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HOUSE BILL NO. 750

House Amendments in [] - February 1, 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.*

Patron Prior to Engrossment—Delegate Toscano

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. *The court may consider the appropriateness of a written post-adoption contact and communication agreement entered into in accordance with subsection A at the permanency hearing held pursuant to § 16.1-282.1 and, if the court finds that all of the provisions of subsection A have been met, the court shall incorporate the written post-adoption contact and communication agreement into an order entered at the conclusion of such hearing.*] 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

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59 *identified adoptive parent(s) after a valid entrustment agreement or consent to the child's adoption is*
60 *executed, or failure to comply with a post-adoption contact and communication agreement, affect the*
61 *validity of (i) the consent to the adoption, (ii) the voluntary relinquishment of parental rights, (iii) the*
62 *voluntary or involuntary termination of parental rights, or (iv) the finality of the adoption.*

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

65 § 63.2-1228.1. Post-adoption contact and communication agreements.

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

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

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

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

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

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

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

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

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

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

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

97 § 63.2-1228.2. Jurisdiction to approve post-adoption contact and communication agreements.

98 A. Unless otherwise stated in the final order of adoption, the circuit court of the jurisdiction in which
99 the final order of adoption was entered shall retain jurisdiction to modify or enforce the terms of a
100 post-adoption contact and communication agreement entered into pursuant to ~~§ 63.2-1228.1~~
101 ~~§ 63.2-1228.01~~.

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

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

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

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

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