

AMENDED IN SENATE MARCH 28, 2006

SENATE BILL

No. 1758

Introduced by Senator Figueroa

February 24, 2006

An act to amend Sections 8623, 8625, 8636, and 8638 of, to repeal Section 8635 of, and to add Section 8632.5 to, the Family Code, relating to adoption.

LEGISLATIVE COUNSEL'S DIGEST

SB 1758, as amended, Figueroa. Adoption facilitators.

Existing law provides a comprehensive scheme regarding adoption regulation, and also provides for the regulation of adoption facilitators, as defined. *Existing law requires a person, prior to engaging in the business of or acting in the capacity of an adoption facilitator to obtain a business license in the appropriate jurisdiction and be bonded in the amount of \$10,000.*

This bill would instead require a person to post a bond in the amount of \$50,000, executed by a corporate surety admitted to do business in this state, with the State Department of Social Services. The bill would also require a person, whenever there is recovery from a bond, to file a new bond before that person may conduct further business as an adoption facilitator. The bill would require the adoption facilitator to notify the department in writing within 30 days when a surety bond is renewed, and provide the department with changes in personal information, as specified.

The bill would also require the State Department of Social Services to establish and adopt regulations for a statewide registration process for adoption facilitators and to establish and adopt regulations to ensure that adoption facilitators comply with the requirements of

posting a bond. The bill would authorize the department to adapt the process it uses to register adoption service providers in order to provide a similar registration process for adoption facilitators. The bill would also require an adoption facilitator, when posting a bond, to file with the department a disclosure form containing specified information about the person's educational background and identity, including fingerprint cards. The bill would authorize the department to impose specified fees for covering the costs of processing fingerprint cards, maintaining a statewide registration system, and processing bonds of adoption facilitators.

The bill would also require the State Department of Social Services to post on its Internet Web site information that shows if an adoption facilitator is compliance with the registration and bond requirements and to draft an adoption fraud manual, to be made available on the department's Web site and at county adoption orientations, as specified. The bill would also require the department to create a task force to study the activities of adoption facilitators and make recommendations for future legislation.

Existing law provides that a person or organization is an adoption facilitator if the person or organization is not licensed as an adoption agency by the State of California and advertises for the purpose of soliciting parties to an adoption, locating children for an adoption, or acting as an intermediary between parties to an adoption.

This bill would revise that provision to include offering adoption consulting services.

Existing law prohibits an adoption facilitator from misleading a person into believing that the adoption facilitator is a licensed adoption agency or representing to a person that he or she is able to provide services for which the facilitator is not properly licensed.

This bill would also prohibit an adoption facilitator from making use of photolisting to advertise minor children for placement in adoption.

Existing law authorizes a person aggrieved by a violation of the provisions regarding adoption facilitators to bring a civil action for damages, rescission, or any other civil or equitable remedy.

This bill would revise that provision to specifically authorize a person to bring a civil action for injunctive relief. The bill would also provide that if the court finds a person has violated those provisions, it shall award actual damages plus an amount equal to treble the amount of the actual damages or \$1,000 per violation, whichever is

greater. The bill would also authorize the Attorney General, a district attorney, or a city attorney to bring a civil action for injunctive relief, restitution, or other equitable relief against the adoption facilitator in the name of the people of the State of California. The bill would further authorize any other person claiming a violation of those provisions to bring a civil action for injunctive relief on behalf of the general public.

Existing law also authorizes a party, in any action to revoke or enforce a contract with an adoption facilitator, to recover reasonable attorneys' fees and costs.

~~This bill would declare the Legislature's intent to enact legislation that ensures the protection of birth parents or prospective adoptive parents in dealing with adoption facilitators. This bill would expand that provision to apply to all civil actions regarding adoption facilitators.~~ The bill would also set forth related findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature hereby finds and declares
- 2 the following:
- 3 (1) The sharp rise in the number of adoptions, and a significant
- 4 increase in adoption fees, has created an expanding industry for
- 5 adoption facilitators in California.
- 6 (2) Adoption facilitators are not licensed as adoption agencies,
- 7 but are adoption intermediaries who are required to hold a
- 8 business license, be bonded in the amount of ten thousand dollars
- 9 (\$10,000), and are regulated by California law in the areas of
- 10 disclosure and advertising.
- 11 (3) Recent accounts of fraudulent practices by adoption
- 12 facilitators demonstrate that current regulations are not strict or
- 13 extensive enough to safeguard birth parents and prospective
- 14 adoptive parents from fraud.
- 15 (b) It is the intent of the Legislature to enact legislation that
- 16 ensures the protection of birth parents and prospective adoptive
- 17 parents in dealing with adoption facilitators.
- 18 SEC. 2. Section 8623 of the Family Code is amended to read:

1 8623. A person or organization is an adoption facilitator if the
2 person or organization is not licensed as an adoption agency by
3 the State of California and engages in either the following
4 activities:

5 (a) Advertises for the purpose of soliciting parties to an
6 adoption~~—or~~, locating children for an adoption~~—or~~, acting as an
7 intermediary between the parties to an adoption, *or offering*
8 *adoption consulting services.*

9 (b) Charges a fee or other valuable consideration for services
10 rendered relating to an adoption.

11 *SEC. 3. Section 8625 of the Family Code is amended to read:*

12 8625. An adoption facilitator shall not:

13 (a) Mislead any person into believing, or imply by any
14 document, including any form of advertising or by oral
15 communications, that the adoption facilitator is a licensed
16 adoption agency.

17 (b) Represent to any person that he or she is able to provide
18 services for which the facilitator is not properly licensed.

19 (c) *Make use of photolisting to advertise minor children for*
20 *placement in adoption.*

21 *SEC. 4. Section 8632.5 is added to the Family Code, to read:*

22 8632.5. (a) *The department shall establish and adopt*
23 *regulations for a statewide registration process for adoption*
24 *facilitators. The department shall also establish and adopt*
25 *regulations to ensure that adoption facilitators comply with the*
26 *requirements of posting a bond, in accordance with this chapter.*

27 (b) *The department may adapt the process it uses to register*
28 *adoption service providers in order to provide a similar*
29 *registration process for adoption facilitators. The process used*
30 *by the department shall include a procedure for determining the*
31 *status of bond compliance by adoption facilitators, a means for*
32 *accepting or denying organizations seeking inclusion in the*
33 *adoption facilitator registry, and an appeals process for those*
34 *entities denied inclusion in the adoption facilitator registry.*

35 (c) *Upon the establishment by the department of a registration*
36 *process, all adoption facilitators that operate independently from*
37 *a licensed public or private adoption agency or an adoption*
38 *attorney in this state shall be required to register with the*
39 *department.*

1 (d) An adoption facilitator, when posting a bond, shall also
2 file with the department a disclosure form containing the
3 adoption facilitator's name, date of birth, residence address,
4 business address, residence telephone number, business
5 telephone number, and the number of adoptions facilitated for
6 the previous year. Along with the disclosure form, the adoption
7 facilitator shall provide all of the following information to the
8 department:

9 (1) Proof of completion of two years of college courses, with
10 at least half of the units and hours focusing on social work or a
11 related field.

12 (2) Proof of a minimum of three years of experience employed
13 by a public or private adoption agency or adoption attorney who
14 assists in bringing adopting persons and placing parents
15 together for the purpose of adoption placement.

16 (3) A valid business license.

17 (4) A valid, current, government-issued identification to
18 determine the adoption facilitator's identity, such as a California
19 driver's license, identification card, passport, or other form of
20 identification that is acceptable to the department.

21 (5) Two classifiable fingerprint cards of the adoption
22 facilitator, for purposes of submitting to a criminal background
23 check.

24 (e) The department may impose a fee upon applicants of no
25 more than three dollars (\$3.00) for each set of classifiable
26 fingerprint cards that it processes pursuant to subparagraph (5)
27 of subdivision (d), except that it shall not charge a fee for those
28 submitted into an electronic fingerprint system using electronic
29 fingerprint technology.

30 (f) The department shall post on its Internet Web site
31 information that shows if an adoption facilitator is in compliance
32 with the registration and bond requirements of this chapter. The
33 department shall ensure that the information is current and shall
34 update the information at least once every 30 days.

35 (g) The department shall draft an adoption fraud manual,
36 which shall include recourse information for victims of fraud by
37 adoption facilitators. This manual shall be made available in
38 electronic format by a link that may be accessed from the
39 department's Internet Web site and shall also be made available
40 in written format at county adoption orientations.

1 (h) The department shall develop the disclosure form required
2 pursuant to subdivision (d) and shall make it available to any
3 adoption facilitator posting a bond.

4 (i) The department may charge adoption facilitators an annual
5 filing fee to cover the cost of maintaining a statewide registration
6 system and processing bonds of adoption facilitators.

7 (j) The department shall create a taskforce to study the
8 activities of adoption facilitators and make recommendations for
9 future legislation.

10 SEC. 5. Section 8635 of the Family Code is repealed.

11 ~~8635. In any action to revoke or enforce the contract, a~~
12 ~~prevailing party may recover reasonable attorneys' fees and~~
13 ~~costs.~~

14 SEC. 6. Section 8636 of the Family Code is amended to read:

15 8636. (a) Prior to engaging in the business of, or acting in the
16 capacity of, an adoption facilitator, any person shall (1) obtain a
17 business license in the appropriate jurisdiction, and (2) ~~be bonded~~
18 ~~in the amount of ten thousand dollars (\$10,000)~~ shall post a bond
19 in the amount of fifty thousand dollars (\$50,000), executed by a
20 corporate surety admitted to do business in this state, with the
21 department in accordance with Section 8632.5.

22 (b) The surety bond required by subdivision (a) shall be in
23 favor of, and payable to, the people of the State of California and
24 shall be for the benefit of any person damaged by fraud,
25 misstatement, misrepresentation, unlawful act or omission, or
26 failure to provide the services of the adoption facilitator, or the
27 agents, representatives, or employees of the adoption facilitator,
28 while acting within the scope of that employment or agency.

29 (c) Whenever there is a recovery from a bond required by
30 subdivision (a), the person shall file a new bond in accordance
31 with subdivision (a) before that person may conduct further
32 business as an adoption facilitator.

33 (d) An adoption facilitator shall notify the department in
34 writing within 30 days when a surety bond required by this
35 section is renewed, and of any change of name, address,
36 telephone number, or agent for service of process.

37 SEC. 6. Section 8638 of the Family Code is amended to read:

38 8638. (a) Any person aggrieved by any violation of this
39 chapter may bring a civil action for damages, ~~for~~ rescission,
40 ~~injunctive relief~~, or ~~for~~ any other civil or equitable remedy.

1 ***(b) If the court finds that a person has violated this chapter, it***
2 ***shall award actual damages, plus an amount equal to treble the***
3 ***amount of the actual damages or one thousand dollars (\$1,000)***
4 ***per violation, whichever is greater.***

5 ***(c) In any civil action under this chapter, a prevailing party***
6 ***may recover reasonable attorneys' fees and costs.***

7 ***(d) The Attorney General, a district attorney, or a city attorney***
8 ***may bring a civil action for injunctive relief, restitution, or other***
9 ***equitable relief against the adoption facilitator in the name of the***
10 ***people of the State of California.***

11 ***(e) Any other person who based, upon information or belief,***
12 ***claims a violation of this chapter has been committed, may bring***
13 ***a civil action for injunctive relief on behalf of the general public.***