

Senator Lyle W. Hillyard proposes the following substitute bill:

POSTADOPTION CONTACT AGREEMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Derek E. Brown

LONG TITLE

General Description:

This bill modifies Title 62A, Chapter 4a, Child and Family Services, and Title 78B, Chapter 6, Particular Proceedings, by permitting postadoption contact agreements between prospective adoptive parents and birth parents or other birth relatives of a prospective adoptive child in the custody of the Division of Child and Family Services.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ permits a prospective adoptive parent, birth parent, or other birth relative of a prospective adoptive child in the custody of the Division of Child and Family Services to enter into a postadoption contact agreement;
- ▶ describes the requirements for a valid postadoption contact agreement;
- ▶ requires that a postadoption contact agreement be approved by the court and found to be in the best interest of the child;
- ▶ prohibits the enforcement of a postadoption contact agreement that is not in the best interest of the child;
- ▶ states that violation of a postadoption contact agreement is not grounds to set aside an adoption or for money damages;



- 26 ▶ prohibits the Division of Child and Family Services from considering a prospective
- 27 adoptive parent's willingness, or unwillingness, to enter into a postadoption contact
- 28 agreement before placing the prospective adoptive child for adoption; and
- 29 ▶ makes technical changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **62A-4a-205.6**, as last amended by Laws of Utah 2008, Chapter 3

37 ENACTS:

38 **78B-6-146**, Utah Code Annotated 1953



40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section **62A-4a-205.6** is amended to read:

42 **62A-4a-205.6. Adoptive placement time frame -- Contracting with agencies.**

43 (1) With regard to a child who has a primary permanency goal of adoption or for whom
44 a final plan for pursuing termination of parental rights has been approved in accordance with
45 Section 78A-6-314, the division shall make intensive efforts to place the child in an adoptive
46 home within 30 days of the earlier of:

- 47 (a) approval of the final plan; or
- 48 (b) establishment of the primary permanency goal.

49 (2) If within the time periods described in Subsection (1) the division is unable to
50 locate a suitable adoptive home, it shall contract with licensed child placing agencies to search
51 for an appropriate adoptive home for the child, and to place the child for adoption. The
52 division shall comply with the requirements of Section 62A-4a-607 and contract with a variety
53 of child placing agencies licensed under Part 6. In accordance with federal law, the division
54 shall develop plans for the effective use of cross-jurisdictional resources to facilitate timely
55 adoptive or permanent placements for waiting children.

56 (3) The division shall ensure that children who are adopted and were previously in its

57 custody, continue to receive the medical and mental health coverage that they are entitled to
58 under state and federal law.

59 (4) The division may not consider a prospective adoptive parent's willingness or
60 unwillingness to enter a postadoption contact agreement under Section 78B-6-146 as a
61 condition of placing a child with the prospective adoptive parent.

62 Section 2. Section **78B-6-146** is enacted to read:

63 **78B-6-146. Postadoption contact agreements.**

64 (1) As used in this section:

65 (a) "Postadoption contact agreement" means a document, agreed upon prior to the
66 finalization of an adoption of a child in the custody of the division, that outlines the
67 relationship between an adoptive parent, birth parent, or other birth relative, and an adopted
68 child after the finalization of adoption.

69 (b) "Other birth relative" means a grandparent, stepparent, sibling, stepsibling, aunt, or
70 uncle of the prospective adoptive child.

71 (2) (a) Notwithstanding any other provision in this chapter, if a child in the custody of
72 the division is placed for adoption, the prospective adoptive parent and birth parent, or other
73 birth relative, may enter into a postadoption contact agreement as provided in this section.

74 (b) A birth parent is not required to be a party to a postadoption contact agreement in
75 order to permit an open adoption agreement between a prospective adoptive parent and another
76 birth relative of the child.

77 (3) In order to be legally enforceable, a postadoption contact agreement shall be:

78 (a) approved by the court before the finalization of the adoption, with the court making
79 a specific finding that the agreement is in the best interest of the child;

80 (b) signed by each party claiming a right or obligation in the agreement; and

81 (c) if the adopted child is 12 years old or older, approved by the child.

82 (4) A postadoption contact agreement shall:

83 (a) describe:

84 (i) visits, if any, that shall take place between the birth parent, other birth relative,
85 adoptive parent, and adopted child;

86 (ii) the degree of supervision, if any, that shall be required during a visit between a
87 birth parent, other birth relative, and adopted child;

88 (iii) the information, if any, that shall be provided to a birth parent, or other birth
89 relative, about the adopted child and how often that information shall be provided;

90 (iv) the grounds, if any, on which the adoptive parent may:

91 (A) decline to permit visits, described in Subsection (4)(a)(i), between the birth parent,
92 or other birth relative, and adopted child; or

93 (B) cease providing the information described in Subsection (4)(a)(iii) to the birth
94 parent or other birth relative; and

95 (b) state that following the adoption, the court shall presume that the adoptive parent's
96 judgment about the best interest of the child is correct in any action seeking to enforce, modify,
97 or terminate the agreement.

98 (5) A postadoption contact agreement may not limit the adoptive parent's ability to
99 move out of state.

100 (6) A postadoption contact agreement may only be modified with the consent of the
101 adoptive parent.

102 (7) In an action seeking enforcement of a postadoption contact agreement:

103 (a) an adoptive parent's judgment about the best interest of the child is entitled to a
104 presumption of correctness;

105 (b) if the party seeking to enforce the postadoption contact agreement successfully
106 rebutts the presumption described in Subsection (7)(a), the court shall consider whether:

107 (i) the parties performed the duties outlined in the open adoption agreement in good
108 faith;

109 (ii) there is a reasonable alternative that fulfills the spirit of the open adoption
110 agreement without ordering mandatory compliance with the open adoption agreement; and

111 (iii) enforcement of the open adoption agreement is in the best interest of the adopted
112 child; and

113 (c) the court shall order the parties to attend mediation, if the presumption in
114 Subsection (7)(a) is successfully rebutted and mediation is in the child's best interest.

115 (8) An open adoption agreement that has been found not to be in the best interest of the
116 adopted child shall not be enforced.

117 (9) Violation of an open adoption agreement is not grounds:

118 (a) to set aside an adoption; or

119 (b) for an award of money damages.

120 (10) Nothing in this section shall be construed to mean that an open adoption
121 agreement is required before an adoption may be finalized.

122 (11) Refusal or failure to agree to a postadoption contact agreement is not admissible
123 in any adoption proceeding.

124 (12) The court that approves a postadoption contact agreement retains jurisdiction over
125 modification, termination, and enforcement of an approved postadoption contact agreement.