

Senate Study Bill 3099 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ZAUN)

A BILL FOR

1 An Act providing for open adoptions and voluntary postadoption
2 contact agreements relating to private termination of
3 parental rights and adoption proceedings.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 144.24, Code 2018, is amended to read as
2 follows:

3 **144.24 Substituting new for original birth certificates —**
4 **inspection.**

5 If a new certificate of birth is established, the actual
6 place and date of birth shall be shown on the certificate.
7 The certificate shall be substituted for the original
8 certificate of birth. Thereafter, the original certificate
9 and the evidence of adoption, paternity, legitimation, or
10 sex change shall not be subject to inspection except under
11 order of a court of competent jurisdiction, including but
12 not limited to an order issued pursuant to [section 600.16A](#),
13 as provided in an open adoption to the extent specifically
14 allowed in a voluntary postadoption contact agreement pursuant
15 to section 600.12B, or as provided by administrative rule
16 for statistical or administrative purposes only. However,
17 the state registrar shall, upon the application of an adult
18 adopted person, a biological parent, an adoptive parent, or
19 the legal representative of the adult adopted person, the
20 biological parent, or the adoptive parent, inspect the original
21 certificate and the evidence of adoption and reveal to the
22 applicant the date of the adoption and the name and address of
23 the court which issued the adoption decree.

24 Sec. 2. Section 600.2, subsection 1, Code 2018, is amended
25 to read as follows:

26 1. *"Child", "parent", "parent-child relationship",*
27 *"termination of parental rights", "biological parent",*
28 *"stepparent", "guardian", "custodian", "guardian ad litem",*
29 *"minor", "adoption service provider", "certified adoption*
30 *investigator", "adult", "agency", "department", "court", and*
31 *"juvenile court", "gestational carrier", "open adoption", and*
32 *"voluntary postadoption contact agreement",* mean the same as
33 defined in [section 600A.2](#).

34 Sec. 3. Section 600.5, Code 2018, is amended by adding the
35 following new subsection:

1 NEW SUBSECTION. 14. Whether the adoptive parent and
2 any biological parent of the child are establishing an open
3 adoption and entering into a voluntary postadoption contact
4 agreement.

5 Sec. 4. Section 600.6, Code 2018, is amended by adding the
6 following new subsection:

7 NEW SUBSECTION. 6. A copy of any voluntary postadoption
8 contact agreement for which the adoptive parent and any
9 biological parent requires the approval of the juvenile court
10 or court.

11 Sec. 5. NEW SECTION. 600.12B **Open adoption — voluntary**
12 **postadoption contact agreement.**

13 1. *Open adoption — voluntary postadoption contact agreement.*

14 a. An adoptive parent of a child may enter into an open
15 adoption by executing a voluntary postadoption contact
16 agreement with any biological parent of the child, unless the
17 adoption involves a gestational carrier or if the biological
18 parent's parental rights were terminated pursuant to chapter
19 232.

20 b. An adoption service provider shall, prior to or at the
21 time of seeking a release of custody under section 600A.4,
22 provide notification to an adoptive parent and any biological
23 parent that, subject to court approval, the parties may enter
24 into a voluntary postadoption contact agreement.

25 c. If a child is fourteen years of age or older at the time
26 of the issuance of an adoption decree, the child must consent
27 to the voluntary postadoption contact agreement.

28 2. *Prohibited provisions of a voluntary postadoption contact*
29 *agreement.* The juvenile court or court shall not approve a
30 voluntary postadoption contact agreement that provides for any
31 of the following:

32 a. That the biological parent is allowed unsupervised
33 visitation with the child at any time.

34 b. That the biological parent may reasonably expect the
35 child to refer to the biological parent as "mother", "father",

1 or any derivative of those terms.

2 *c.* That the biological parent may share pictures or videos
3 of the child on any social media platform.

4 *d.* That the adoptive parent is in any way prohibited from
5 relocating.

6 *e.* That the biological parent retains any rights generally
7 reserved to a parent.

8 3. *Approval of a voluntary postadoption contact*
9 *agreement.* The juvenile court or court shall approve a
10 voluntary postadoption contact agreement required to be filed
11 as an attachment to an adoption petition pursuant to section
12 600.6, if the juvenile court or court determines that all of
13 the following conditions are met:

14 *a.* The agreement has been entered into knowingly and
15 voluntarily by all parties and is accompanied by an affidavit
16 made under oath that affirmatively states the agreement was
17 entered into knowingly and voluntarily and is not the product
18 of coercion, fraud, or duress. The affidavit may be executed
19 jointly or separately by the biological parent and the adoptive
20 parent.

21 *b.* The agreement specifically advises the biological parent
22 that the agreement is based on the personal circumstances of
23 the parties at the time the agreement is entered into, and
24 that continuation of the agreement is subject to the adoptive
25 parent's continuing assessment that such agreement is in the
26 best interest of the child.

27 *c.* The agreement does not contain any of the prohibited
28 conditions specified in subsection 2.

29 *d.* The agreement is otherwise in the best interest of the
30 child. In making this determination, the factors that the
31 juvenile court or court shall consider but is not limited to
32 considering include:

33 (1) The stated desires of the adoptive parent and the
34 biological parent.

35 (2) The willingness and ability of the biological parent to

1 respect and appreciate the parent-child relationship between
2 the child and the adoptive parent.

3 (3) The willingness and ability of the adoptive parent to
4 respect and appreciate the benefit to the child of continuing
5 contact between the child and the biological parent.

6 (4) Any evidence of abuse or neglect of the child by the
7 biological parent.

8 (5) Any history of alcohol or substance abuse on the part of
9 the biological parent.

10 (6) Any other factor the court deems relevant.

11 4. *Legal effect of voluntary postadoption contact*

12 *agreement.* A voluntary postadoption contact agreement shall not
13 be legally enforceable unless approved by the juvenile court or
14 court. Such agreement shall not be entered into by the parties
15 until the parental rights of the biological parents have been
16 terminated and all time frames for appeal or vacation of the
17 termination of parental rights order have expired. The fact
18 that a biological parent believes that a prospective adoptive
19 parent will agree to enter into a voluntary postadoption
20 contact agreement and later does not agree to enter into such
21 an agreement, or the refusal of an adoptive parent to enter
22 into such an agreement, shall not be considered fraud and does
23 not otherwise constitute good cause pursuant to section 600A.4,
24 subsection 4, for the purposes of revocation of a release of
25 custody previously executed.

26 5. *Termination or modification of voluntary postadoption*

27 *contact agreement — recourse for adoptive parent.* Following
28 approval of a voluntary postadoption contact agreement by the
29 juvenile court or court, if an adoptive parent reasonably
30 believes that it is no longer in the best interest of the
31 child for the adoptive parent to comply with the terms of the
32 agreement, the adoptive parent may do any of the following:

33 a. Notify the biological parent, in writing, of the
34 determination that compliance with the agreement is no
35 longer in the best interest of the child and the reasons

1 for the determination, and provide the biological parent the
2 opportunity to address the reasons for the determination.

3 **b.** Petition the juvenile court or court to modify or
4 terminate the agreement. Only an adoptive parent may file
5 a petition to modify or terminate a voluntary postadoption
6 contact agreement.

7 (1) An action to modify or terminate a voluntary
8 postadoption contact agreement shall be brought in the juvenile
9 court or court of the county in which the adoption decree was
10 entered or in which the adopted child resides. There shall be
11 a rebuttable presumption that the adoptive parent's request to
12 modify or terminate the agreement is in the best interest of
13 the child.

14 (2) Following notice and hearing, the juvenile court or
15 court may grant an order to modify or terminate a voluntary
16 postadoption contact agreement, if the court finds by clear
17 and convincing evidence that the modification or termination
18 is in the best interest of the child. If the action involves
19 a child fourteen years of age or older, the juvenile court or
20 court shall consider the stated objections of the child in
21 determining the best interest of the child.

22 **6. Refusal to comply with a voluntary postadoption contact**
23 **agreement — recourse for biological parent.** Following approval
24 of a voluntary postadoption contact agreement by the juvenile
25 court or court, if a biological parent reasonably believes
26 an adoptive parent is improperly refusing to comply with the
27 agreement, the biological parent may petition the juvenile
28 court or court to compel the adoptive parent to comply with
29 the terms of the agreement. The action to compel compliance
30 with the voluntary postadoption contact agreement shall be
31 brought in the juvenile court or court of the county in which
32 the adoption decree was entered or in which the adopted child
33 resides.

34 **a.** In any action to compel compliance under this subsection,
35 the burden of proof shall be on the biological parent to

1 show by clear and convincing evidence that a continuation of
2 the voluntary postadoption contact agreement is in the best
3 interest of the child. There shall be a rebuttable presumption
4 that the adoptive parent's failure to comply with the agreement
5 is in the best interest of the child.

6 *b.* If the action involves a child fourteen years of age or
7 older, the juvenile court or court shall consider the stated
8 objections of the child in determining the best interest of the
9 child.

10 *c.* The best interest of the child shall be the paramount
11 factor in determining whether the terms of the voluntary
12 postadoption contact agreement should be enforced.

13 *d.* Any action brought by a biological parent to enforce the
14 terms of a voluntary postadoption contact agreement shall be
15 tried in equity and the appointment of counsel by the court to
16 represent the interest of the biological parent is not required
17 regardless of the financial circumstances of the biological
18 parent.

19 *e.* If the juvenile court or court determines by clear and
20 convincing evidence that an adoptive parent is violating a
21 court-ordered voluntary postadoption contact agreement and the
22 violation is contrary to the best interest of the child, the
23 court may do any of the following:

24 (1) Require the adoptive parent to immediately comply with
25 the agreement.

26 (2) Order the adoptive parent to participate in counseling
27 or mediation with the biological parent to resolve the dispute
28 which led to the adoptive parent's failure to comply with the
29 agreement.

30 *f.* (1) After notice and hearing, if the court orders an
31 adoptive parent to comply with the voluntary postadoption
32 contact agreement or to participate in counseling or mediation
33 with the biological parent pursuant to paragraph "e", but
34 the adoptive parent willfully and intentionally continues to
35 violate the court order to comply or participate, the adoptive

1 parent may be held in contempt and punished in accordance with
2 chapter 665.

3 (2) Failure of an adoptive parent to comply with a court
4 order to comply with the voluntary postadoption contact
5 agreement or to participate in counseling or mediation, even
6 after being held in contempt, shall not be grounds for setting
7 aside an adoption decree.

8 Sec. 6. Section 600.16, Code 2018, is amended by adding the
9 following new subsection:

10 NEW SUBSECTION. 5. Notwithstanding any provision to the
11 contrary, this section shall not apply to an open adoption
12 to the extent disclosure of information otherwise protected
13 under this section is specifically allowed in a voluntary
14 postadoption contact agreement.

15 Sec. 7. Section 600.16A, Code 2018, is amended by adding the
16 following new subsection:

17 NEW SUBSECTION. 7. Notwithstanding any provision to the
18 contrary, this section shall not apply to an open adoption
19 to the extent disclosure of information otherwise protected
20 under this section is specifically allowed in a voluntary
21 postadoption contact agreement.

22 Sec. 8. Section 600A.2, Code 2018, is amended by adding the
23 following new subsections:

24 NEW SUBSECTION. 9A. "*Gestational carrier*" means a woman
25 who carries a fertilized embryo, to which she has no biological
26 relationship, to term.

27 NEW SUBSECTION. 14A. "*Open adoption*" means an agreement,
28 the specific terms of which shall be incorporated into a
29 voluntary postadoption contact agreement, between one or both
30 biological parents and an adoptive parent of a child that
31 allows a biological parent to maintain contact with the adopted
32 child and establish a nonparental relationship with the child
33 following adoption.

34 NEW SUBSECTION. 21. "*Voluntary postadoption contact*
35 *agreement*" means a voluntary written agreement between an

1 adoptive parent and a biological parent whose rights have been
2 terminated pursuant to chapter 600A, that is approved by the
3 court and provides for continuing contact or communication
4 between the child and the biological parent or between the
5 adoptive parent and the biological parent.

6 Sec. 9. Section 600A.4, subsection 2, Code 2018, is amended
7 by adding the following new paragraph:

8 NEW PARAGRAPH. 1. Shall state that a biological parent
9 was informed of the possibility of entering into a voluntary
10 postadoption contact agreement with the adoptive parent,
11 subject to approval of the juvenile court or court. The
12 biological parent shall be informed that a voluntary
13 postadoption contact agreement shall not be entered into
14 until the parental rights of the biological parents have been
15 terminated and all time frames for appeal or vacation of the
16 termination of parental rights order have expired. The fact
17 that a biological parent believes that a prospective adoptive
18 parent will agree to enter into a voluntary postadoption
19 contact agreement but later does not agree to enter into such
20 an agreement, or the refusal of an adoptive parent to enter
21 into such an agreement, shall not be considered fraud and does
22 not otherwise constitute good cause pursuant to subsection
23 4 for the purposes of revocation of a release of custody
24 previously executed.

25 EXPLANATION

26 The inclusion of this explanation does not constitute agreement with
27 the explanation's substance by the members of the general assembly.

28 This bill provides for open adoptions and voluntary
29 postadoption contact agreements relative to private termination
30 of parental rights and adoption proceedings.

31 The bill provides definitions used in the bill including
32 "gestational carrier", "open adoption", and "voluntary
33 postadoption contact agreement".

34 The bill requires that an adoption petition include a
35 statement as to whether the adoptive parent and any biological

1 parent of the child are establishing an open adoption and
2 entering into a voluntary postadoption contact agreement.
3 Additionally, a copy of the voluntary postadoption contact
4 agreement, for which the adoptive parent and any biological
5 parent requires the approval of the juvenile court or court,
6 must be attached to the adoption petition.

7 The bill provides that an adoptive parent of a child
8 may enter into an open adoption by executing a voluntary
9 postadoption contact agreement with any biological parent
10 of the child, unless the adoption involves a gestational
11 carrier or if the biological parent's parental rights were
12 terminated pursuant to Code chapter 232 (juvenile justice).
13 An adoption service provider is required, prior to or at the
14 time of seeking a release of custody, to provide notification
15 to an adoptive parent and any biological parent that, subject
16 to court approval, the parties may enter into a voluntary
17 postadoption contact agreement. Such agreement shall not be
18 entered into by the parties until the parental rights of the
19 biological parents have been terminated and all time frames
20 for appeal or vacation of the termination of parental rights
21 order have expired. The fact that a biological parent believes
22 that a prospective adoptive parent will agree to enter into a
23 voluntary postadoption contact agreement but later does not
24 agree to enter into such an agreement, or the refusal by the
25 adoptive parent to enter into a voluntary postadoption contact
26 agreement, shall not be considered fraud and does not otherwise
27 constitute good cause for the purposes of revocation of a
28 release of custody. If a child who is being adopted is 14 years
29 of age or older at the time of the issuance of an adoption
30 decree, the child must consent to the voluntary postadoption
31 contact agreement.

32 The bill specifies certain prohibited provisions from
33 being included in a voluntary postadoption contact agreement,
34 and requires approval of the agreement, which was filed as
35 an attachment to the adoption petition, by a juvenile court

1 or court based on certain factors in order to be legally
2 enforceable, including that the agreement is in the best
3 interest of the child.

4 The bill provides recourse for the adoptive parent to
5 either notify the biological parent to informally address
6 issues relating to compliance with a voluntary postadoption
7 contract agreement, or to petition the juvenile court or
8 court to modify or terminate a voluntary postadoption contact
9 agreement following approval by the juvenile court or court,
10 if an adoptive parent reasonably believes that it is no longer
11 in the best interest of the child for the adoptive parent to
12 comply with the terms of the agreement. Additionally, the
13 bill provides recourse for a biological parent to petition the
14 juvenile court or court to compel an adoptive parent to comply
15 with the agreement if a biological parent reasonably believes
16 an adoptive parent is improperly refusing to comply with the
17 agreement. The court's decision in both cases is based on
18 the best interest of the child, and if the action involves a
19 child 14 years of age or older, the juvenile court or court
20 shall consider input from the child in determining what is in
21 the child's best interest. If the juvenile court or court
22 determines by clear and convincing evidence that an adoptive
23 parent is violating a court-ordered voluntary postadoption
24 contact agreement and the violation is contrary to the best
25 interest of the child, the court may require the adoptive
26 parent to immediately comply with the agreement or order the
27 adoptive parent to participate in counseling or mediation with
28 the biological parent to resolve the dispute which led to the
29 adoptive parent's failure to comply with the agreement. After
30 notice and hearing, if the court orders an adoptive parent to
31 comply with the voluntary postadoption contact agreement or
32 to participate in counseling or mediation with the biological
33 parent, but the adoptive parent willfully and intentionally
34 continues to violate the court order to comply with the
35 voluntary postadoption contact agreement or participate

1 in counseling or mediation with the biological parent, the
2 adoptive parent may be held in contempt. However, failure of
3 an adoptive parent to comply with a court order to comply with
4 the voluntary postadoption contact agreement or to participate
5 in counseling or mediation, even after being held in contempt,
6 shall not be grounds for setting aside an adoption decree.

7 The bill also provides that the disclosure of certain
8 information relating to adoption records and termination of
9 parental rights records is inapplicable to an open adoption to
10 the extent the disclosure of information otherwise protected
11 is specifically allowed in the voluntary postadoption
12 contact agreement. The bill also makes conforming changes
13 in Code section 144.24 (substituting new for original
14 birth certificates — inspection) and in Code chapter 600A
15 (termination of parental rights).