoptee's best interests would be served by  
28 approving the post-adoption contacts agreement.
- 29       (f) The court may approve a post-adoption contacts agreement after considering the  
30 following conditions and making findings of fact regarding each condition:
- 31           (1) Whether there is a significant emotional attachment between the adoptee and  
32 the birth relative to whom the agreement gives post-adoption contacts or that  
33 the adoptee is part of a sibling group to whom post-adoption contacts are  
34 being granted and it is in the adoptee's best interests to be treated similarly to  
35 his or her siblings.
- 36           (2) Whether the adoptee, if the adoptee is 12 years of age or older, consents to  
37 the post-adoption contacts agreement.
- 38           (3) Whether the county department of social services or the licensed  
39 child-placing agency that placed the adoptee for adoption, or in the case of a  
40 direct placement adoption, the agency making the report to the court under  
41 G.S. 48-2-501, has reviewed the post-adoption contacts agreement and either  
42 recommended approval of the agreement or stated in writing its reasons for  
43 not recommending approval.
- 44           (4) Whether the adoptee is represented by a court-appointed guardian ad litem  
45 who has reviewed the post-adoption contacts agreement and either  
46 recommended approval of the agreement or stated in writing the guardian ad  
47 litem's reasons for not recommending approval.
- 48       (g) The Administrative Office of the Courts may adopt rules and shall prescribe and  
49 supply forms for establishing a civil action pursuant to this section.
- 50       (h) The entire record of a proceeding involving approval, modification, enforcement, or  
51 termination of a post-adoption contacts agreement under this Article shall not be a matter of

1 public record. The clerk of court shall maintain the record of the proceeding separately from  
2 other records and withhold the record from public inspection. The record may be examined  
3 only by order of the court, by the parties to the post-adoption contacts agreement, or by their  
4 attorneys or guardians ad litem.

5 **"§ 48-11-102. Modification, enforcement, and termination.**

6 (a) A party to a post-adoption contacts agreement may file a new civil action in district  
7 court for the purpose of modifying, enforcing, or terminating a post-adoption contacts  
8 agreement after the party has participated or attempted to participate in good faith in mediation  
9 or other appropriate dispute resolution proceedings to resolve any dispute.

10 (b) In a proceeding under this section, the court may modify a post-adoption contacts  
11 agreement if the court finds by a preponderance of the evidence either of the following:

12 (1) There has been a substantial change of circumstances and the modification is  
13 necessary to serve the best interests of the adoptee, and the modification  
14 would not enlarge, expand, or increase the amount of contact permitted by  
15 the post-adoption contacts agreement, place new obligations on the adoptive  
16 parent, or undermine the adoptive parent's authority.

17 (2) The parties to the agreement, including the adoptee, if the adoptee is 12  
18 years of age or older, have agreed to the modification.

19 (c) The court may enforce a post-adoption contacts agreement in a proceeding under  
20 this section if the court finds by clear, cogent, and convincing evidence that enforcement of the  
21 post-adoption contacts agreement is in the best interests of the adoptee and enforcement would  
22 not enlarge, expand, or increase the amount of contact permitted by the post-adoption contacts  
23 agreement, place new obligations on the adoptive parent, or undermine the adoptive parent's  
24 authority.

25 (d) The court may terminate a post-adoption contacts agreement in a proceeding under  
26 this section if the court finds by clear, cogent, and convincing evidence that termination of the  
27 post-adoption contacts agreement is in the best interests of the adoptee or the parties to the  
28 agreement, including the adoptee if the adoptee is 12 years of age or older, have agreed to  
29 terminate the agreement.

30 (e) In any proceeding under this section to modify, enforce, or terminate a  
31 post-adoption contacts agreement, the court may receive documentary evidence or written  
32 reports to support modification, enforcement, or termination of the agreement. No testimony or  
33 evidentiary hearing shall be required unless the court finds after review of the documentary  
34 evidence or written reports that a hearing is necessary to determine the issues raised in the  
35 motion before the court. The court shall not order further investigation or evaluation by any  
36 public or private agency or individual absent a finding by clear, cogent, and convincing  
37 evidence that the best interests of the adoptee may be protected or advanced only by the inquiry  
38 and that the inquiry would not disturb the stability of the adoptee's home to the detriment of the  
39 adoptee.

40 (f) The court shall not award monetary damages. However, the court may award  
41 attorneys' fees and costs to the prevailing party if the court, in its discretion, determines that it  
42 would prevent frivolous or harassing litigation.

43 **"§ 48-11-103. Effect of failure to comply.**

44 The court shall not set aside a decree of adoption, revoke a written consent to an adoption,  
45 rescind a relinquishment, or modify an order to terminate parental rights or any other prior  
46 court order for failure of a birth relative, an adoptive parent, or an adoptee to comply with any  
47 or all of the original terms of or subsequent modifications to the post-adoption contacts  
48 agreement."

49 **SECTION 2.** G.S. 48-1-100 is amended by adding a new subsection to read:

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

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

5       "**§ 7B-1100. Legislative intent; construction of Article.**

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

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

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

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

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

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

26       **SECTION 4.** G.S. 7B-1110(a) is amended by adding a new subdivision to read:

27       "(a) After an adjudication that one or more grounds for terminating a parent's rights  
28 exist, the court shall determine whether terminating the parent's rights is in the juvenile's best  
29 interest. In making this determination, the court shall consider the following:

30       ...

31       (5a) Whether or not the prospective adoptive parent and the birth relative, and the  
32 adoptee if the adoptee is 12 years of age or older, intend to enter into a  
33 post-adoption contacts agreement and the impact of that agreement on the  
34 best interests of the child regarding termination of parental rights of the  
35 parent. For purposes of this subdivision, the term 'birth relative' shall have  
36 the same meaning as defined in G.S. 48-11-100(1).

37       ...."

38       **SECTION 5.** G.S. 7B-1112 reads as rewritten:

39       "**§ 7B-1112. Effects of termination order.**

40       (a) An order terminating the parental rights completely and permanently terminates all  
41 rights and obligations of the parent to the juvenile and of the juvenile to the parent arising from  
42 the parental relationship, except that the juvenile's right of inheritance from the juvenile's  
43 parent shall not terminate until a final order of adoption is issued. The parent is not thereafter  
44 entitled to notice of proceedings to adopt the juvenile and may not object thereto or otherwise  
45 participate therein:

46           (1) If the juvenile had been placed in the custody of or released for adoption by  
47 one parent to a county department of social services or licensed  
48 child-placing agency and is in the custody of the agency at the time of the  
49 filing of the petition or motion, including a petition or motion filed pursuant  
50 to G.S. 7B-1103(6), that agency shall, upon entry of the order terminating  
51 parental rights, acquire all of the rights for placement of the juvenile as the

1 agency would have acquired had the parent whose rights are terminated  
2 released the juvenile to that agency pursuant to the provisions of Part 7 of  
3 Article 3 of Chapter 48 of the General Statutes, including the right to consent  
4 to the adoption of the juvenile.

- 5 (2) Except as provided in subdivision (1) above, upon entering an order  
6 terminating the parental rights of one or both parents, the court may place  
7 the juvenile in the custody of the petitioner or movant, or some other suitable  
8 person, or in the custody of the department of social services or licensed  
9 child-placing agency, as may appear to be in the best interests of the  
10 juvenile.

11 (b) Nothing in this section shall be construed to prevent the parent and the prospective  
12 adoptive parent from entering into a post-adoption contacts agreement in accordance with  
13 Article 11 of Chapter 48 of the General Statutes."

14 **SECTION 6.** G.S. 1-301.2(b) reads as rewritten:

15 "(b) Transfer. – Except as provided in subsections (g) and (h) of this section, when an  
16 issue of fact, an equitable defense, or a request for equitable relief is raised in a pleading in a  
17 special proceeding or in a pleading or written motion in an adoption proceeding, the clerk shall  
18 transfer the proceeding to the appropriate court. However, when an issue of fact, an equitable  
19 defense, or a request for equitable relief is raised in a pleading or written motion in an approval  
20 of a post-adoption contacts agreement under Article 11 of Chapter 48 of the General Statutes,  
21 the clerk shall transfer the proceeding to domestic court, and the court shall ensure that the  
22 identity of the parties to the agreement and the proceeding are confidential. In court, the  
23 proceeding is subject to the provisions in the General Statutes and to the rules that apply to  
24 actions initially filed in that court."

25 **SECTION 7.** This act is effective when it becomes law.