

LEGISLATIVE BILL 744

Approved by the Governor April 13, 2016

Introduced by Watermeier, 1; Kolterman, 24; Ebke, 32.

A BILL FOR AN ACT relating to adoptions; to provide for written communication and contact agreements in private and agency adoptions as prescribed; to authorize enforcement, modification, or termination of agreements in a civil action as prescribed; and to require certain agreement disclosures. Be it enacted by the people of the State of Nebraska,

Section 1. (1) The adoptive parent or parents and the parent or parents relinquishing a child for adoption may enter into a written agreement to permit continuing communication and contact after the placement of an adoptee between the adoptive parent or parents and the relinquishing parent or parents in private or agency adoptions for adoptees not in the custody of the Department of Health and Human Services as provided under this section.

(2)(a) In private adoptions, a parent or parents who relinquish a child for adoption shall be provided legal counsel of their choice independent from that of the adoptive parent or parents at the expense of the adoptive parent or parents prior to the execution of a written relinquishment and consent to adoption, or a communication and contact agreement under this section, unless specifically waived in writing.

(b) In private and agency adoptions, a parent or parents contemplating relinquishment of a child for adoption shall be offered, at the expense of the adoptive parent or parents or the agency, at least three hours of professional counseling prior to executing a written relinquishment of parental rights or written consent to adoption. Such relinquishment or consent shall state whether the relinquishing parent or parents received or declined counseling.

(3) The terms of a communication and contact agreement entered into under this section may include provisions for (a) future contact or communication between the relinquishing parent or parents and the adoptee or the adoptive parent or parents, or both, (b) sharing information about the adoptee, or (c) other matters related to communication or contact agreed to by the parties.

(4) If the adoptee is fourteen years of age or older at the time of placement, a communication and contact agreement under this section shall not be valid unless consented to in writing by the adoptee.

(5) A court may approve a communication and contact agreement entered into under this section by incorporating such agreement by reference and indicating the court's approval of such agreement in the decree of adoption. Enforceability of a communication and contact agreement is not contingent on court approval or its incorporation into the decree of adoption.

(6) Neither the existence of, nor the failure of any party to comply with the terms of, a communication and contact agreement entered into under this section shall be grounds for (a) setting aside an adoption decree, (b) revoking a written relinquishment of parental rights or written consent to adoption, (c) challenging the adoption on the basis of duress or coercion, or (d) challenging the adoption on the basis that the agreement retains some aspect of parental rights by the relinquishing parent or parents.

(7) A communication and contact agreement entered into under this section may be enforced by a civil action. A court in which such civil action is filed may enforce, modify, or terminate a communication and contact agreement entered into under this section if the court finds that (a) enforcing, modifying, or terminating the communication and contact agreement is necessary to serve the best interests of the adoptee, (b) the party seeking to enforce, modify, or terminate the communication and contact agreement participated in, or attempted to participate in, mediation in good faith or participated in other appropriate dispute resolution proceedings in good faith to resolve the dispute prior to filing the petition, and (c) when seeking to modify or terminate the agreement, a material change in circumstances has arisen since the parties entered into the communication and contact agreement that justifies modifying or terminating the agreement.

(8) If the adoption was through an agency, the agency which accepted the relinquishment from the relinquishing parent or parents shall be invited to participate in any mediation or other appropriate dispute resolution proceedings as provided in subsection (7) of this section.

(9) With any communication and contact agreement entered into under this section, the following shall appear on the communication and contact agreement: No adoption shall be set aside due to the failure of the adoptive parent or parents or the relinquishing parent or parents to follow the terms of this agreement or a later order modifying or terminating this agreement. Disagreement between the parties or a subsequent civil action brought to enforce, modify, or terminate this agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child. The court shall not act on a petition to enforce, modify, or terminate this agreement unless the petitioner has participated in, or attempted to participate in, mediation in good faith or participated in other appropriate dispute resolution proceedings in good faith to resolve the dispute

prior to filing the petition.

(10) The court shall not award monetary damages as a result of the filing of a civil action pursuant to subsection (7) of this section.