

Assembly Bill No. 941

CHAPTER 492

An act to amend Sections 7620, 7845, 8616.5, 8814.5, 9007, and 9211 of the Family Code, relating to adoption.

[Approved by Governor October 11, 2009. Filed with Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 941, Committee on Judiciary. Adoption.

Existing law establishes the jurisdiction of the courts under the Uniform Parentage Act. The act specifies the counties in which an action may be brought, including among other counties as specified, the county in which a licensed California adoption agency maintains an office if that agency brings the action.

This bill would instead provide, under the Uniform Parentage Act, that if the child is the subject of a pending or proposed adoption, the action may be brought in any county in which a licensed California adoption agency to which the child has been relinquished or is proposed to be relinquished maintains an office or the county in which an office of the State Department of Social Services or a public adoption agency that is investigating the petition is located, in addition to the other specified counties.

Existing law provides for a petition for an order or judgment declaring a child free from the custody and control of either or both parents on the basis of, among other circumstances, the abandonment, neglect, or cruel treatment of the child or the disability, as specified, or unfitness, as specified, of the parent. That petition may be filed in the county in which a minor resides or is found or in which the acts forming the basis for the petition are alleged to have occurred.

This bill would provide that a petition for an order or judgment declaring a child free from the custody and control of either or both parents may be filed, in addition to the county in which a minor resides or is found or in which the acts forming the basis for the petition are alleged to have occurred, in the county in which a petition for the adoption of the child has been filed or the adoption agency to which the child has been relinquished or proposed to be relinquished has an office.

Existing law allows for continuing contact between the birth relatives and the child if a postadoption contact agreement is entered into voluntarily and in the best interests of the child at the time the adoption petition is granted. Existing law limits postadoption contact to the sharing of information about the child, unless the child had an existing relationship with the birth relative.

This bill would permit contact between the child and the child's birth parent or parents including visitation and sharing of information, where there was not an existing relationship, as specified. This bill would also permit contact between the child and birth relatives other than the child's birth parent or parents, limited to the sharing of information, unless there was a preexisting relationship, as specified.

Existing law provides that, after a consent to an adoption is signed by the birth parent or parents, the birth parent or parents signing the consent have 30 days to take one of specified actions, including signing a waiver of the right to revoke consent. Existing law requires a waiver to be signed in the presence of a representative of the department or the delegated county adoption agency, or if the birth parents are represented by independent legal counsel, the waiver can also be signed in the presence of a judicial officer of the court of record or an adoption service provider. Existing law allows for the witnessing and signing of a waiver of the right to revoke consent by a birth parent living outside of California to be conducted in the state where the birth parent is located, as provided.

This bill would allow for the adoption service provider who advised the birth mother and witnessed the signing of the consent to be the adoption service provider present for the signing of a waiver, if the birth parents are represented by independent legal counsel.

Existing law requires that in a stepparent adoption the prospective adoptive parent and the child proposed to be adopted shall appear before the court, as specified.

This bill would provide that if it is impossible or impracticable for either prospective adoptive parent to make an appearance in person, and the circumstances are established by clear and convincing documentary evidence, the court may, in its discretion, waive the personal appearance of the prospective adoptive parent and the appearance may be made for the prospective adoptive parent by counsel, commissioned and empowered in writing for that purpose, as specified.

Existing law also authorizes a petition for the adoption of a minor to be filed in the county in which the petitioner or the minor lives or in which an office of an agency that placed the minor is located.

This bill would instead authorize a petitioner who is a resident of this state to file a petition to adopt a child with the court in any county in which a petitioner resides, in which the minor was born or resides at the time of filing, in which an office of the agency that placed the child for adoption is located, or in which the State Department of Social Services or a public adoption agency that is investigating the petition is located. The bill would also authorize a petitioner who is not a resident of California to file a petition to adopt a child with the court in any county in which the minor was born or resides at the time of filing, in which an office of the agency that placed the child for adoption is located, or in which an office of the State Department of Social Services or a public agency that is investigating the petition is located.

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

SECTION 1. Section 7620 of the Family Code is amended to read:

7620. (a) A person who has sexual intercourse or causes conception with the intent to become a legal parent by assisted reproduction in this state thereby submits to the jurisdiction of the courts of this state as to an action brought under this part with respect to a child who may have been conceived by that act of intercourse or assisted reproduction.

(b) An action under this part shall be brought in one of the following:

(1) The county in which the child resides or is found.

(2) If the child is the subject of a pending or proposed adoption, any county in which a licensed California adoption agency to which the child has been relinquished or is proposed to be relinquished maintains an office.

(3) If the child is the subject of a pending or proposed adoption, the county in which an office of the department or a public adoption agency investigating the petition is located.

(4) If the father is deceased, the county in which proceedings for probate of the estate of the father of the child have been or could be commenced.

SEC. 2. Section 7845 of the Family Code is amended to read:

7845. The petition shall be filed in any of the following:

(a) The county in which a minor described in Chapter 2 (commencing with Section 7820) resides or is found.

(b) The county in which any of the acts which are set forth in Chapter 2 (commencing with Section 7820) are alleged to have occurred.

(c) The county in which a petition for the adoption of the child has been filed or the adoption agency to which the child has been relinquished or proposed to be relinquished has an office.

SEC. 3. Section 8616.5 of the Family Code is amended to read:

8616.5. (a) The Legislature finds and declares that some adoptive children may benefit from either direct or indirect contact with birth relatives, including the birth parent or parents or an Indian tribe, after being adopted. Postadoption contact agreements are intended to ensure children of an achievable level of continuing contact when contact is beneficial to the children and the agreements are voluntarily entered into by birth relatives, including the birth parent or parents or an Indian tribe, and adoptive parents. Nothing in this section requires all of the listed parties to participate in the development of a postadoption contact agreement in order for the agreement to be entered into.

(b) (1) Nothing in the adoption laws of this state shall be construed to prevent the adopting parent or parents, the birth relatives, including the birth parent or parents or an Indian tribe, and the child from voluntarily entering into a written agreement to permit continuing contact between the birth relatives, including the birth parent or parents or an Indian tribe, and the child if the agreement is found by the court to have been entered into voluntarily and to be in the best interests of the child at the time the adoption petition is granted.

(2) The terms of any postadoption contact agreement executed under this section shall be limited to, but need not include, all of the following:

(A) Provisions for visitation between the child and a birth parent or parents and other birth relatives, including siblings, and the child's Indian tribe if the case is governed by the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(B) Provisions for future contact between a birth parent or parents or other birth relatives, including siblings, or both, and the child or an adoptive parent, or both, and in cases governed by the Indian Child Welfare Act, the child's Indian tribe.

(C) Provisions for the sharing of information about the child in the future.

(3) The terms of any postadoption contact agreement with birth relatives other than the child's birth parent or parents shall be limited to the sharing of information about the child, unless the child has a preexisting relationship with the birth relative.

(c) At the time an adoption decree is entered pursuant to a petition filed pursuant to Section 8714, 8714.5, 8802, 8912, or 9000, the court entering the decree may grant postadoption privileges if an agreement for those privileges has been entered into, including agreements entered into pursuant to subdivision (f) of Section 8620. The hearing to grant the adoption petition and issue an order of adoption may be continued as necessary to permit parties who are in the process of negotiating a postadoption agreement to reach a final agreement.

(d) The child who is the subject of the adoption petition shall be considered a party to the postadoption contact agreement. The written consent to the terms and conditions of the postadoption contact agreement and any subsequent modifications of the agreement by a child who is 12 years of age or older is a necessary condition to the granting of privileges regarding visitation, contact, or sharing of information about the child, unless the court finds by a preponderance of the evidence that the agreement, as written, is in the best interests of the child. Any child who has been found to come within Section 300 of the Welfare and Institutions Code or who is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code shall be represented by an attorney for purposes of consent to the postadoption contact agreement.

(e) A postadoption contact agreement shall contain the following warnings in bold type:

(1) After the adoption petition has been granted by the court, the adoption cannot be set aside due to the failure of an adopting parent, a birth parent, a birth relative, an Indian tribe, or the child to follow the terms of this agreement or a later change to this agreement.

(2) A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the adoption and shall not serve as a basis for orders affecting the custody of the child.

(3) A court will not act on a petition to change or enforce this agreement unless the petitioner has participated, or attempted to participate, in good

faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute.

(f) Upon the granting of the adoption petition and the issuing of the order of adoption of a child who is a dependent of the juvenile court, juvenile court dependency jurisdiction shall be terminated. Enforcement of the postadoption contact agreement shall be under the continuing jurisdiction of the court granting the petition of adoption. The court may not order compliance with the agreement absent a finding that the party seeking the enforcement participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings regarding the conflict, prior to the filing of the enforcement action, and that the enforcement is in the best interests of the child. Documentary evidence or offers of proof may serve as the basis for the court's decision regarding enforcement. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by that inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(g) The court may not award monetary damages as a result of the filing of the civil action pursuant to subdivision (e) of this section.

(h) A postadoption contact agreement may be modified or terminated only if either of the following occurs:

(1) All parties, including the child if the child is 12 years of age or older at the time of the requested termination or modification, have signed a modified postadoption contact agreement and the agreement is filed with the court that granted the petition of adoption.

(2) The court finds all of the following:

(A) The termination or modification is necessary to serve the best interests of the child.

(B) There has been a substantial change of circumstances since the original agreement was executed and approved by the court.

(C) The party seeking the termination or modification has participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings prior to seeking court approval of the proposed termination or modification.

Documentary evidence or offers of proof may serve as the basis for the court's decision. No testimony or evidentiary hearing shall be required. The court shall not order further investigation or evaluation by any public or private agency or individual absent a finding by clear and convincing evidence that the best interests of the child may be protected or advanced only by that inquiry and that the inquiry will not disturb the stability of the child's home to the detriment of the child.

(i) All costs and fees of mediation or other appropriate dispute resolution proceedings shall be borne by each party, excluding the child. All costs and fees of litigation shall be borne by the party filing the action to modify or enforce the agreement when no party has been found by the court as failing

to comply with an existing postadoption contact agreement. Otherwise, a party, other than the child, found by the court as failing to comply without good cause with an existing agreement shall bear all the costs and fees of litigation.

(j) The Judicial Council shall adopt rules of court and forms for motions to enforce, terminate, or modify postadoption contact agreements.

(k) The court may not set aside a decree of adoption, rescind a relinquishment, or modify an order to terminate parental rights or any other prior court order because of the failure of a birth parent, adoptive parent, birth relative, an Indian tribe, or the child to comply with any or all of the original terms of, or subsequent modifications to, the postadoption contact agreement, except as follows:

(1) Prior to issuing the order of adoption, in an adoption involving an Indian child, the court may, upon a petition of the birth parent, birth relative, or an Indian tribe, order the parties to engage in family mediation services for the purpose of reaching a postadoption contact agreement if the prospective adoptive parent fails to negotiate in good faith to enter into a postadoption contact agreement, after having agreed to enter into negotiations, provided that the failure of the parties to reach an agreement is not in and of itself proof of bad faith.

(2) Prior to issuing the order of adoption, if the parties fail to negotiate in good faith to enter into a postadoption contact agreement during the negotiations entered into pursuant to and in accordance with paragraph (1), the court may modify prior orders or issue new orders as necessary to ensure the best interest of the Indian child is met, including, but not limited to, requiring parties to engage in further family mediation services for the purpose of reaching a postadoption contact agreement, initiating guardianship proceeding in lieu of adoption, or authorizing a change of adoptive placement for the child.

SEC. 4. Section 8814.5 of the Family Code is amended to read:

8814.5. (a) After a consent to the adoption is signed by the birth parent or parents pursuant to Section 8801.3 or 8814, the birth parent or parents signing the consent shall have 30 days to take one of the following actions:

(1) Sign and deliver to the department or delegated county adoption agency a written statement revoking the consent and requesting the child to be returned to the birth parent or parents. After revoking consent, in cases where the birth parent or parents have not regained custody, or the birth parent or parents have failed to make efforts to exercise their rights under subdivision (b) of Section 8815, a written notarized statement reinstating the original consent may be signed and delivered to the department or delegated county adoption agency, in which case the revocation of consent shall be void and the remainder of the original 30-day period shall commence. After revoking consent, in cases in which the birth parent or parents have regained custody or made efforts to exercise their rights under subdivision (b) of Section 8815 by requesting the return of the child, upon the delivery of a written notarized statement reinstating the original consent to the department or delegated county adoption agency, the revocation of

consent shall be void and a new 30-day period shall commence. The birth mother shall be informed of the operational timelines associated with this section at the time of signing of the statement reinstating the original consent.

(2) (A) Sign a waiver of the right to revoke consent on a form prescribed by the department in the presence of any of the following:

(i) A representative of the department or delegated county adoption agency.

(ii) A judicial officer of a court of record if the birth parent is represented by independent legal counsel.

(iii) An adoption service provider, including, but not limited to, the adoption service provider who advised the birth mother and witnessed the signing of the consent, if the birth parent or parents are represented by independent legal counsel. The adoption service provider shall ensure that the waiver is delivered to the department, the petitioners, or their counsel no earlier than the end of the business day following the signing of the waiver. The adoption service provider shall inform the birth parent that during this time period he or she may request that the waiver be withdrawn and that, if he or she makes that request, the waiver shall be withdrawn.

(B) An adoption service provider may assist the birth parent or parents in any activity where the primary purpose of that activity is to facilitate the signing of the waiver with the department, a delegated county agency, or a judicial officer. The adoption service provider or another person designated by the birth parent or parents may also be present at any interview conducted pursuant to this section to provide support to the birth parent or parents, except when the interview is conducted by independent legal counsel for the birth parent or parents.

(C) The waiver of the right to revoke consent may not be signed until an interview has been completed by the department or delegated county adoption agency unless the waiver of the right to revoke consent is signed in the presence of a judicial officer of a court of record or an adoption service provider as specified in this section. If the waiver is signed in the presence of a judicial officer, the interview and the witnessing of the signing of the waiver shall be conducted by the judicial officer. If the waiver is signed in the presence of an adoption service provider, the interview shall be conducted by the independent legal counsel for the birth parent or parents. If the waiver is to be signed in the presence of an adoption service provider, prior to the waiver being signed the waiver shall be reviewed by the independent legal counsel who (i) counsels the birth parent or parents about the nature of his or her intended waiver and (ii) signs and delivers to the birth parent or parents and the department a certificate in substantially the following form:

I, (name of attorney), have counseled my client, (name of client), on the nature and legal effect of the waiver of right to revoke consent to adoption. I am so disassociated from the interest of the petitioner(s)/prospective adoptive parent(s) as to be in a position to advise my client impartially and confidentially as to the consequences of the waiver. (Name of client) is aware that California law provides for a 30-day period during which a birth parent may revoke consent to

adoption. On the basis of this counsel, I conclude that it is the intent of (name of client) to waive the right to revoke, and make a permanent and irrevocable consent to adoption. (Name of client) understands that he/she will not be able to regain custody of the child unless the petitioner(s)/prospective adoptive parent(s) agree(s) to withdraw their petition for adoption or the court denies the adoption petition. Within 10 working days of a request made after the department or the delegated county adoption agency has received a copy of the petition for the adoption and the names and addresses of the persons to be interviewed, the department or the delegated county adoption agency shall interview, at the department or agency office, any birth parent requesting to be interviewed.

(D) Notwithstanding subparagraphs (A) and (C), the interview, and the witnessing of the signing of a waiver of the right to revoke consent of a birth parent residing outside of California or located outside of California for an extended period of time unrelated to the adoption may be conducted in the state where the birth parent is located, by any of the following:

- (i) A representative of a public adoption agency in that state.
 - (ii) A judicial officer in that state where the birth parent is represented by independent legal counsel.
 - (iii) An adoption service provider.
- (3) Allow the consent to become a permanent consent on the 31st day after signing.

(b) The consent may not be revoked after a waiver of the right to revoke consent has been signed or after 30 days, beginning on the date the consent was signed or as provided in paragraph (1) of subdivision (a), whichever occurs first.

SEC. 5. Section 9007 of the Family Code is amended to read:

9007. The prospective adoptive parent and the child proposed to be adopted shall appear before the court pursuant to Sections 8612, 8613, and 8613.5.

SEC. 6. Section 9211 of the Family Code is amended to read:

9211. (a) A person who is a resident of this state may file a petition for the adoption of a child with the court in the county in which one of the following applies:

- (1) The petitioner resides.
- (2) The child was born or resides at the time of filing.
- (3) An office of the agency that placed the child for adoption is located.
- (4) An office of the department or a public adoption agency that is investigating the petition is located.

(b) A petitioner who is not a resident of this state may file a petition for the adoption of a child with the court in a county in which paragraph (2), (3), or (4) of subdivision (a) applies.