

AMENDED IN SENATE MAY 26, 2006
AMENDED IN SENATE MAY 2, 2006
AMENDED IN SENATE APRIL 20, 2006
AMENDED IN SENATE APRIL 6, 2006
AMENDED IN SENATE MARCH 28, 2006

SENATE BILL

No. 1758

Introduced by Senator Figueroa

February 24, 2006

An act to amend Sections 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.

(1) 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 replenish the bond or file a new bond if the former bond cannot be replenished 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. Certain of these requirements would extend to staff members who provide direct adoption services. 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 and recovering all other costs associated with the bill's requirements.~~

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 in 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 *authorize the department to create an Adoption Facilitator Account for the deposit of fees received and would* require the department to create a task force to study the activities of adoption facilitators and make recommendations for future legislation.

(2) 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 and from advertising specific information about particular minor children available for adoption.

(3) 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.

(4) 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 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: 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.

1 SEC. 2. Section 8625 of the Family Code is amended to read:

2 8625. An adoption facilitator shall not:

3 (a) Mislead any person into believing, or imply by any
4 document, including any form of advertising or by oral
5 communications, that the adoption facilitator is a licensed
6 adoption agency.

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

9 (c) Make use of photolisting to advertise minor children for
10 placement in adoption.

11 (d) Post in any advertising specific information about
12 particular minor children who are available for adoption
13 placement.

14 SEC. 3. Section 8632.5 is added to the Family Code, to read:

15 8632.5. (a) The department shall establish and adopt
16 regulations for a statewide registration process for adoption
17 facilitators. The department shall also establish and adopt
18 regulations to ensure that adoption facilitators comply with the
19 requirements of posting a bond, in accordance with this chapter.

20 (b) The department may adapt the process it uses to register
21 adoption service providers in order to provide a similar
22 registration process for adoption facilitators. The process used by
23 the department shall include a procedure for determining the
24 status of bond compliance by adoption facilitators, a means for
25 accepting or denying organizations seeking inclusion in the
26 adoption facilitator registry, and an appeals process for those
27 entities denied inclusion in the adoption facilitator registry.

28 (c) Upon the establishment by the department of a registration
29 process, all adoption facilitators that operate independently from
30 a licensed public or private adoption agency or an adoption
31 attorney in this state shall be required to register with the
32 department.

33 (d) An adoption facilitator, when posting a bond, shall also file
34 with the department a disclosure form containing the adoption
35 facilitator's name, date of birth, residence address, business
36 address, residence telephone number, business telephone number,
37 and the number of adoptions facilitated for the previous year.
38 Along with the disclosure form, the adoption facilitator shall
39 provide all of the following information to the department:

1 (1) (A) Proof that the facilitator and any member of the staff
2 who provides direct adoption services has completed two years
3 of college courses, with at least half of the units and hours
4 focusing on social work or a related field.

5 (B) An adoption facilitator and any member of the staff
6 subject to this paragraph may waive the educational requirements
7 by satisfying all of the following requirements:

8 (i) He or she has over five years of work experience providing
9 direct adoption services.

10 (ii) He or she has not been found liable, and has no pending
11 lawsuits, in connection with providing adoption services.

12 (iii) He or she provides three separate letters of support
13 attesting to his or her ethics and work providing direct adoption
14 services from any of the following:

15 (I) A licensed public or private adoption agency.

16 (II) A member of the Academy of California Adoption
17 Lawyers.

18 (III) The State Department of Social Services.

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

23 (3) A valid business license.

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

28 (5) Two classifiable fingerprint cards of the adoption
29 facilitator and all staff members, for purposes of submitting to a
30 criminal background check.

31 (e) The department may impose a fee upon applicants of no
32 more than three dollars (\$3.00) for each set of classifiable
33 fingerprint cards that it processes pursuant to paragraph (5) of
34 subdivision (d), except that it shall not charge a fee for those
35 submitted into an electronic fingerprint system using electronic
36 fingerprint technology.

37 (f) The department shall post on its Internet Web site
38 information that shows if an adoption facilitator is in compliance
39 with the registration and bond requirements of this chapter. The

1 department shall ensure that the information is current and shall
2 update the information at least once every 30 days.

3 ~~(g) The department shall draft an adoption fraud manual,~~
4 ~~which shall include recourse information for victims of fraud by~~
5 ~~adoption facilitators. This manual shall be made available in~~
6 ~~electronic format by a link that may be accessed from the~~
7 ~~department's Internet Web site and shall also be made available~~
8 ~~in written format at county adoption orientations.~~

9 ~~(h)~~

10 (g) The department shall develop the disclosure form required
11 pursuant to subdivision (d) and shall make it available to any
12 adoption facilitator posting a bond.

13 ~~(i)~~

14 (h) The department may charge adoption facilitators an annual
15 filing fee to cover the cost of maintaining a statewide registration
16 system and processing bonds of adoption facilitators. *recover all*
17 *costs associated with the requirements of this section and that fee*
18 *shall be set by regulation.*

19 (i) *The department may create an Adoption Facilitator*
20 *Account for deposit of fees received from registrants.*

21 (j) The department shall create a taskforce to study the
22 activities of adoption facilitators and make recommendations for
23 future legislation.

24 SEC. 4. Section 8635 of the Family Code is repealed.

25 SEC. 5. Section 8636 of the Family Code is amended to read:

26 8636. (a) Prior to engaging in the business of, or acting in the
27 capacity of, an adoption facilitator, any person shall (1) obtain a
28 business license in the appropriate jurisdiction, and (2) post a
29 bond in the amount of fifty thousand dollars (\$50,000), executed
30 by a corporate surety admitted to do business in this state, with
31 the department in accordance with Section 8632.5.

32 (b) The surety bond required by subdivision (a) shall be in
33 favor of, and payable to, the people of the State of California and
34 shall be for the benefit of any person damaged by fraud,
35 misstatement, misrepresentation, unlawful act or omission, or
36 failure to provide the services of the adoption facilitator, or the
37 agents, representatives, or employees of the adoption facilitator,
38 while acting within the scope of that employment or agency.

39 (c) Whenever there is a recovery from a bond required by
40 subdivision (a), the person shall replenish the bond or file a new

1 bond if the former bond cannot be replenished in accordance
2 with subdivision (a) before that person may conduct further
3 business as an adoption facilitator.

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

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

9 8638. (a) Any person aggrieved by any violation of this
10 chapter may bring a civil action for damages, rescission,
11 injunctive relief, or any other civil or equitable remedy.

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

16 (c) In any civil action under this chapter, a prevailing party
17 may recover reasonable attorney's fees and costs.

18 (d) The Attorney General, a district attorney, or a city attorney
19 may bring a civil action for injunctive relief, restitution, or other
20 equitable relief against the adoption facilitator in the name of the
21 people of the State of California.

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