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**HOUSE BILL NO. 750**

Offered January 13, 2010

Prefiled January 12, 2010

*A BILL to amend and reenact §§ 16.1-283.1, 63.2-1228.1, and 63.2-1228.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 63.2-1228.01, relating to post-adoption contact and communication agreements.*

Patrons—Toscano and Landes

Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-283.1, 63.2-1228.1, and 63.2-1228.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 63.2-1228.01 as follows:**

§ 16.1-283.1. Authority to enter into voluntary post-adoption contact and communication agreement.

A. In any case in which a child has been placed in foster care as a result of court commitment, an entrustment agreement entered into by the parent or parents, or other voluntary relinquishment by the parent or parents, the child's birth parent or parents may enter into a written post-adoption contact and communication agreement with the pre-adoptive parent or parents *as provided in §§ 63.2-1228.01, 63.2-1228.1, and 63.2-1228.2*. A post-adoption contact and communication agreement may include, but is not limited to, provisions related to contact and communication between the child, the birth parent or parents, and the adoptive parent or parents, and provisions for the sharing of information about the child, including sharing of photographs of the child and information about the child's education, health, and welfare.

B. Any agreement entered into by the birth parent or parents and the pre-adoptive parent or parents shall contain the birth parent's or parents' acknowledgment that the adoption of the child is irrevocable, even if the adoptive parents do not abide by the post-adoption contact and communication agreement, and the adoptive parent's or parents' acknowledgment that the agreement grants the birth parent or parents the right to seek to enforce the post-adoption contact and communication provisions set forth in the agreement. The petitioner for adoption shall file such agreement with other documents filed in the circuit court having jurisdiction over the child's adoption.

C. In no event shall failure to enter into a post-adoption contact and communication agreement with identified adoptive parents after authority to consent to the child's adoption is granted to a local board of social services or a child welfare agency, or failure to comply with a post-adoption contact and communication agreement, affect the validity of (i) the consent to the adoption, (ii) the voluntary relinquishment of parental rights, (iii) the voluntary or involuntary termination of parental rights, or (iv) the finality of the adoption.

D. No birth parent or parents of a child or pre-adoptive parent or parents of a child shall be required to enter into a post-adoption contact and communication agreement.

§ 63.2-1228.01. Authority to enter into post-adoption contract and communication agreements.

A. In any proceeding for adoption pursuant to this chapter, the birth parent(s) and the adoptive parent(s) of a child may enter into a written post-adoption contact and communication agreement. A post-adoption contact and communication agreement may include, but is not limited to, provisions related to contact and communication between the child, the birth parent(s), and the adoptive parent(s), and provisions for the sharing of information about the child, including sharing of photographs of the child and information about the child's education, health, and welfare.

B. Any post-adoption contact and communication agreement entered into by the birth parent(s) and the adoptive parent(s) of a child shall include acknowledgement by the birth parent(s) that the adoption of the child is irrevocable, even if the adoptive parents do not abide by the post-adoption contact and communication agreement, and the acknowledgement by the adoptive parent(s) that the agreement grants the birth parent(s) the right to seek to enforce the post-adoption contact and communication provisions set forth in the agreement. The petitioner for adoption shall file such agreement with other documents filed in the circuit court having jurisdiction over the child's adoption.

C. In no event shall failure to enter into a post-adoption contact and communication agreement with identified adoptive parent(s) after a valid entrustment agreement or consent to the child's adoption is executed, or failure to comply with a post-adoption contact and communication agreement, affect the validity of (i) the consent to the adoption, (ii) the voluntary relinquishment of parental rights, (iii) the voluntary or involuntary termination of parental rights, or (iv) the finality of the adoption.

INTRODUCED

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59 *D. No birth parent(s) or adoptive parent(s) of a child shall be required to enter into a post-adoption*  
60 *contact and communication agreement.*

61 § 63.2-1228.1. Post-adoption contact and communication agreements.

62 A. The circuit court may approve a post-adoption contact and communication agreement authorized  
63 pursuant to § 16.1-283.1 *or 63.2-1228.01* and filed with the court for a petition for adoption if:

64 1. The court determines that the child's best interest would be served by approving the post-adoption  
65 contact and communication agreement;

66 2. The adoptive parent or parents and birth parent or parents have consented to a post-adoption  
67 contact and communication agreement filed with the court;

68 3. The agency ~~sponsoring the authorized to place the child for adoption and to consent to an~~  
69 ~~adoption or authorized to recommend the placement of a child for~~ adoption and the child's guardian ad  
70 litem have recommended that the post-adoption contact and communication agreement be approved as  
71 being in the best interest of the child, or, if there is no agency sponsoring the adoption, the agency that  
72 prepared the adoption report has been informed of the post-adoption contact and communication  
73 agreement and has recommended in the agency's report to the circuit court that the post-adoption contact  
74 and communication agreement be approved; *however, in cases in which no child placing agency or*  
75 *guardian ad litem for the child is involved, this requirement may be waived;* and

76 4. Where the child is 14 years of age or older, consent to the post-adoption contact and  
77 communication agreement is obtained from the child.

78 ~~B. A post-adoption contact and communication agreement shall include the following:~~

79 1. ~~The birth parent's or parents' acknowledgment that the adoption of the child is irrevocable, even if~~  
80 ~~the adoptive parent or parents do not abide by the post-adoption contact and communication agreement;~~  
81 ~~and~~

82 2. ~~The adoptive parent's or parents' acknowledgment that the agreement grants the birth parent or~~  
83 ~~parents rights to seek to enforce the post-adoption contact and communication provisions set forth in the~~  
84 ~~agreement.~~

85 C. A post-adoption contact and communication agreement may include, but is not limited to,  
86 provisions related to contact and communication between the child, the birth parent or parents, and the  
87 adoptive parent or parents, and provisions for the sharing of information about the child, including  
88 sharing of photographs of the child and information about the child's education, health, and welfare.

89 ~~D.B.~~ To be enforceable, any agreement under this section shall be approved by the circuit court and  
90 incorporated into the final order of adoption.

91 ~~E.C.~~ The circuit court shall not require execution of a post-adoption contact and communication  
92 agreement as a condition for approving any adoption.

93 § 63.2-1228.2. Jurisdiction to approve post-adoption contact and communication agreements.

94 A. Unless otherwise stated in the final order of adoption, the circuit court of the jurisdiction in which  
95 the final order of adoption was entered shall retain jurisdiction to modify or enforce the terms of a  
96 post-adoption contact and communication agreement entered into pursuant to ~~§ 63.2-1228.1~~  
97 ~~§ 63.2-1228.01~~.

98 B. A birth parent or parents or adoptive parent or parents who have executed a post-adoption contact  
99 and communication agreement as described in this section may file a petition with the circuit court of  
100 the jurisdiction in which the final order of adoption was entered:

101 1. To modify the post-adoption contact and communication agreement; and

102 2. To compel a birth or adoptive parent to comply with the post-adoption contact and communication  
103 agreement. The court may not award monetary damages as a result of the filing of a petition for  
104 modification of or compliance with the agreement. The court may modify the agreement at any time  
105 before or after the adoption if the court, after notice and opportunity to be heard by the birth parent or  
106 parents and the adoptive parent or parents, determines that the child's best interest requires the  
107 modification of the agreement. Before the court modifies an agreement or hears a motion to compel  
108 compliance, the court may appoint a guardian ad litem to represent the child's best interest.

109 C. The circuit court shall not grant a request to modify the terms of a post-adoption contact and  
110 communication agreement unless the moving party establishes that there has been a change of  
111 circumstances and the agreement is no longer in the child's best interest; provided, however, that no  
112 modification shall affect the irrevocability of the adoption.

113 D. ~~Failure to comply with the terms of a post-adoption contact and communication agreement or an~~  
114 ~~order entered into pursuant to § 63.2-1228.1 shall not affect (i) the consent to the adoption, (ii) the~~  
115 ~~voluntary relinquishment of parental rights, (iii) the voluntary or involuntary termination of parental~~  
116 ~~rights, or (iv) the finality of the adoption.~~