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SENATE BILL NO. 1139

Offered January 9, 2019

Prefiled December 30, 2018

A BILL to amend and reenact §§ 16.1-283.1, 63.2-1220.2, and 63.2-1220.3 of the Code of Virginia, relating to post-adoption contact and communication agreements.

Patrons—Favola; Delegate: Reid

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-283.1, 63.2-1220.2, and 63.2-1220.3 of the Code of Virginia are amended and reenacted 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, or in which the parent or parents have voluntarily consented to the adoption of the child, 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 Article 1.1 (§ 63.2-1220.2 et seq.) of Chapter 12 of Title 63.2.

B. The court ~~may~~ *shall* consider the appropriateness of a written post-adoption contact and communication agreement entered into pursuant to subsection A and in accordance with Article 1.1 (§ 63.2-1220.2 et seq.) of Chapter 12 of Title 63.2 at the permanency planning hearing pursuant to § 16.1-282.1 and, if the court finds that all of the requirements of subsection A and Article 1.1 (§ 63.2-1220.2 et seq.) of Chapter 12 of Title 63.2 have been met, shall incorporate the written post-adoption contact and communication agreement into an order entered at the conclusion of such hearing.

§ 63.2-1220.2. Authority to enter into post-adoption contact 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. *In any proceeding for adoptions pursuant to Article 2 (§ 63.2-1221 et seq.), the agency authorized to place the child for adoption shall inform the birth parent(s) and the adoptive parent(s) of a child that they may enter into such an 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 acknowledgment by the birth parent(s) that the adoption of the child is irrevocable, even if the adoptive parent(s) do not abide by the post-adoption contact and communication agreement, and acknowledgment 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.

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

§ 63.2-1220.3. Approval of post-adoption contact and communication agreements.

A. The circuit court ~~may~~ *shall* approve a post-adoption contact and communication agreement authorized pursuant to § 16.1-283.1 or entered into pursuant to this article and filed with the court for a petition for adoption ~~if~~ *unless*:

1. The court determines that the child's best interest would *not* be served by approving the post-adoption contact and communication agreement;

2. The adoptive parent or parents and birth parent or parents have *not* consented to a post-adoption contact and communication agreement filed with the court;

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3. The agency authorized to place the child for adoption and to consent to an adoption or authorized to recommend the placement of a child for adoption and the child's guardian ad litem have recommended ~~that~~ *against approving* the post-adoption contact and communication agreement ~~be approved~~ as being in the best interest of the child, or, if there is no agency sponsoring the adoption, the agency that prepared the adoption report has been informed of the post-adoption contact and communication agreement and has recommended in the agency's report to the circuit court that the post-adoption contact and communication agreement *not* be approved; however, in cases in which no ~~child placing~~ *child-placing* agency or guardian ad litem for the child is involved, this requirement may be waived; ~~and~~ *or*

4. Where the child is 14 years of age or older, consent to the post-adoption contact and communication agreement is *not* obtained from the child.

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

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