

Introduced by Senator ScottFebruary 16, 2007

An act to amend Sections 8604 and 8802 of the Family Code, relating to adoption.

LEGISLATIVE COUNSEL'S DIGEST

SB 313, as introduced, Scott. Adoption.

Existing law generally provides that a child having a presumed father, as specified, may not be adopted without the consent of the child's birth parents, if living. However, if one birth parent has been awarded custody by judicial order, or has custody by agreement of both parents, and the other birth parent for a period of one year willfully fails to communicate with and to pay for the care, support, and education of the child when able to do so, then the birth parent having sole custody may consent to the adoption, after the birth parent who does not have custody has been served with a specified citation. The failure of a birth parent to pay for the care, support, and education of the child for the period of one year or the failure of a birth parent to communicate with the child for the period of one year is prima facie evidence that the failure was willful and without lawful excuse.

This bill would additionally provide that if the parent or parents have made only token efforts to support or communicate with the child, the court may disregard those token efforts.

Existing law specifically authorizes certain persons to file a petition to adopt a child, including a legal guardian who has been the child's legal guardian for more than 6 months, if the court has found the child to be abandoned, as specified.

This bill would instead authorize a legal guardian who has been the child’s legal guardian for more than 6 months to file a petition if the child is alleged to be abandoned.

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

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

1 SECTION 1. Section 8604 of the Family Code is amended to
 2 read:

3 8604. (a) Except as provided in subdivision (b), a child having
 4 a presumed father under Section 7611 may not be adopted without
 5 the consent of the child’s birth parents, if living. The consent of a
 6 presumed father is not required for the child’s adoption unless he
 7 became a presumed father as described in Chapter 1 (commencing
 8 with Section 7540) or Chapter 3 (commencing with Section 7570)
 9 of Part 2 of Division 12, or subdivision (a), (b), or (c) of Section
 10 7611 before the mother’s relinquishment or consent becomes
 11 irrevocable or before the mother’s parental rights have been
 12 terminated.

13 (b) If one birth parent has been awarded custody by judicial
 14 order, or has custody by agreement of both parents, and the other
 15 birth parent for a period of one year willfully fails to communicate
 16 with and to pay for the care, support, and education of the child
 17 when able to do so, then the birth parent having sole custody may
 18 consent to the adoption, but only after the birth parent not having
 19 custody has been served with a copy of a citation in the manner
 20 provided by law for the service of a summons in a civil action that
 21 requires the birth parent not having custody to appear at the time
 22 and place set for the appearance in court under Section 8718, 8823,
 23 8913, or 9007.

24 (c) Failure of a birth parent to pay for the care, support, and
 25 education of the child for the period of one year or failure of a
 26 birth parent to communicate with the child for the period of one
 27 year is prima facie evidence that the failure was willful and without
 28 lawful excuse. *If the parent or parents have made only token efforts*
 29 *to support or communicate with the child, the court may disregard*
 30 *those token efforts.*

31 SEC. 2. Section 8802 of the Family Code is amended to read:

1 8802. (a) (1) Any of the following persons who desire to adopt
2 a child may, for that purpose, file a petition in the county in which
3 the petitioner resides or, if the petitioner is not a resident of this
4 state, in the county in which the placing birth parent or birth parents
5 resided when the adoption placement agreement was signed, or
6 the county in which the placing birth parent or birth parents resided
7 when the petition was filed:

8 (A) An adult who is related to the child or the child's half sibling
9 by blood or affinity, including all relatives whose status is preceded
10 by the words "step," "great," "great-great," or "grand," or the
11 spouse of any of these persons, even if the marriage was terminated
12 by death or dissolution.

13 (B) A person named in the will of a deceased parent as an
14 intended adoptive parent where the child has no other parent.

15 (C) A person with whom a child has been placed for adoption.

16 (D) (i) A legal guardian who has been the child's legal guardian
17 for more than one year.

18 (ii) If the ~~court has found the~~ child *is alleged* to have been
19 abandoned pursuant to Section 7822, a legal guardian who has
20 been the child's legal guardian for more than six months. The legal
21 guardian may file a petition pursuant to Section 7822 in the same
22 court and concurrently with a petition under this section.

23 (iii) However, if the parent nominated the guardian for a purpose
24 other than adoption for a specified time period, or if the
25 guardianship was established pursuant to Section 360 of the
26 Welfare and Institutions Code, the guardianship shall have been
27 in existence for not less than three years.

28 (2) If the child has been placed for adoption, a copy of the
29 adoptive placement agreement shall be attached to the petition.
30 The court clerk shall immediately notify the department at
31 Sacramento in writing of the pendency of the proceeding and of
32 any subsequent action taken.

33 (3) If the petitioner has entered into a postadoption contact
34 agreement with the birth parent as set forth in Section 8616.5, the
35 agreement, signed by the participating parties, shall be attached
36 to and filed with the petition for adoption.

37 (b) The petition shall contain an allegation that the petitioners
38 will file promptly with the department or delegated county adoption
39 agency information required by the department in the investigation
40 of the proposed adoption. The omission of the allegation from a

1 petition does not affect the jurisdiction of the court to proceed or
2 the validity of an adoption order or other order based on the
3 petition.

4 (c) The caption of the adoption petition shall contain the names
5 of the petitioners, but not the child's name. The petition shall state
6 the child's sex and date of birth and the name the child had before
7 adoption.

8 (d) If the child is the subject of a guardianship petition, the
9 adoption petition shall so state and shall include the caption and
10 docket number or have attached a copy of the letters of the
11 guardianship or temporary guardianship. The petitioners shall
12 notify the court of any petition for guardianship or temporary
13 guardianship filed after the adoption petition. The guardianship
14 proceeding shall be consolidated with the adoption proceeding.

15 (e) The order of adoption shall contain the child's adopted name,
16 but not the name the child had before adoption.