

SENATE BILL 207

By Haile

AN ACT to amend Tennessee Code Annotated, Title 36,
Chapter 1, relative to post-adoption contact.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-1-121(f), is amended by deleting the subsection and substituting instead the following:

A final order of adoption of a child cannot require the adoptive parent to permit visitation by any other person, nor can the final order of adoption place any conditions on the adoption of the child by the adoptive parent. This statute does not prohibit the entry of an order enforcing or modifying a contract for post-adoption contact pursuant to § 36-1-145.

SECTION 2. Tennessee Code Annotated, Title 36, Chapter 1, is amended by adding the following language as a new section:

36-1-145.

(a) A prospective adoptive parent or an adoptive parent and a biological parent; or a prospective adoptive parent or an adoptive parent, a biological parent, and a child who is fourteen (14) years of age or older who is being adopted or who has been adopted, may voluntarily enter into a written contract for post-adoption contact that permits continued contact between legal relatives and the child. Unless expressly designated as a moral agreement only and that the agreement is not intended to be legally enforceable, a written agreement executed in accordance with this section is a contract for post-adoption contact, and is enforceable pursuant to this section. A subject child fourteen (14) years of age or older is a necessary party to a contract for post-

adoption contact and is deemed to have the capacity to enter into a contract for purposes of this section.

(b) A contract for post-adoption contact may provide for privileges regarding an adopted child, including, but not limited to, visitation with the child, contact with the child, sharing of information about the child, or sharing of information about biological parents or adoptive parents.

(c) A contract for post-adoption contact must be in writing and signed by all parties to the agreement and is enforceable pursuant to this section. A verbal agreement or written statement not signed by all parties is not enforceable under this section. A provision of a contract for post-adoption contact permitting contact between an adopted child and a person legally restrained from contact with the child, or with children generally, is not enforceable under this section. A contract for post-adoption contact becomes enforceable under this section upon finalization of the anticipated adoption. Unless the parties state otherwise in the contract, a contract for post-adoption contact may be enforceable until the child being adopted reaches eighteen (18) years of age.

(d) As used in this section, "parties" means the prospective adoptive parent or adoptive parent, the biological parent, and the child if the child is fourteen (14) years of age or older at the time of the contract, but excludes any third-party beneficiary to the contract.

(e) A contract for post-adoption contact must contain the following warnings in at least fourteen (14) point boldface type:

(1) After the entry of an order of adoption, an adoption cannot be set aside due to the failure of an adoptive parent, a biological parent, or the child to follow the terms of this contract or a later change to this contract; and

(2) A disagreement between the parties or litigation brought to enforce or modify this contract shall not affect the validity of the adoption and cannot serve as a basis for orders affecting the custody of the child.

(f) Except as otherwise provided in subdivision (j)(5), the court issuing the order of adoption has continuing jurisdiction over enforcement or modification of a contract for post-adoption contact.

(g) A party to a contract for post-adoption contact may file the original contract with the court having jurisdiction over the adoption if the contract provides for court enforcement or if the contract is silent as to the issue of enforcement. A contract filed with the adoption court must be filed in the adoption action, unless an action to enforce the contract is filed. An action to enforce the contract is a new and independent action.

(h) A contract for post-adoption contact may be modified or terminated by voluntary execution of a modification or termination agreement by all living parties to the original contract. A modified contract for post-adoption contact may be filed with the court if the contract provides for court enforcement or the contract is silent as to enforcement.

(i) A court shall not set aside an order of adoption, rescind a waiver of interest or surrender, or modify an order terminating parental rights due to the failure of a party to comply with any or all the original terms of, or subsequent modifications to, a contract for post-adoption contact.

(j) A biological parent shall not petition the court for modification of a contract for post-adoption contact. Only the adoptive parent or the child may petition the court to modify a contract for post-adoption contact. For purposes of this section, a petition to terminate a post-adoption contract will be considered a petition for modification of the contract. Any party may petition the court for enforcement of a contract for post-adoption contact. Enforcement or modification of an enforceable contract for post-adoption contact must be initiated by an appropriate party as follows:

(1) By delivering a letter, by certified mail or personal service, to all other parties to the contract stating with reasonable particularity the enforcement or modification sought and the reason for such request;

(2) The party against whom enforcement or modification is sought has thirty (30) days after receipt of the letter to provide a response;

(3) If no response is received within thirty (30) days, or the response is not satisfactory to the party initiating enforcement or modification, the adoptive parent must seek and obtain, at the parent's own expense, a written opinion from a licensed psychological professional holding a certification equal to or greater than that of clinical social worker as to the child's best interests on the issue or issues raised and a recommendation as to whether any or all of the requested enforcement or modification should occur, including any other recommendations based on the child's best interests regarding the child's relationship to the parties. The opinion of the psychological professional must be completed and provided to the other parties by the adoptive parents within ninety (90) days of the delivery of the initial notice;

(4) If the professional recommendation does not result in a resolution of the issues, or if the adoptive parent fails to obtain the opinion of a psychological professional within the time provided, the parties shall attend mediation within thirty (30) days of the release of the written recommendation or within one hundred twenty (120) days of the delivery of the initial notice. The parties may agree on a mediator, or a party otherwise authorized to do so under this section may file a petition for modification or enforcement of the contract before the court that issued the order of adoption and request appointment of a mediator. The adoptive parent is responsible for the mediation costs; and

(5) If the issues raised are not resolved after two (2) mediation sessions, the mediation reaches an impasse as determined by the mediator, or the opposing party refuses to participate in mediation, a party, if permitted under this section, may petition the court that issued the order of adoption for relief. If at that time no party resides in this state, the petition may be filed in a court with adoption jurisdiction where the child resides. Tennessee law applies to enforcement of contracts made pursuant to this section regardless of where the action is filed. The burden of proof is on the party seeking enforcement or modification. The standard of proof is a preponderance of the evidence. The best interests of the child must be the court's primary test for determining whether the contract should be modified or enforced, but the good faith of all parties, any change in circumstances since the contract was executed, and each party's compliance with the contract to date, are also relevant considerations. The court may consider such other evidence as is appropriate to reach an equitable resolution.

(k) Any further requests for enforcement or modification based on the same or similar allegations made by the same party must be filed at the expense of the moving party directly in the court that granted the order for adoption. A party determined by the court to be noncompliant must overcome a presumption of bad faith.

(l) Court costs and attorney fees incurred by any party to the contract and the fees of any attorney for the child incurred under subsection (j)(5) may be taxed to all or any parties. The good faith and means of each party are to be primary considerations for apportionment of fees and expenses.

(m) Should an adoptive parent lose legal custody of the child, the process in this section to enforce a contract for post-adoption contact must be suspended until such

time as custody is restored. However, a subsequent custodian may choose to comply with the contract as a moral agreement.

SECTION 3. Tennessee Code Annotated, Section 36-1-102(29), is amended by deleting the subdivision and substituting instead the following

"Legal relative" means a person who is included in the class of persons set forth in the definition of "biological relative" or "legal parent" and who, at the time a request for services or information is made pursuant to §§ 36-1-127, 36-1-131, and 36-1-133 - 36-1-138 or with reference to a contract for post-adoption contact under § 36-1-145 immediately prior to the execution of a surrender or the entry of an order terminating parental rights, is related to the adopted person by any legal relationship established by law, court order, or by marriage, and includes, a step-parent and the spouse of any legal relative.

SECTION 4. This act shall take effect July 1, 2019, the public welfare requiring it.