

Senate Bill No. 313

CHAPTER 47

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

[Approved by Governor July 12, 2007. Filed with
Secretary of State July 12, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

SB 313, 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 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 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.

(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 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.

(5) Existing law 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.

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

SECTION 1. Section 7630 of the Family Code is amended to read:

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

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

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

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

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

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

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

(3) The consolidated action under paragraph (1) or (2) shall be heard in the court in which the proceeding under Section 7662 or Chapter 2 (commencing with Section 7820) of Part 4 is filed, unless the court finds, by clear and convincing evidence, that transferring the action to the other court poses a substantial hardship to the petitioner. Mere inconvenience does not constitute a sufficient basis for a finding of substantial hardship. If the court determines there is a substantial hardship, the consolidated action shall be heard in the court in which the paternity action is filed.

(e) (1) 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 under subdivision (a), (b), or (c), or an action for custody by the alleged natural father, the court shall join the prospective adoptive parent or licensed California adoption agency as a party upon application or on its own motion, without the necessity of a motion for joinder.

(2) If a man 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, he shall serve his entire pleading on, and give notice of all proceedings to, the adoption agency or the prospective adoptive parents, or both.

(f) A party to an assisted reproduction agreement may bring an action at any time to establish a parent and child relationship consistent with the intent expressed in that assisted reproduction agreement.

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

7822. (a) A proceeding under this part may be brought if any of the following occur:

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

(2) The child has been left by both parents or the sole parent in the care and custody of another person for a period of six 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.

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

(b) The failure to provide identification, failure to provide support, or failure to communicate is presumptive evidence of the intent to abandon. If the parent or parents have made only token efforts to support or communicate with the child, the court may declare the child abandoned by the parent or parents. 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 this section.

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

(d) If the parent has agreed for the child to be in the physical custody of another person or persons for adoption and has not signed an adoption placement agreement pursuant to Section 8801.3, a consent to adoption pursuant to Section 8814, or a relinquishment to a licensed adoption agency pursuant to Section 8700, evidence of the adoptive placement shall not in itself preclude the court from finding an intent on the part of that parent to abandon the child. If the parent has placed the child for adoption pursuant to Section 8801.3, consented to adoption pursuant to Section 8814, or relinquished the child to a licensed adoption agency pursuant to Section 8700, and has then either revoked the consent or rescinded the relinquishment, but has not taken reasonable action to obtain custody of the child, evidence of the adoptive placement shall not in itself preclude the court from finding an intent on the part of that parent to abandon the child.

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

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

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

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

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

(b) For purposes of this section, an "interested person" is one who has a direct interest in the action, and includes, but is not limited to, a person who has filed, or who intends to file within a period of 6 months, an adoption petition under Section 8714, 8802, or 9000, or a licensed adoption agency to whom the child has been relinquished by the other parent.

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

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

(b) 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, but only after the birth parent not having custody has been served with a copy of a citation in the manner provided by law for the service of a summons in a civil action that requires the birth parent not having custody to appear at the time and place set for the appearance in court under Section 8718, 8823, 8913, or 9007.

(c) Failure of a birth parent to pay for the care, support, and education of the child for the period of one year or 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. If the birth parent or parents have made only token efforts to support or communicate with the child, the court may disregard those token efforts.

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

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

(A) An adult who is related to the child or the child's half sibling by blood or affinity, including all relatives whose status is preceded by the

words “step,” “great,” “great-great,” or “grand,” or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

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

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

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

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

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

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

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

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

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

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

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