

Introduced by Senator Scott

February 16, 2007

An act to amend Sections ~~8604~~ 7630, 7822, 7841, 8604, and 8802 of the Family Code, relating to adoption.

LEGISLATIVE COUNSEL'S DIGEST

SB 313, as amended, Scott. Adoption.

(1) Existing law allows a child, the child's natural mother, a man presumed to be the child's father under specified provisions of law, an adoption agency to whom the child has been relinquished, or a prospective adoptive parent of the child to bring any of specified actions relating to the existence of a father and child relationship.

This bill would require the court, if any prospective adoptive parent who has physical custody of the child, or any licensed California adoption agency that has legal custody of the child, has not been joined as a party to an action to determine the existence of a father and child relationship or an action for custody by the alleged natural father, to join the prospective adoptive parent or adoption agency as a party, without the necessity of a motion for joinder.

The bill would require a man who brings an action to determine paternity and custody of a child who he has reason to believe is in the physical or legal custody of an adoption agency, or of one or more persons other than the child's mother who are prospective adoptive parents, to serve his entire pleading on, and give notice of all proceedings to, the adoption agency or the prospective adoptive parents, or both.

(2) *Existing law authorizes an adoption proceeding to be brought under specified circumstances in which a child has been abandoned by his or her parents, including if the child has been left by both parents or the sole parent in the care and custody of another person for a period of 6 months.*

This bill would revise and recast those circumstances under which an adoption proceeding may be brought with respect to an abandoned child, to include, among other things, if the child has been left in the care and custody of another person for a period of 6 months without any provision for the child's support, or without communication from the parent or parents, with the intent on the part of the parent or parents to abandon the child. The bill would provide that, in the event that a guardian has been appointed for the child, the court may still declare the child abandoned if the parent or parents have failed to communicate with or support the child within the meaning of these provisions. The bill would make related technical changes.

(3) *Existing law authorizes an interested person to file an adoption petition for an order or judgment declaring a child free from the custody and control of either or both parents.*

This bill would define "interested person" for purposes of this provision.

Existing

(4) *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 *noncustodial* 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

(5) 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 7630 of the Family Code is amended to
2 read:

3 7630. (a) A child, the child’s natural mother, a man presumed
4 to be the child’s father under subdivision (a), (b), or (c) of Section
5 7611, an adoption agency to whom the child has been relinquished,
6 or a prospective adoptive parent of the child may bring an action
7 as follows:

8 (1) At any time for the purpose of declaring the existence of the
9 father and child relationship presumed under subdivision (a), (b),
10 or (c) of Section 7611.

11 (2) For the purpose of declaring the nonexistence of the father
12 and child relationship presumed under subdivision (a), (b), or (c)
13 of Section 7611 only if the action is brought within a reasonable
14 time after obtaining knowledge of relevant facts. After the
15 presumption has been rebutted, paternity of the child by another
16 man may be determined in the same action, if he has been made
17 a party.

18 (b) Any interested party may bring an action at any time for the
19 purpose of determining the existence or nonexistence of the father
20 and child relationship presumed under subdivision (d) or (f) of
21 Section 7611.

22 (c) An action to determine the existence of the father and child
23 relationship with respect to a child who has no presumed father
24 under Section 7611 or whose presumed father is deceased may be
25 brought by the child or personal representative of the child, the
26 Department of Child Support Services, the mother or the personal
27 representative or a parent of the mother if the mother has died or
28 is a minor, a man alleged or alleging himself to be the father, or

1 the personal representative or a parent of the alleged father if the
2 alleged father has died or is a minor.

3 (d) (1) If a proceeding has been filed under Chapter 2
4 (commencing with Section 7820) of Part 4, an action under
5 subdivision (a) or (b) shall be consolidated with that proceeding.
6 The parental rights of the presumed father shall be determined as
7 set forth in Sections 7820 through 7829, inclusive.

8 (2) If a proceeding pursuant to Section 7662 has been filed under
9 Chapter 5 (commencing with Section 7660), an action under
10 subdivision (c) shall be consolidated with that proceeding. The
11 parental rights of the alleged natural father shall be determined as
12 set forth in Section 7664.

13 (3) The consolidated action under paragraph (1) or (2) shall be
14 heard in the court in which the proceeding is filed, unless the court
15 finds, by clear and convincing evidence, that transferring the action
16 to the other court poses a substantial hardship to the petitioner.
17 Mere inconvenience does not constitute a sufficient basis for a
18 finding of substantial hardship. If the court determines there is a
19 substantial hardship, the consolidated action shall be heard in the
20 court in which the paternity action is filed.

21 *(e) (1) If any prospective adoptive parent who has physical*
22 *custody of the child, or any licensed California adoption agency*
23 *that has legal custody of the child, has not been joined as a party*
24 *to an action to determine the existence of a father and child*
25 *relationship under subdivision (a), (b), or (c), or an action for*
26 *custody by the alleged natural father, the court shall join the*
27 *prospective adoptive parent or licensed California adoption agency*
28 *as a party upon application or on its own motion, without the*
29 *necessity of a motion for joinder.*

30 *(2) If a man brings an action to determine paternity and custody*
31 *of a child who he has reason to believe is in the physical or legal*
32 *custody of an adoption agency, or of one or more persons other*
33 *than the child's mother who are prospective adoptive parents, he*
34 *shall serve his entire pleading on, and give notice of all*
35 *proceedings to, the adoption agency or the prospective adoptive*
36 *parents, or both.*

37 ~~(e)~~

38 (f) A party to an assisted reproduction agreement may bring an
39 action at any time to establish a parent and child relationship

1 consistent with the intent expressed in that assisted reproduction
2 agreement.

3 *SEC. 2. Section 7822 of the Family Code is amended to read:*

4 7822. (a) A proceeding under this part may be brought ~~where~~
5 ~~the child has been left without provision for the~~ *if any of the*
6 *following occur:*

7 (1) *The child has been left without provision for the child's*
8 *identification by the child's parent or parents* ~~or by others or.~~

9 (2) *The child has been left by both parents or the sole parent in*
10 *the care and custody of another person for a period of six months*
11 ~~or by one parent without any provision for the child's support, or~~
12 *without communication from the parent or parents, with the intent*
13 *on the part of the parent or parents to abandon the child.*

14 (3) *One parent has left the child in the care and custody of the*
15 *other parent for a period of one year without any provision for the*
16 *child's support, or without communication from the parent* ~~or~~
17 ~~parents, with the intent on the part of the parent~~ ~~or parents~~ *to*
18 *abandon the child.*

19 (b) *The failure to provide identification, failure to provide*
20 *support, or failure to communicate is presumptive evidence of the*
21 *intent to abandon. If the parent or parents have made only token*
22 *efforts to support or communicate with the child, the court may*
23 *declare the child abandoned by the parent or parents. In the event*
24 *that a guardian has been appointed for the child, the court may*
25 *still declare the child abandoned if the parent or parents have*
26 *failed to communicate with or support the child within the meaning*
27 *of this section.*

28 (c) *If the child has been left without provision for the child's*
29 *identification and the whereabouts of the parents are unknown, a*
30 *petition may be filed after the 120th day following the discovery*
31 *of the child and citation by publication may be commenced. The*
32 *petition may not be heard until after the 180th day following the*
33 *discovery of the child.*

34 (d) *If the parent has* ~~placed~~ *agreed for the child to be in the*
35 *physical custody of another person or persons for adoption and*
36 *has not* ~~refused to give the required~~ *signed an adoption placement*
37 *agreement pursuant to Section 8801.3, a consent to adoption*
38 *pursuant to Section 8814, or a relinquishment to a licensed*
39 *adoption agency, pursuant to Section 8700, evidence of the*
40 *adoptive placement shall not in itself preclude the court from*

1 finding an intent on the part of that parent to abandon the child. If
 2 the parent has placed the child for adoption and has refused to give
 3 the required consent to adoption pursuant to Section 8801.3,
 4 consented to adoption pursuant to Section 8814, or relinquished
 5 the child to a licensed adoption agency pursuant to Section 8700,
 6 and has then either revoked the consent or rescinded the
 7 relinquishment, but has not taken reasonable action to obtain
 8 custody of the child, evidence of the adoptive placement shall not
 9 in itself preclude the court from finding an intent on the part of
 10 that parent to abandon the child.

11 (e) Notwithstanding subdivisions (a), (b), (c), and (d), if the
 12 parent of an Indian child has transferred physical care, custody
 13 and control of the child to an Indian custodian, that action shall
 14 not be deemed to constitute an abandonment of the child, unless
 15 the parent manifests the intent to abandon the child by either of
 16 the following:

17 (1) Failing to resume physical care, custody, and control of the
 18 child upon the request of the Indian custodian provided that if the
 19 Indian custodian is unable to make a request because the parent
 20 has failed to keep the Indian custodian apprised of his or her
 21 whereabouts and the Indian custodian has made reasonable efforts
 22 to determine the whereabouts of the parent without success, there
 23 may be evidence of intent to abandon.

24 (2) Failing to substantially comply with any obligations assumed
 25 by the parent in his or her agreement with the Indian custodian
 26 despite the Indian custodian's objection to the noncompliance.

27 *SEC. 3. Section 7841 of the Family Code is amended to read:*

28 7841. ~~Any~~ (a) An interested person may file a petition under
 29 this part for an order or judgment declaring a child free from the
 30 custody and control of either or both parents.

31 (b) For purposes of this section, an "interested person" is one
 32 who has a direct interest in the action, and includes, but is not
 33 limited to, a person who has filed, or who may file, an adoption
 34 petition under Section 8714, 8802, or 9000, or a licensed adoption
 35 agency to whom the child has been relinquished by the other
 36 parent.

37 ~~SECTION 1.~~

38 *SEC. 4. Section 8604 of the Family Code is amended to read:*

39 8604. (a) Except as provided in subdivision (b), a child having
 40 a presumed father under Section 7611 may not be adopted without

1 the consent of the child’s birth parents, if living. The consent of a
2 presumed father is not required for the child’s adoption unless he
3 became a presumed father as described in Chapter 1 (commencing
4 with Section 7540) or Chapter 3 (commencing with Section 7570)
5 of Part 2 of Division 12, or subdivision (a), (b), or (c) of Section
6 7611 before the mother’s relinquishment or consent becomes
7 irrevocable or before the mother’s parental rights have been
8 terminated.

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

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

27 ~~SEC. 2.~~

28 *SEC. 5.* Section 8802 of the Family Code is amended to read:

29 8802. (a) (1) Any of the following persons who desire to adopt
30 a child may, for that purpose, file a petition in the county in which
31 the petitioner resides or, if the petitioner is not a resident of this
32 state, in the county in which the placing birth parent or birth parents
33 resided when the adoption placement agreement was signed, or
34 the county in which the placing birth parent or birth parents resided
35 when the petition was filed:

36 (A) An adult who is related to the child or the child’s half sibling
37 by blood or affinity, including all relatives whose status is preceded
38 by the words “step,” “great,” “great-great,” or “grand,” or the
39 spouse of any of these persons, even if the marriage was terminated
40 by death or dissolution.

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

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

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

6 (ii) If the child is alleged to have been abandoned pursuant to
7 Section 7822, a legal guardian who has been the child's legal
8 guardian for more than six months. The legal guardian may file a
9 petition pursuant to Section 7822 in the same court and
10 concurrently with a petition under this section.

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

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

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

25 (b) The petition shall contain an allegation that the petitioners
26 will file promptly with the department or delegated county adoption
27 agency information required by the department in the investigation
28 of the proposed adoption. The omission of the allegation from a
29 petition does not affect the jurisdiction of the court to proceed or
30 the validity of an adoption order or other order based on the
31 petition.

32 (c) The caption of the adoption petition shall contain the names
33 of the petitioners, but not the child's name. The petition shall state
34 the child's sex and date of birth and the name the child had before
35 adoption.

36 (d) If the child is the subject of a guardianship petition, the
37 adoption petition shall so state and shall include the caption and
38 docket number or have attached a copy of the letters of the
39 guardianship or temporary guardianship. The petitioners shall
40 notify the court of any petition for guardianship or temporary

- 1 guardianship filed after the adoption petition. The guardianship
- 2 proceeding shall be consolidated with the adoption proceeding.
- 3 (e) The order of adoption shall contain the child's adopted name,
- 4 but not the name the child had before adoption.

O