

Assembly Bill No. 2020

Passed the Assembly August 16, 2010

Chief Clerk of the Assembly

Passed the Senate August 11, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 7630, 7662, 7667, 8620, 8710, 8814.5, and 9001 of, and to repeal Section 7631 of, the Family Code, and to amend Section 1516.5 of the Probate Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 2020, Fletcher. Family law.

Existing law provides that a man may bring an action at any time to determine that he is the father of a child having no presumed father. Under existing law, a man who is not a presumed father may bring an action to establish that he is the natural father of a child having a presumed father if the mother has relinquished for, or consents to, the adoption of the child, and requires that he bring this action within 30 days after (1) he is served with notice that he is or could be the father or (2) the birth of the child, whichever is later.

This bill would delete the latter provisions relating to the time periods in which a man may bring an action to establish paternity and would instead provide that a man may bring an action at any time to establish that he is the father of a child, subject to a specified exception.

Existing law provides that if a mother consents to, or relinquishes for, the adoption of a child, a petition to terminate the parental rights of the father is required, subject to specified exceptions, and an action to terminate the parental rights of the father shall be set for a hearing.

This bill would authorize the court in an action to terminate parental rights to dispense with a hearing and issue an ex parte order terminating parental rights if the identity or whereabouts of the alleged father is unknown, he has been served with a written notice of his alleged paternity and the potential adoption and has failed to respond, or he has signed a waiver of his right to notice or a denial of paternity.

Existing law provides that if a child is being considered for adoption, the State Department of Social Services or licensed adoption agency is required to first consider adoptive placement

in the home of a relative, unless it is not in the child's best interest or if other specified conditions exist, in which case the foster parent of the child shall be considered along with all other prospective adoptive parents, if certain criteria are met.

This bill would include the birth parent's refusal to consider a relative or sibling placement for the child as a condition upon which the foster parent of the child shall be considered for placement, if certain criteria are met.

Under existing law, if a parent is seeking to relinquish a child or execute an adoption placement agreement, the State Department of Social Services, licensed adoption agency, or adoption service provider is required to ask the child and the child's parent or custodian whether the child is, or may be, a member of an Indian tribe. Existing law provides that these entities are required to send a specified notice and a request for confirmation of the child's Indian status to any parent or custodian of the child, and to any Indian tribe of which the child is, or may be, a member.

This bill would additionally include an attorney for the prospective adoptive parents among the entities that are required to send this notice and request for confirmation of a child's Indian status.

Existing law provides that in each case of stepparent adoption, the probation officer, qualified court investigator, licensed clinical social worker, licensed marriage family therapist, or the county welfare department is required to conduct an investigation.

This bill would additionally include a private licensed adoption agency among the entities that are required to conduct the investigation, and would require the adoption agency to assign the investigation to a licensed clinical social worker or licensed marriage and family therapist associated with the agency. The bill would also require that any grievance regarding the investigation be directed to the licensing authority of the clinical social worker or marriage and family therapist.

Existing law provides that a court may appoint a guardian of the person or estate of a minor child if it appears necessary or convenient, as specified. Under existing law, a proceeding to have the child declared free from the custody and control of one or both parents may be brought in the guardianship proceeding if specified requirements are met, including a requirement that the child has

been in the physical custody of the guardian for a period of not less than 2 years.

This bill would provide that a proceeding to have a child who is the subject of a guardianship declared free from the custody and control of one or both parents may be brought in the guardianship proceeding, in an adoption action, or in a separate action filed for the purpose.

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) Except as to cases coming within Chapter 1 (commencing with Section 7540) of Part 2, an action to determine the existence of the father and child relationship 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. A joined party shall not be required to pay a fee in connection with this action.

(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 7631 of the Family Code is repealed.

SEC. 3. Section 7662 of the Family Code is amended to read:

7662. (a) If a mother relinquishes for or consents to, or proposes to relinquish for or consent to, the adoption of a child, or if a child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished, or the mother or the person having physical or legal custody of the child, or the prospective adoptive parent, shall file a petition to terminate the parental rights of the father, unless one of the following occurs:

(1) The father's relationship to the child has been previously terminated or determined not to exist by a court.

(2) The father has been served as prescribed in Section 7666 with a written notice alleging that he is or could be the natural father of the child to be adopted or placed for adoption and has failed to bring an action for the purpose of declaring the existence of the father and child relationship pursuant to subdivision (c) of Section 7630 within 30 days of service of the notice or the birth of the child, whichever is later.

(3) The alleged father has executed a written form developed by the department to waive notice, to deny his paternity, relinquish the child for adoption, or consent to the adoption of the child.

(b) The birth father may validly execute a waiver or denial of paternity before or after the birth of the child, and once signed, no notice of, relinquishment for, or consent to adoption of the child shall be required from the birth father for the adoption to proceed.

(c) All proceedings affecting a child under Divisions 8 (commencing with Section 3000) to 11 (commencing with Section 6500), inclusive, and Parts 1 (commencing with Section 7500) to 3 (commencing with Section 7600), inclusive, of this division, other than an action brought pursuant to this section, shall be stayed pending final determination of proceedings to terminate the parental rights of the father pursuant to this section.

(d) Nothing in this section may limit the jurisdiction of the court pursuant to Part 3 (commencing with Section 6240) and Part 4 (commencing with Section 6300) of Division 10 with respect to domestic violence orders.

SEC. 4. Section 7667 of the Family Code is amended to read:

7667. (a) Notwithstanding any other provision of law, an action to terminate the parental rights of a father of a child as specified

in this part shall be set for hearing not more than 45 days after filing of the petition therefor and completion of service thereon or the entry of an order dispensing with notice of the proceedings. The petition shall either specify the date of the hearing or state that a hearing will be held on a date as determined pursuant to this section, which shall be separately noticed.

(b) The matter so set shall have precedence over all other civil matters on the date set for trial, except an action to terminate parental rights pursuant to Part 4 (commencing with Section 7800).

(c) The court may dispense with a hearing and issue an ex parte order terminating parental rights if any of the following apply:

(1) The identity or whereabouts of the father are unknown.

(2) The alleged father has validly executed a waiver of the right to notice or a waiver or denial of paternity.

(3) The alleged father has been served with written notice of his alleged paternity and the proposed adoption, and he has failed to bring an action pursuant to subdivision (c) of Section 7630 within 30 days of service of the notice or the birth of the child, whichever is later.

SEC. 5. Section 8620 of the Family Code is amended to read:

8620. (a) (1) If a parent is seeking to relinquish a child pursuant to Section 8700 or execute an adoption placement agreement pursuant to Section 8801.3, the department, licensed adoption agency, or adoption service provider, as applicable, shall ask the child and the child's parent or custodian whether the child is, or may be, a member of, or eligible for membership in an Indian tribe or whether the child has been identified as a member of an Indian organization. The department, licensed adoption agency, or adoption service provider, as applicable, shall complete the forms provided for this purpose by the department and shall make this completed form a part of the file.

(2) If there is any oral or written information that indicates that the child is, or may be, an Indian child, the department, licensed adoption agency, or adoption service provider, as applicable, shall obtain the following information:

(A) The name of the child involved, and the actual date and place of birth of the child.

(B) The name, address, date of birth, and tribal affiliation of the birth parents, maternal and paternal grandparents, and maternal and paternal great-grandparents of the child.

(C) The name and address of extended family members of the child who have a tribal affiliation.

(D) The name and address of the Indian tribes or Indian organizations of which the child is, or may be, a member.

(E) A statement of the reasons why the child is, or may be, an Indian.

(3) (A) The department, licensed adoption agency, attorney for the prospective adoptive parents, or adoption service provider shall send a notice, which shall include information obtained pursuant to paragraph (2) and a request for confirmation of the child's Indian status, to any parent and any custodian of the child, and to any Indian tribe of which the child is, or may be, a member or eligible for membership. If any of the information required under paragraph (2) cannot be obtained, the notice shall indicate that fact.

(B) The notice sent pursuant to subparagraph (A) shall describe the nature of the proceeding and advise the recipient of the Indian tribe's right to intervene in the proceeding on its own behalf or on behalf of a tribal member relative of the child.

(b) The department shall adopt regulations to ensure that if a child who is being voluntarily relinquished for adoption, pursuant to Section 8700, is an Indian child, the parent of the child shall be advised of his or her right to withdraw his or her consent and thereby rescind the relinquishment of an Indian child for any reason at any time prior to entry of a final decree of termination of parental rights or adoption, pursuant to Section 1913 of Title 25 of the United States Code.

(c) If a child who is the subject of an adoption proceeding after being relinquished for adoption pursuant to Section 8700, is an Indian child, the child's Indian tribe may intervene in that proceeding on behalf of a tribal member relative of the child.

(d) Any notice sent under this section shall comply with Section 180.

(e) If all prior notices required by this section have been provided to an Indian tribe, the Indian tribe receiving those prior notices is encouraged to provide notice to the department and to the licensed adoption agency or adoption service provider, not later than five calendar days prior to the date of the hearing to determine whether or not the final adoption order is to be granted, indicating whether or not it intends to intervene in the proceeding

required by this section, either on its own behalf or on behalf of a tribal member who is a relative of the child.

(f) The Legislature finds and declares that some adoptive children may benefit from either direct or indirect contact with an Indian tribe. 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, an Indian tribe, and the child, from voluntarily entering into a written agreement to permit continuing contact between the 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 interest of the child at the time the adoption petition is granted.

(g) With respect to giving notice to Indian tribes in the case of voluntary placements of Indian children pursuant to this section, a person, other than a birth parent of the child, shall be subject to a civil penalty if that person knowingly and willfully:

(1) Falsifies, conceals, or covers up by any trick, scheme, or device, a material fact concerning whether the child is an Indian child or the parent is an Indian.

(2) Makes any false, fictitious, or fraudulent statement, omission, or representation.

(3) Falsifies a written document knowing that the document contains a false, fictitious, or fraudulent statement or entry relating to a material fact.

(4) Assists any person in physically removing a child from the State of California in order to obstruct the application of notification.

(h) Civil penalties for a violation of subdivision (g) by a person other than a birth parent of the child are as follows:

(1) For the initial violation, a person shall be fined not more than ten thousand dollars (\$10,000).

(2) For any subsequent violation, a person shall be fined not more than twenty thousand dollars (\$20,000).

SEC. 6. Section 8710 of the Family Code is amended to read:

8710. (a) If a child is being considered for adoption, the department or licensed adoption agency shall first consider adoptive placement in the home of a relative or, in the case of an Indian child, according to the placement preferences and standards set out in subdivisions (c), (d), (e), (f), (g), (h), and (i) of Section 361.31 of the Welfare and Institutions Code. However, if the birth

parent refuses to consider a relative or sibling placement, if a relative is not available, if placement with an available relative is not in the child's best interest, or if placement would permanently separate the child from other siblings who are being considered for adoption or who are in foster care and an alternative placement would not require the permanent separation, the foster parent or parents of the child shall be considered with respect to the child along with all other prospective adoptive parents where all of the following conditions are present:

(1) The child has been in foster care with the foster parent or parents for a period of more than four months.

(2) The child has substantial emotional ties to the foster parent or parents.

(3) The child's removal from the foster home would be seriously detrimental to the child's well-being.

(4) The foster parent or parents have made a written request to be considered to adopt the child.

(b) In the case of an Indian child whose foster parent or parents or other prospective adoptive parents do not fall within the placement preferences established in subdivision (c) or (d) of Section 361.31 of the Welfare and Institutions Code, the foster parent or parents or other prospective adoptive parents shall only be considered if the court finds, supported by clear and convincing evidence, that good cause exists to deviate from these placement preferences.

(c) This section does not apply to a child who has been adjudged a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code.

(d) Upon a request to move a child from a prospective adoptive home for the purpose of placement with siblings or other relatives, the court shall consider the best interests of the child.

SEC. 7. 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.

(D) 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.

(E) 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. 8. Section 9001 of the Family Code is amended to read:

9001. (a) The probation officer, qualified court investigator, licensed clinical social worker, licensed marriage family therapist, private licensed adoption agency, or, at the option of the board of supervisors, the county welfare department in the county in which the adoption proceeding is pending shall make an investigation of each case of stepparent adoption. The court may not make an order of adoption until after the probation officer, qualified court investigator, licensed clinical social worker, licensed marriage family therapist, private licensed adoption agency, or county welfare department has filed its report and recommendation and they have been considered by the court.

(b) If a private licensed adoption agency conducts the investigation, it shall assign the investigation to a licensed clinical social worker or licensed marriage and family therapist associated with the agency. Any grievance regarding the investigation shall be directed to the licensing authority of the clinical social worker or marriage and family therapist, as applicable.

(c) Unless ordered by the court, no home study may be required of the petitioner's home in a stepparent adoption. The agency conducting the investigation or any interested person may request

the court to order a home study or the court may order a home study on its own motion.

(d) “Home study” as used in this section means a physical investigation of the premises where the child is residing.

(e) Nothing in this section shall be construed to require the State Department of Social Services to issue regulations for stepparent adoptions.

SEC. 9. Section 1516.5 of the Probate Code is amended to read:

1516.5. (a) A proceeding to have a child declared free from the custody and control of one or both parents may be brought in accordance with the procedures specified in Part 4 (commencing with Section 7800) of Division 12 of the Family Code within an existing guardianship proceeding, in an adoption action, or in a separate action filed for that purpose, if all of the following requirements are satisfied:

(1) One or both parents do not have the legal custody of the child.

(2) The child has been in the physical custody of the guardian for a period of not less than two years.

(3) The court finds that the child would benefit from being adopted by his or her guardian. In making this determination, the court shall consider all factors relating to the best interest of the child, including, but not limited to, the nature and extent of the relationship between all of the following:

(A) The child and the birth parent.

(B) The child and the guardian, including family members of the guardian.

(C) The child and any siblings or half siblings.

(b) The court shall appoint a court investigator or other qualified professional to investigate all factors enumerated in subdivision (a). The findings of the investigator or professional regarding those issues shall be included in the written report required pursuant to Section 7851 of the Family Code.

(c) The rights of the parent, including the rights to notice and counsel provided in Part 4 (commencing with Section 7800) of Division 12 of the Family Code, shall apply to actions brought pursuant to this section.

(d) This section does not apply to any child who is a dependent of the juvenile court or to any Indian child.

Approved _____, 2010

Governor