

ASSEMBLY BILL NO. 51—COMMITTEE ON JUDICIARY

FEBRUARY 11, 2005

Referred to Committee on Judiciary

SUMMARY—Provides certain procedures relating to agreements for postadoptive contact. (BDR 11-457)

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

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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; requiring certain persons to notify the court of the existence of such an agreement; authorizing a natural parent who has entered into such an agreement to petition the court to prove the existence of the agreement, to enforce its terms and to bring certain civil actions related to the agreement; authorizing an adoptive parent who has entered into such an agreement to petition the court to enforce the terms of the agreement and to modify or terminate the agreement; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, the parental rights of a parent must be terminated before a
2 child is placed for adoption. (NRS 128.150) After an adoption, the natural parents
3 cannot exercise any rights over the child or his property. (NRS 127.160)
4 Administrative regulations, however, implicitly authorize agreements that provide
5 for postadoptive contacts or communications between the parties to an adoption.
6 (NAC 127.210) The Nevada Supreme Court has held that because there is no
7 statutory provision providing for the enforcement of an agreement for postadoptive
8 contacts or communications, such agreements are unenforceable unless
9 incorporated into the adoption decree. (*Birth Mother v. Adoptive Parents*, 118 Nev.
10 972 (2002))

11 This bill adopts the holding of the Nevada Supreme Court by providing that any
12 agreement for postadoptive contacts is enforceable only if the agreement is written,
13 signed by the parties, and incorporated in the order or decree of adoption.

14 This bill requires certain parties and other persons who are involved in an
15 adoption proceeding to notify the court of the existence of an agreement for



postadoptive contact. This bill further requires the court to question those parties and persons as to their knowledge of the existence of such an agreement. If the court determines that an agreement for postadoptive contact exists, the court is required to incorporate the agreement into the order or decree of adoption.

In addition, this bill authorizes a natural parent who has entered into an agreement for postadoptive contact to petition the court to prove the existence of the agreement and to enforce the terms of the agreement. This bill further authorizes an adoptive parent who has entered into such an agreement to petition the court to enforce the terms of the agreement and to modify or terminate the agreement. This bill 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.

Further, this bill authorizes a natural parent or adoptive parent, under certain circumstances, to inspect only the portions of the court's files and records which concern an agreement for postadoptive contact without obtaining a court order. However, those portions of the file or records that are made available for inspection by a natural parent or adoptive parent must not include any confidential information such as information that would identify the natural parent or lead to the identification of the natural parent if the identity of the natural parent is not included in the agreement.

This bill authorizes a natural parent who has entered into such an agreement to bring a civil action against certain persons who knowingly provide false information to the court concerning the existence of the agreement and thereby cause the court not to incorporate the agreement into the order or decree of adoption.

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

Section 1. Chapter 127 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. 1. *The natural parent or parents and the prospective adoptive parent or parents of a child to be adopted may enter into an enforceable agreement that provides for postadoptive contact between:*

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

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

(c) Any combination thereof.

2. *An agreement that provides for postadoptive contact is enforceable if the agreement:*

(a) Is in writing and signed by the parties; and

(b) Is incorporated into an order or decree of adoption.

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



1 4. A court that enters an order or decree of adoption which
2 incorporates an agreement that provides for postadoptive contact
3 shall retain jurisdiction to enforce, modify or terminate the
4 agreement that provides for postadoptive contact until:

- 5 (a) The child reaches 18 years of age;
6 (b) The child becomes emancipated; or
7 (c) The agreement is terminated.

8 5. The establishment of an agreement that provides for
9 postadoptive contact does not affect the rights of an adoptive
10 parent as the legal parent of the child as set forth in NRS 127.160.

11 Sec. 3. 1. Each prospective adoptive parent of a child to be
12 adopted who enters into an agreement that provides for
13 postadoptive contact pursuant to section 2 of this act shall notify
14 the court responsible for entering the order or decree of adoption
15 of the child of the existence of the agreement as soon as
16 practicable after the agreement is established, but not later than
17 the time at which the court enters the order or decree of adoption
18 of the child.

19 2. Each:

20 (a) Director or other authorized representative of the agency
21 which provides child welfare services or the licensed child-placing
22 agency involved in the adoption proceedings concerning the child;
23 and

24 (b) Attorney representing a prospective adoptive parent, the
25 child, the agency which provides child welfare services or the
26 licensed child-placing agency in the adoption proceedings
27 concerning the child,

28 ↪ shall, as soon as practicable after obtaining actual knowledge
29 that the prospective adoptive parent or parents of the child and the
30 natural parent or parents of the child have entered into an
31 agreement that provides for postadoptive contact pursuant to
32 section 2 of this act, notify the court responsible for entering the
33 order or decree of adoption of the child of the existence of the
34 agreement.

35 Sec. 4. 1. Before a court may enter an order or decree of
36 adoption of a child, the court must address in person:

37 (a) Each prospective adoptive parent of the child to be
38 adopted;

39 (b) Each director or other authorized representative of the
40 agency which provides child welfare services or the licensed child-
41 placing agency involved in the adoption proceedings concerning
42 the child; and

43 (c) Each attorney representing a prospective adoptive parent,
44 the child, the agency which provides child welfare services or the



1 *licensed child-placing agency in the adoption proceedings*
2 *concerning the child,*

3 *↪ and inquire whether the person has actual knowledge that the*
4 *prospective adoptive parent or parents of the child and natural*
5 *parent or parents of the child have entered into an agreement that*
6 *provides for postadoptive contact pursuant to section 2 of this act.*

7 *2. If the court determines that the prospective adoptive parent*
8 *or parents and the natural parent or parents have entered into an*
9 *agreement that provides for postadoptive contact, the court shall:*

10 *(a) Order the prospective adoptive parent or parents to provide*
11 *a copy of the agreement to the court; and*

12 *(b) Incorporate the agreement into the order or decree of*
13 *adoption.*

14 *Sec. 5. 1. A natural parent who has entered into an*
15 *agreement that provides for postadoptive contact pursuant to*
16 *section 2 of this act may, for good cause shown:*

17 *(a) Petition the court that entered the order or decree of*
18 *adoption of the child to prove the existence of the agreement that*
19 *provides for postadoptive contact and to request that the*
20 *agreement be incorporated into the order or decree of adoption;*
21 *and*

22 *(b) During the period set forth in subsection 2 of section 6 of*
23 *this act, petition the court that entered the order or decree of*
24 *adoption of the child to enforce the terms of the agreement that*
25 *provides for postadoptive contact if the agreement complies with*
26 *the requirements of subsection 2 of section 2 of this act.*

27 *2. An adoptive parent who has entered into an agreement that*
28 *provides for postadoptive contact pursuant to section 2 of this act*
29 *may:*

30 *(a) During the period set forth in subsection 2 of section 6 of*
31 *this act, petition the court that entered the order or decree of*
32 *adoption of the child to enforce the terms of the agreement that*
33 *provides for postadoptive contact if the agreement complies with*
34 *the requirements of subsection 2 of section 2 of this act; and*

35 *(b) Petition the court that entered the order or decree of*
36 *adoption of the child to modify or terminate the agreement that*
37 *provides for postadoptive contact in the manner set forth in section*
38 *7 of this act.*

39 *Sec. 6. 1. Failure to comply with the terms of an agreement*
40 *that provides for postadoptive contact entered into pursuant to*
41 *section 2 of this act may not be used as a ground to:*

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

43 *(b) Revoke, nullify or set aside a valid release for or consent to*
44 *an adoption or a relinquishment for adoption; or*



1 (c) Except as otherwise provided in section 11 of this act,
2 award any civil damages to a party to the agreement.

3 2. Any action to enforce the terms of an agreement that
4 provides for postadoptive contact must be commenced not later
5 than 120 days after the date on which the agreement was
6 breached.

7 **Sec. 7.** 1. An agreement that provides for postadoptive
8 contact entered into pursuant to section 2 of this act may only be
9 modified or terminated by an adoptive parent petitioning the court
10 that entered the order or decree which included the agreement.
11 The court may grant a request to modify or terminate the
12 agreement only if:

13 (a) The adoptive parent petitioning the court for the
14 modification or termination establishes that:

15 (1) A change in circumstances warrants the modification or
16 termination; and

17 (2) The contact provided for in the agreement is no longer
18 in the best interests of the child; or

19 (b) Each party to the agreement consents to the modification
20 or termination.

21 2. If an adoptive parent petitions the court for a modification
22 or termination of an agreement pursuant to this section:

23 (a) There is a presumption that the modification or
24 termination is in the best interests of the child; and

25 (b) The court may consider the wishes of the child involved in
26 the agreement.

27 3. Any order issued pursuant to this section to modify an
28 agreement that provides postadoptive contact:

29 (a) May limit, restrict, condition or decrease contact between
30 the parties involved in the agreement; and

31 (b) May not expand or increase the contact between the parties
32 involved in the agreement or place any new obligation on an
33 adoptive parent.

34 **Sec. 8.** NRS 127.005 is hereby amended to read as follows:

35 127.005 The provisions of NRS 127.010 to 127.186, inclusive,
36 and sections 2 to 7, inclusive, of this act govern the adoption of
37 minor children, and the provisions of NRS 127.190, 127.200 and
38 127.210 and the provisions of NRS 127.010 to 127.186, inclusive,
39 where not inconsistent with the provisions of NRS 127.190, 127.200
40 and 127.210, govern the adoption of adults.

41 **Sec. 9.** NRS 127.140 is hereby amended to read as follows:

42 127.140 1. All hearings held in proceedings under this
43 chapter are confidential and must be held in closed court, without
44 admittance of any person other than the petitioners, their witnesses,



1 the director of an agency, or their authorized representatives,
2 attorneys and persons entitled to notice by this chapter, except by
3 order of the court.

4 2. The files and records of the court in adoption proceedings
5 are not open to inspection by any person except ~~upon~~ :

6 (a) *Upon* an order of the court expressly so permitting pursuant
7 to a petition setting forth the reasons therefor ~~for it~~ ;

8 (b) *If* a natural parent and the child are eligible to receive
9 information from the State Register for Adoptions ~~it~~ ; or

10 (c) *As provided pursuant to subsections 3, 4 and 5.*

11 3. *An adoptive parent who intends to file a petition pursuant*
12 *to section 5 or 7 of this act to enforce, modify or terminate an*
13 *agreement that provides for postadoptive contact may inspect only*
14 *the portions of the files and records of the court concerning the*
15 *agreement for postadoptive contact.*

16 4. *A natural parent who intends to file a petition pursuant to*
17 *section 5 of this act to prove the existence of or to enforce an*
18 *agreement that provides for postadoptive contact or to file an*
19 *action pursuant to section 11 of this act may inspect only the*
20 *portions of the files or records of the court concerning the*
21 *agreement for postadoptive contact.*

22 5. *The portions of the files and records which are made*
23 *available for inspection by an adoptive parent or natural parent*
24 *pursuant to subsection 3 or 4 must not include any confidential*
25 *information, including, without limitation, any information that*
26 *identifies or would lead to the identification of a natural parent if*
27 *the identity of the natural parent is not included in the agreement*
28 *for postadoptive contact.*

29 **Sec. 10.** NRS 127.171 is hereby amended to read as follows:

30 127.171 1. ~~It~~ *Except as otherwise provided in sections 2 to*
31 *7, inclusive, of this act, in* a proceeding for the adoption of a child,
32 the court may grant a reasonable right to visit to certain relatives of
33 the child only if a similar right had been granted previously pursuant
34 to NRS 125C.050.

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

37 **Sec. 11.** Chapter 41 of NRS is hereby amended by adding
38 thereto a new section to read as follows:

39 1. *A natural parent of an adopted child who has entered into*
40 *an agreement that provides for postadoptive contact pursuant to*
41 *section 2 of this act may bring a civil action against a person if:*

42 (a) *The person knowingly provided false information in*
43 *response to a question asked by a court pursuant to section 4 of*
44 *this act; and*



- 1 ***(b) The provision of false information caused the court not to***
2 ***incorporate the agreement that provides for postadoptive contact***
3 ***in the order or decree of adoption pursuant to section 4 of this act.***
4 ***2. If a person is liable to a natural parent of an adopted child***
5 ***pursuant to subsection 1, the natural parent may recover his***
6 ***actual damages, costs, reasonable attorney's fees and any punitive***
7 ***damages that the facts may warrant.***
8 ***3. The liability imposed by this section is in addition to any***
9 ***other liability imposed by law.***



