

IN THE SENATE

SENATE BILL NO. 1281

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO ADOPTION OF CHILDREN; AMENDING CHAPTER 15, TITLE 16, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 16-1516, IDAHO CODE, TO PROVIDE A METHOD FOR BIOLOGICAL PARENTS TO MAINTAIN CONTACT WITH ADOPTEEES, TO PROVIDE PROCEDURES FOR ENTERING INTO A CONTACT AGREEMENT AND TO AUTHORIZE A COURT TO APPROVE, MODIFY AND ENFORCE SUCH AN AGREEMENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 15, Title 16, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 16-1516, Idaho Code, and to read as follows:

16-1516. AGREEMENTS FOR POST-ADOPTION CONTACT OR COMMUNICATION. (1) Prior to the entry of an adoption decree, prospective adoptive parents and the biological parents of the prospective adoptee may enter into a written agreement for post-adoption contact or communication between or among the minor child to be adopted, the prospective adoptive parents and the birth parents. To be enforceable, such written agreement shall be approved by the court issuing the adoption decree under the provisions of section 16-1507, Idaho Code.

(2) The court issuing the adoption decree may approve a written agreement for post-adoption contact or communication if the court finds, by clear and convincing evidence, that:

(a) The prospective adoptee is in the legal custody or guardianship of the department of health and welfare; and

(b) Such written agreement:

(i) Is in the best interests of the prospective adoptee;

(ii) Contains terms that are fair and reasonable to each of the parties to the agreement;

(iii) Has been entered into knowingly and voluntarily by each of the parties to the agreement and is not the product of fraud, coercion or duress; and

(iv) Has been approved, in writing, by the department of health and welfare, by the prospective adoptee's attorney or guardian ad litem if one (1) has been appointed under the provisions of section 16-1614, Idaho Code, and by the prospective adoptee if the adoptee is twelve (12) years of age or older.

(3) Every agreement entered into pursuant to the provisions of this section shall contain an acknowledgment that states:

(a) The adoptive parents may terminate contact or communication between the birth parents and the adoptee at any time so long as the adoptive parents believe that further contact or communication is not in the adoptee's best interests;

1 (b) The termination of parental rights and the adoption decree are fi-
2 nal and irrevocable, even if the adoptive parents do not abide by the
3 terms of the agreement; and

4 (c) The parties agree to the continuing jurisdiction of the court to en-
5 force and modify the agreement, and they understand that failure to com-
6 ply with an agreement is not grounds for setting aside an adoption de-
7 cree, for revocation of a written consent to an adoption decree or for
8 reconsidering an order terminating parental rights.

9 (4) The court issuing the adoption decree retains jurisdiction after
10 the decree of adoption is entered to hear motions brought to enforce or mod-
11 ify an agreement made pursuant to this section. Before filing a motion, the
12 party seeking to enforce or modify an agreement shall make a good faith at-
13 tempt to mediate the dispute. The court shall not enforce or modify an agree-
14 ment unless the party filing the motion has made a good faith attempt to medi-
15 ate the dispute.

16 (5) The court may order a modification of an agreement if it finds, by
17 clear and convincing evidence, that:

18 (a) All parties, including the adopted child if the adopted child is
19 twelve (12) years of age or older at the time of the requested termi-
20 nation or modification, have signed a modified post-adoption contact
21 agreement and the agreement is filed with the court that granted the pe-
22 tition of adoption;

23 (b) The modification is necessary to serve the best interests of the
24 adopted child;

25 (c) Exceptional circumstances have arisen since the agreement was ap-
26 proved by the court that could not have been reasonably anticipated when
27 it was initially approved by the court.

28 (6) Any breach, modification or invalidation of a written agreement, or
29 any part of such agreement made in accordance with this section, shall not
30 affect in any way the order terminating parental rights, written consent of
31 adoption, the order of adoption or custody of the adopted child. The order
32 terminating parental rights and the order of adoption are final.

33 (7) An agreement entered into pursuant to this section is enforceable
34 even if it does not disclose the identity of the parties to the agreement.

35 (8) The court may not set aside an adoption decree, rescind a relin-
36 quishment or modify an order to terminate parental rights because of the
37 failure of any party to comply with the original terms of, or subsequent mod-
38 ifications to, an agreement made pursuant to this section.