

ASSEMBLY BILL NO. 51—COMMITTEE ON JUDICIARY

FEBRUARY 11, 2005

Referred to Committee on Judiciary

SUMMARY—Provides procedure for parties to adoption to enter into enforceable agreement for postadoptive contact. (BDR 11-457)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to adoption; providing a procedure for parties to an adoption to enter into an enforceable agreement that provides for postadoptive contact; providing the procedure to modify such an agreement; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, the parental rights of a parent must be terminated before a child is placed for adoption. (NRS 128.150) After an adoption, the natural parents cannot exercise any rights over the child or his property. (NRS 127.160) Administrative regulations, however, implicitly authorize agreements that provide for postadoptive contacts or communications between the parties to an adoption. (NAC 127.210) The Nevada Supreme Court has held that because there is no statutory provision providing for the enforcement of an agreement for postadoptive contacts or communications, such agreements are unenforceable unless incorporated into the adoption decree. (*Birth Mother v. Adoptive Parents*, 118 Nev. 972 (2002))

This bill adopts the holding of the Nevada Supreme Court by requiring any agreement for postadoptive contacts to be included in the order or decree of adoption. In addition, this bill requires that a release for, acknowledgment of or consent to adoption must include a provision in bold type to provide notice to the natural parent that any agreement that is not made a part of the order or decree of adoption is unenforceable. A court is prohibited from entering an order or decree of adoption unless the release for, acknowledgment of or consent to adoption is signed by the natural parent and includes such notice.

This bill further provides that failure to comply with an agreement for postadoptive contact may not be used as a basis for setting aside an adoption or consent to an adoption. This bill authorizes the modification of such an agreement under certain circumstances.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 127 of NRS is hereby amended by adding
2 thereto the provisions set forth as section 2 and 3 of this act.

3 **Sec. 2. 1.** *A release for, acknowledgment of or consent to*
4 *adoption must include a provision in bold type informing the*
5 *natural parent that any agreement between the natural parent and*
6 *any other person with respect to the terms of the adoption,*
7 *including, without limitation, any agreement concerning*
8 *postadoptive contact, is not valid and enforceable unless the terms*
9 *of the agreement are set forth in the order or decree of adoption.*
10 *The natural parent must sign or initial that he has read and*
11 *understood this provision.*

12 **2.** *A court shall not enter an order or decree of adoption of a*
13 *child where a release for, acknowledgment of or consent to*
14 *adoption is required unless the record contains a signed release*
15 *for, acknowledgment of or consent to adoption which includes the*
16 *provision required pursuant to subsection 1.*

17 **Sec. 3. 1.** *The natural parent or parents and prospective*
18 *adoptive parent or parents of a child to be adopted may enter into*
19 *an enforceable agreement that provides for postadoptive contact*
20 *between:*

21 **(a)** *The child and his natural parent or parents;*

22 **(b)** *The adoptive parent or parents and the natural parent or*
23 *parents; or*

24 **(c)** *Any combination thereof.*

25 **2.** *An agreement for postadoptive contact must be included in*
26 *an order or decree of adoption and must include, without*
27 *limitation, a provision specifying that:*

28 **(a)** *Each party to the agreement agrees to the continuing*
29 *jurisdiction of the court;*

30 **(b)** *Each party to the agreement acknowledges that any party*
31 *to the agreement may seek enforcement of the terms of the*
32 *agreement in court;*

33 **(c)** *The court may award costs and attorney's fees to the*
34 *prevailing party in an action seeking enforcement of the*
35 *agreement; and*

36 **(d)** *The agreement for postadoptive contact terminates and is*
37 *no longer enforceable on the date on which the adopted child*
38 *attains the age of 18 years or upon the date on which the adopted*
39 *child becomes emancipated.*



1 3. *The identity of a natural parent who is a party to an*
2 *agreement for postadoptive contact is not required to be included*
3 *in the agreement. If such information is withheld, an agent who*
4 *may receive service of process for the parent must be provided in*
5 *the agreement.*

6 4. *An agreement for postadoptive contact that is included in*
7 *an order or decree of adoption creates a rebuttable presumption*
8 *that the contact provided for in the agreement is in the best*
9 *interests of the child.*

10 5. *Failure to comply with the terms of an agreement for*
11 *postadoptive contact may not be used as the grounds to:*

12 (a) *Set aside an order or decree of adoption; or*

13 (b) *Revoke, nullify or set aside a valid release for or consent to*
14 *an adoption or a relinquishment for adoption.*

15 6. *Any action to enforce the terms of an agreement for*
16 *postadoptive contact must be commenced not later than 120 days*
17 *after the breach of the agreement.*

18 **Sec. 4.** *An agreement that provides for postadoptive contact,*
19 *entered into pursuant to section 3 of this act, may be modified by*
20 *applying to the court that issued the order which included the*
21 *agreement. The court may grant a request to modify the*
22 *agreement only if:*

23 1. *The party requesting the modification establishes a change*
24 *in circumstances that warrants the modification and establishes*
25 *that the agreement is no longer in the best interests of the child; or*

26 2. *Each party to the agreement consents to the modification.*

27 **Sec. 5.** NRS 127.005 is hereby amended to read as follows:

28 127.005 The provisions of NRS 127.010 to 127.186, inclusive,
29 *and sections 2 and 3 of this act* govern the adoption of minor
30 children, and the provisions of NRS 127.190, 127.200 and 127.210
31 and the provisions of NRS 127.010 to 127.186, inclusive, where not
32 inconsistent with the provisions of NRS 127.190, 127.200 and
33 127.210, govern the adoption of adults.

34 **Sec. 6.** NRS 127.171 is hereby amended to read as follows:

35 127.171 1. ~~Has~~ *Except as otherwise provided in section 3 of*
36 *this act, in a proceeding for the adoption of a child, the court may*
37 *grant a reasonable right to visit to certain relatives of the child only*
38 *if a similar right had been granted previously pursuant to*
39 *NRS 125C.050.*

40 2. *The court may not grant a right to visit the child to any*
41 *person other than as specified in subsection 1.*



