

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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SENATE BILL 721

Short Title: Post-Adoption Privileges.

(Public)

Sponsors: Senators Kinnaird; and Lucas.

Referred to: Judiciary II.

April 3, 2003

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

5 The General Assembly of North Carolina enacts:

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

8 "Article 11.

9 "Post-Adoption Privileges.

10 **"§ 48-11-100. Definitions.**

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

- 12 (1) Birth relative. – A biological parent, grandparent, sibling, or any other  
13 member of the child's biological family related to the child by blood or  
14 marriage.
- 15 (2) Post-adoption privileges agreement. – A written agreement between an  
16 adoptive parent, a birth relative, and a child, if the child is 12 years of  
17 age or older, to allow specifically described post-adoption privileges.
- 18 (3) Post-adoption privileges. – Visitation, communication, or any other  
19 contact or conveyance of information regarding a child who has been  
20 adopted.

21 **"§ 48-11-101. Post-adoption privileges agreement; terms; conditions.**

22 (a) An adoptive parent, a birth relative, and a child, if the child is 12 years of age  
23 or older, may enter into a post-adoption privileges agreement before or at the time a  
24 decree of adoption is granted.

25 (b) A post-adoption privileges agreement shall include the following:

- 26 (1) Provisions for visitation between the child and a birth relative.
- 27 (2) Provisions for other forms of communication including the exchange  
28 of letters and telephone contact between the child and a birth relative.

- 1           (3)    Provisions for sharing information about the child by parties to the  
2           agreement.
- 3           (4)    The following warnings in bold type:
- 4           a.     After the adoption petition has been granted by the court, the  
5           adoption shall not be set aside due to the failure of an adoptive  
6           parent, birth relative, or the child to follow the terms of this  
7           agreement or modifications to the agreement.
- 8           b.     A disagreement between the parties or litigation brought to  
9           enforce, modify, or terminate this agreement shall not affect the  
10          validity of the adoption or serve as a basis for orders affecting  
11          the custody of the child.
- 12          c.     A court will not act on a petition to modify, enforce, or  
13          terminate this agreement unless the petitioner has participated  
14          or attempted to participate in good faith in mediation or other  
15          appropriate dispute resolution proceedings to resolve any  
16          dispute.
- 17          (c)    The court may approve a post-adoption privileges agreement only if all of the  
18          following conditions are satisfied:
- 19               (1)    The court finds that there is a significant emotional attachment  
20               between the child and the person or persons to whom the agreement  
21               gives post-adoption privileges.
- 22               (2)    The child, if the child is 12 years of age or older, consents to the post-  
23               adoption privileges agreement. However, the court may waive the  
24               requirement for the child's consent if the court finds that the child is  
25               not capable of consenting or that the child should not be required to  
26               consent because consenting would not be in the child's best interest.
- 27               (3)    The county department of social services or the licensed agency  
28               placing the child for adoption or in the case of a direct placement  
29               adoption, the agency making the report to the court pursuant to G.S.  
30               48-2-501 recommends the granting of post-adoption privileges.
- 31               (4)    The child is represented by a court-appointed guardian ad litem and the  
32               guardian recommends the granting of post-adoption privileges unless  
33               the court finds that the appointment of a guardian ad litem is not  
34               necessary to protect the child's best interest.
- 35               (5)    Each adoptive parent consents to the granting of post-adoption  
36               privileges.
- 37               (6)    The adoptive parent and the birth relative execute a post-adoption  
38               privileges agreement and file the agreement with the court.
- 39               (7)    The post-adoption privileges agreement includes an acknowledgment  
40               by the birth relative that the adoption is irrevocable regardless of  
41               whether the adoptive parent fails to abide by the post-adoption  
42               privileges agreement.
- 43               (8)    The post-adoption privileges agreement includes an acknowledgment  
44               by the adoptive parent that the agreement, when approved by the court,

1 grants the birth relative the right to seek enforcement in court of the  
2 post-adoption privileges specified in the agreement.

3 (9) Any other factors the court deems appropriate in determining whether  
4 the child's best interests would be served by granting post-adoption  
5 privileges.

6 (d) A post-adoption privileges agreement is enforceable only if it is approved by  
7 the court and signed by a district court judge.

8 **"§ 48-11-102. Modification, enforcement, and termination.**

9 (a) A birth relative or an adoptive parent may file a new civil action in district  
10 court for the purpose of modifying, enforcing, or terminating a post-adoption privileges  
11 agreement.

12 (b) In an action under this section, the court may modify, enforce, or terminate a  
13 post-adoption privileges agreement if the court finds that the party seeking relief has  
14 participated or attempted to participate in good faith in mediating the dispute giving rise  
15 to the action or the court determines that the modification or termination is necessary to  
16 serve the best interests of the adopted child.

17 (c) The court shall not award monetary damages.

18 **"§ 48-11-103. Effect of failure to comply.**

19 The court shall not set aside a decree of adoption, revoke a written consent to an  
20 adoption, rescind a relinquishment, or modify an order to terminate parental rights or  
21 any other prior court order for failure of a birth relative, an adoptive parent, or a child to  
22 comply with any or all of the original terms of or subsequent modifications to the post-  
23 adoption privileges agreement."

24 **SECTION 2.** G.S. 48-1-100 reads as rewritten:

25 **"§ 48-1-100. Legislative findings and intent; construction of Chapter.**

26 (a) The General Assembly finds that it is in the public interest to establish a clear  
27 judicial process for adoptions, to promote the integrity and finality of adoptions, to  
28 encourage prompt, conclusive disposition of adoption proceedings, and to structure  
29 services to adopted children, biological parents, and adoptive parents that will provide  
30 for the needs and protect the interests of all parties to an adoption, particularly adopted  
31 minors.

32 (b) With special regard for the adoption of minors, the General Assembly  
33 declares as a matter of legislative policy that:

34 (1) The primary purpose of this Chapter is to advance the welfare of  
35 minors by (i) protecting minors from unnecessary separation from their  
36 original parents, (ii) facilitating the adoption of minors in need of  
37 adoptive placement by persons who can give them love, care, security,  
38 and support, (iii) protecting minors from placement with adoptive  
39 parents unfit to have responsibility for their care and rearing, and (iv)  
40 assuring the finality of the adoption; and

41 (2) Secondary purposes of this Chapter are (i) to protect biological parents  
42 from ill-advised decisions to relinquish a child or consent to the child's  
43 adoption, (ii) to protect adoptive parents from assuming responsibility  
44 for a child about whose heredity or mental or physical condition they

1 know nothing, (iii) to protect the privacy of the parties to the adoption,  
2 and (iv) to discourage unlawful trafficking in minors and other  
3 unlawful placement activities.

4 (c) In construing this Chapter, the needs, interests, and rights of minor adoptees  
5 are primary. Any conflict between the interests of a minor adoptee and those of an adult  
6 shall be resolved in favor of the minor.

7 (d) This Chapter shall be liberally construed and applied to promote its  
8 underlying purposes and policies.

9 (e) Nothing in this Chapter shall be construed to prevent an adoptive parent, a  
10 birth relative, and a child, if the child is 12 years of age or older, from entering into a  
11 post-adoption privileges agreement as provided in Article 11 of this Chapter."

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

13 **"§ 7B-1100. Legislative intent; construction of Article.**

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

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

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

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

29 (4) This Article shall not be used to circumvent the provisions of Chapter  
30 50A of the General Statutes, the Uniform Child-Custody Jurisdiction  
31 and Enforcement Act.

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

35 **SECTION 4.** This act is effective when it becomes law.