

ASSEMBLY BILL NO. 51—COMMITTEE ON JUDICIARY

FEBRUARY 11, 2005

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions relating to domestic relations. (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 domestic relations; revising provisions concerning the considerations of the court in determining the best interests of a child for the purpose of determining custody of the child; 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:

Existing law provides that the best interest of the child must be the sole consideration of the court in determining the custody of a child. Existing law further requires the court to consider certain factors in determining the best interest of the child. (NRS 125.480)

This bill expands the factors that the court must consider in determining the best interest of the child. This bill also requires the court to set forth its specific findings concerning the factors considered in determining the best interest of the child.

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 providing that any agreement for postadoptive contacts is enforceable only if the agreement is written, signed by the parties, and incorporated in the order or decree of adoption.

This bill requires certain parties and other persons who are involved in an 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.

This bill also 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.

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. NRS 125.480 is hereby amended to read as follows:

125.480 1. In determining custody of a minor child in an action brought under this chapter, the sole consideration of the court is the best interest of the child. If it appears to the court that joint custody would be in the best interest of the child, the court may grant custody to the parties jointly.

2. Preference must not be given to either parent for the sole reason that the parent is the mother or the father of the child.



3. The court shall award custody in the following order of preference unless in a particular case the best interest of the child requires otherwise:

(a) To both parents jointly pursuant to NRS 125.490 or to either parent. If the court does not enter an order awarding joint custody of a child after either parent has applied for joint custody, the court shall state in its decision the reason for its denial of the parent's application. ~~[When awarding custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.]~~

(b) To a person or persons in whose home the child has been living and where the child has had a wholesome and stable environment.

(c) To any person related within the third degree of consanguinity to the child whom the court finds suitable and able to provide proper care and guidance for the child, regardless of whether the relative resides within this State.

(d) To any other person or persons whom the court finds suitable and able to provide proper care and guidance for the child.

4. In determining the best interest of the child, the court shall consider ~~[]~~ *and set forth its specific findings concerning*, among other things:

(a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his custody. ~~[]~~

(b) Any nomination by a parent or a guardian for the child. ~~[] and []~~

(c) *Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.*

(d) *The level of conflict between the parents.*

(e) *The ability of the parents to cooperate to meet the needs of the child.*

(f) *The mental and physical health of the parents.*

(g) *The physical, developmental and emotional needs of the child.*

(h) *The nature of the relationship of the child with each parent.*

(i) *The ability of the child to maintain a relationship with any sibling.*

(j) *Any history of parental abuse or neglect of the child or a sibling of the child.*



1 (k) Whether either parent or any other person seeking custody
2 has engaged in an act of domestic violence against the child, a
3 parent of the child or any other person residing with the child.

4 5. Except as otherwise provided in subsection 6 or NRS
5 125C.210, a determination by the court after an evidentiary hearing
6 and finding by clear and convincing evidence that either parent or
7 any other person seeking custody has engaged in one or more acts of
8 domestic violence against the child, a parent of the child or any
9 other person residing with the child creates a rebuttable presumption
10 that sole or joint custody of the child by the perpetrator of the
11 domestic violence is not in the best interest of the child. Upon
12 making such a determination, the court shall set forth:

13 (a) Findings of fact that support the determination that one or
14 more acts of domestic violence occurred; and

15 (b) Findings that the custody or visitation arrangement ordered
16 by the court adequately protects the child and the parent or other
17 victim of domestic violence who resided with the child.

18 6. If after an evidentiary hearing held pursuant to subsection 5
19 the court determines that each party has engaged in acts of domestic
20 violence, it shall, if possible, then determine which person was the
21 primary physical aggressor. In determining which party was the
22 primary physical aggressor for the purposes of this section, the court
23 shall consider:

24 (a) All prior acts of domestic violence involving either party;

25 (b) The relative severity of the injuries, if any, inflicted upon the
26 persons involved in those prior acts of domestic violence;

27 (c) The likelihood of future injury;

28 (d) Whether, during the prior acts, one of the parties acted in
29 self-defense; and

30 (e) Any other factors which the court deems relevant to the
31 determination.

32 ➡ In such a case, if it is not possible for the court to determine
33 which party is the primary physical aggressor, the presumption
34 created pursuant to subsection 5 applies to both parties. If it is
35 possible for the court to determine which party is the primary
36 physical aggressor, the presumption created pursuant to subsection 5
37 applies only to the party determined by the court to be the primary
38 physical aggressor.

39 7. As used in this section, "domestic violence" means the
40 commission of any act described in NRS 33.018.



1 **Sec. 2.** Chapter 127 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 3 to 8, inclusive, of this
3 act.

4 **Sec. 3. 1.** *The natural parent or parents and the prospective*
5 *adoptive parent or parents of a child to be adopted may enter into*
6 *an enforceable agreement that provides for postadoptive contact*
7 *between:*

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

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

11 (c) *Any combination thereof.*

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

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

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

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

20 **4.** *A court that enters an order or decree of adoption which*
21 *incorporates an agreement that provides for postadoptive contact*
22 *shall retain jurisdiction to enforce, modify or terminate the*
23 *agreement that provides for postadoptive contact until:*

24 (a) *The child reaches 18 years of age;*

25 (b) *The child becomes emancipated; or*

26 (c) *The agreement is terminated.*

27 **5.** *The establishment of an agreement that provides for*
28 *postadoptive contact does not affect the rights of an adoptive*
29 *parent as the legal parent of the child as set forth in NRS 127.160.*

30 **Sec. 4. 1.** *Each prospective adoptive parent of a child to be*
31 *adopted who enters into an agreement that provides for*
32 *postadoptive contact pursuant to section 3 of this act shall notify*
33 *the court responsible for entering the order or decree of adoption*
34 *of the child of the existence of the agreement as soon as*
35 *practicable after the agreement is established, but not later than*
36 *the time at which the court enters the order or decree of adoption*
37 *of the child.*

38 **2.** *Each:*

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

43 (b) *Attorney representing a prospective adoptive parent, the*
44 *child, the agency which provides child welfare services or the*



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

3 *↪ shall, as soon as practicable after obtaining actual knowledge*
4 *that the prospective adoptive parent or parents of the child and the*
5 *natural parent or parents of the child have entered into an*
6 *agreement that provides for postadoptive contact pursuant to*
7 *section 3 of this act, notify the court responsible for entering the*
8 *order or decree of adoption of the child of the existence of the*
9 *agreement.*

10 **Sec. 5.** *1. Before a court may enter an order or decree of*
11 *adoption of a child, the court must address in person:*

12 *(a) Each prospective adoptive parent of the child to be*
13 *adopted;*

14 *(b) Each director or other authorized representative of the*
15 *agency which provides child welfare services or the licensed child-*
16 *placing agency involved in the adoption proceedings concerning*
17 *the child; and*

18 *(c) Each attorney representing a prospective adoptive parent,*
19 *the child, the agency which provides child welfare services or the*
20 *licensed child-placing agency in the adoption proceedings*
21 *concerning the child,*

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

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

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

31 *(b) Incorporate the agreement into the order or decree of*
32 *adoption.*

33 **Sec. 6.** *1. A natural parent who has entered into an*
34 *agreement that provides for postadoptive contact pursuant to*
35 *section 3 of this act may, for good cause shown:*

36 *(a) Petition the court that entered the order or decree of*
37 *adoption of the child to prove the existence of the agreement that*
38 *provides for postadoptive contact and to request that the*
39 *agreement be incorporated into the order or decree of adoption;*
40 *and*

41 *(b) During the period set forth in subsection 2 of section 7 of*
42 *this act, petition the court that entered the order or decree of*
43 *adoption of the child to enforce the terms of the agreement that*



1 *provides for postadoptive contact if the agreement complies with*
2 *the requirements of subsection 2 of section 3 of this act.*

3 2. *An adoptive parent who has entered into an agreement that*
4 *provides for postadoptive contact pursuant to section 3 of this act*
5 *may:*

6 (a) *During the period set forth in subsection 2 of section 7 of*
7 *this act, petition the court that entered the order or decree of*
8 *adoption of the child to enforce the terms of the agreement that*
9 *provides for postadoptive contact if the agreement complies with*
10 *the requirements of subsection 2 of section 3 of this act; and*

11 (b) *Petition the court that entered the order or decree of*
12 *adoption of the child to modify or terminate the agreement that*
13 *provides for postadoptive contact in the manner set forth in section*
14 *8 of this act.*

15 **Sec. 7. 1.** *Failure to comply with the terms of an agreement*
16 *that provides for postadoptive contact entered into pursuant to*
17 *section 3 of this act may not be used as a ground to:*

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

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

21 (c) *Except as otherwise provided in section 12 of this act,*
22 *award any civil damages to a party to the agreement.*

23 2. *Any action to enforce the terms of an agreement that*
24 *provides for postadoptive contact must be commenced not later*
25 *than 120 days after the date on which the agreement was*
26 *breached.*

27 **Sec. 8. 1.** *An agreement that provides for postadoptive*
28 *contact entered into pursuant to section 3 of this act may only be*
29 *modified or terminated by an adoptive parent petitioning the court*
30 *that entered the order or decree which included the agreement.*
31 *The court may grant a request to modify or terminate the*
32 *agreement only if:*

33 (a) *The adoptive parent petitioning the court for the*
34 *modification or termination establishes that:*

35 (1) *A change in circumstances warrants the modification or*
36 *termination; and*

37 (2) *The contact provided for in the agreement is no longer*
38 *in the best interests of the child; or*

39 (b) *Each party to the agreement consents to the modification*
40 *or termination.*

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

43 (a) *There is a presumption that the modification or*
44 *termination is in the best interests of the child; and*



1 (b) *The court may consider the wishes of the child involved in*
2 *the agreement.*

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

5 (a) *May limit, restrict, condition or decrease contact between*
6 *the parties involved in the agreement; and*

7 (b) *May not expand or increase the contact between the parties*
8 *involved in the agreement or place any new obligation on an*
9 *adoptive parent.*

10 **Sec. 9.** NRS 127.005 is hereby amended to read as follows:

11 127.005 The provisions of NRS 127.010 to 127.186, inclusive,
12 *and sections 3 to 8, inclusive, of this act* govern the adoption of
13 minor children, and the provisions of NRS 127.190, 127.200 and
14 127.210 and the provisions of NRS 127.010 to 127.186, inclusive,
15 where not inconsistent with the provisions of NRS 127.190, 127.200
16 and 127.210, govern the adoption of adults.

17 **Sec. 10.** NRS 127.140 is hereby amended to read as follows:

18 127.140 1. All hearings held in proceedings under this
19 chapter are confidential and must be held in closed court, without
20 admittance of any person other than the petitioners, their witnesses,
21 the director of an agency, or their authorized representatives,
22 attorneys and persons entitled to notice by this chapter, except by
23 order of the court.

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

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

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

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

31 3. *An adoptive parent who intends to file a petition pursuant*
32 *to section 6 or 8 of this act to enforce, modify or terminate an*
33 *agreement that provides for postadoptive contact may inspect only*
34 *the portions of the files and records of the court concerning the*
35 *agreement for postadoptive contact.*

36 4. *A natural parent who intends to file a petition pursuant to*
37 *section 6 of this act to prove the existence of or to enforce an*
38 *agreement that provides for postadoptive contact or to file an*
39 *action pursuant to section 12 of this act may inspect only the*
40 *portions of the files or records of the court concerning the*
41 *agreement for postadoptive contact.*

42 5. *The portions of the files and records which are made*
43 *available for inspection by an adoptive parent or natural parent*
44 *pursuant to subsection 3 or 4 must not include any confidential*



1 *information, including, without limitation, any information that*
2 *identifies or would lead to the identification of a natural parent if*
3 *the identity of the natural parent is not included in the agreement*
4 *for postadoptive contact.*

5 **Sec. 11.** NRS 127.171 is hereby amended to read as follows:

6 127.171 1. ~~Has~~ *Except as otherwise provided in sections 3 to*
7 *8, inclusive, of this act, in* a proceeding for the adoption of a child,
8 the court may grant a reasonable right to visit to certain relatives of
9 the child only if a similar right had been granted previously pursuant
10 to NRS 125C.050.

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

13 **Sec. 12.** Chapter 41 of NRS is hereby amended by adding
14 thereto a new section to read as follows:

15 1. *A natural parent of an adopted child who has entered into*
16 *an agreement that provides for postadoptive contact pursuant to*
17 *section 3 of this act may bring a civil action against a person if:*

18 (a) *The person knowingly provided false information in*
19 *response to a question asked by a court pursuant to section 5 of*
20 *this act; and*

21 (b) *The provision of false information caused the court not to*
22 *incorporate the agreement that provides for postadoptive contact*
23 *in the order or decree of adoption pursuant to section 5 of this act.*

24 2. *If a person is liable to a natural parent of an adopted child*
25 *pursuant to subsection 1, the natural parent may recover his*
26 *actual damages, costs, reasonable attorney's fees and any punitive*
27 *damages that the facts may warrant.*

28 3. *The liability imposed by this section is in addition to any*
29 *other liability imposed by law.*



