

AMENDED IN SENATE JUNE 24, 1996  
AMENDED IN ASSEMBLY MAY 2, 1996  
AMENDED IN ASSEMBLY APRIL 8, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2165**

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**Introduced by Assembly Member Goldsmith**  
**(Coauthors: Assembly Members Baldwin, Margett, and**  
**Richter)**  
(Coauthor: Senator Haynes)

February 6, 1996

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An act to amend Sections 8801.3, 8802, 8810, 8814, 8814.5, and 9102 of, and to add Section 8811.5 to, the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 2165, as amended, Goldsmith. Children: adoption.

(1) Existing law requires each person filing an adoption petition to be fingerprinted and requires an examination of any criminal record.

This bill would authorize, with regard to independent adoptions, licensed private adoption agencies to certify prospective adoptive parents by a preplacement evaluation, to be completed no more than one year prior to the signing of an adoptive placement agreement.

(2) Existing law authorizes specified persons, including a legal guardian who has been the child's legal guardian for

more than 3 years, who desire to adopt a child, to file a petition for the independent adoption of the child.

This bill would reduce this time period with regard to legal guardians to one year and include other specified persons, as well as any other person who has a significant and long-term relationship ~~of more than one year~~ with the child, in the court’s discretion, as specified.

(3) Existing law provides for the payment of a specified fee when a petition is filed for the independent adoption of a child, except as provided.

The bill would instead provide that whenever a petition is filed for the independent adoption of a child, prior to the filing of a report in the superior court by the Department of Social Services or the delegated county adoption agency, the petitioner shall pay specified fees relating to the filing of the petition and for a postplacement evaluation to the department or agency.

(4) Under existing law, after the consent to an independent adoption is signed by the birth parents, the birth parents have 90 days to revoke consent, sign a waiver of the right to revoke consent, or allow the consent to become permanent, as provided.

This bill would reduce this time period to 30 days only where a favorable preplacement certification has been issued, as specified, and would make related changes. The bill would revise the requirements relating to the waiver of the right to revoke consent.

(5) Under existing law, an action or proceeding of any kind to vacate, set aside, or otherwise nullify an order of adoption on any ground, except fraud, is required to be commenced within one year after entry of the order, and in instances of fraud, within 5 years after entry of the order.

This bill would instead require that an action or proceeding of any kind to vacate, set aside, or otherwise nullify an order of adoption on the basis of fraud be commenced within 18 months after entry of the order, except as specified.

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



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

1 SECTION 1. Section 8801.3 of the Family Code is  
2 amended to read:

3 8801.3. A child shall not be considered to have been  
4 placed for adoption unless each of the following is true:

5 (a) Each birth parent placing the child for adoption  
6 has been advised of his or her rights, and if desired, has  
7 been counseled pursuant to Section 8801.5.

8 (b) The adoption service provider, each prospective  
9 adoptive parent, and each birth parent placing the child  
10 have signed an adoption placement agreement on a form  
11 prescribed by the department. The signing of the  
12 agreement shall satisfy all of the following requirements:

13 (1) Each birth parent shall have been advised of his or  
14 her rights pursuant to Section 8801.5 at least 10 days  
15 before signing the agreement, unless the adoption service  
16 provider finds exigent circumstances which shall be set  
17 forth in the adoption placement agreement.

18 (2) The agreement may not be signed by either the  
19 birth parents or the prospective adoptive parents until  
20 the time of discharge of the birth mother from the  
21 hospital. However, if the birth mother remains  
22 hospitalized for a period longer than the hospitalization  
23 of the child, the agreement may be signed by all parties  
24 at the time of or after the child's discharge from the  
25 hospital but prior to the birth mother's discharge from the  
26 hospital if her competency to sign is verified by her  
27 attending physician and surgeon before she signs the  
28 agreement.

29 (3) The birth parents and prospective adoptive  
30 parents shall sign the agreement in the presence of an  
31 adoption service provider.

32 (4) The adoption service provider who witnesses the  
33 signatures shall keep the original of the adoption  
34 placement agreement and immediately forward it and  
35 supporting documentation as required by the  
36 department to the department or delegated county  
37 adoption agency.



1 (5) The child is not deemed to be placed for adoption  
2 with the prospective adoptive parents until the adoption  
3 placement agreement has been signed and witnessed.

4 (6) If the birth parent is not located in this state, the  
5 adoption placement agreement shall be signed before an  
6 adoption service provider or a notary or other person  
7 authorized to perform notarial acts in the state where the  
8 birth parent is located.

9 (c) The adoption placement agreement form shall  
10 include all of the following:

11 (1) A statement that the birth parent received the  
12 advisement of rights and the date upon which it was  
13 received.

14 (2) A statement that the birth parent understands that  
15 the placement is for the purpose of adoption and that if  
16 the birth parent takes no further action, the agreement  
17 shall become a permanent and irrevocable consent to the  
18 adoption either (A) on the 31st day after signing the  
19 adoption placement agreement where a favorable  
20 preplacement certification has been issued, or (B) on the  
21 91st day after signing the adoption placement agreement  
22 where a favorable preplacement certification has not  
23 been issued.

24 (3) A statement that the birth parent signs the  
25 agreement having personal knowledge of certain facts  
26 regarding the prospective adoptive parents as provided  
27 in Section 8801.

28 (4) A statement that the adoptive parents have been  
29 informed of the basic health and social history of the birth  
30 parents.

31 (5) A consent to the adoption that may be revoked as  
32 provided by Section 8814.5.

33 (d) The adoption placement agreement shall also  
34 meet the requirements of the Interstate Compact on the  
35 Placement of Children in Section 7901.

36 (e) This section shall become operative on January 1,  
37 1995.

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



1 8802. (a) A grandparent, great-grandparent,  
2 step-grandparent, aunt, great-aunt, step-aunt, uncle,  
3 great-uncle, step-uncle, first cousin, sibling, or legal  
4 guardian who has been the child's legal guardian for more  
5 than one year, a person named in the will of a deceased  
6 parent as an intended adoptive parent where the child  
7 has no other parent, ~~or~~ a person with whom a child has  
8 been placed for adoption, or, in exigent circumstances  
9 *including, but not limited to, the death of the parent or*  
10 *parents, judicial termination of parental rights, or when*  
11 *the court determines it necessary for the welfare and*  
12 *protection of the child,* and in the court's discretion, any  
13 other person who has a significant and long-term  
14 relationship ~~of more than one year~~ with the child if the  
15 child does not have a parent whose circumstances permit  
16 him or her to complete an adoption placement  
17 agreement, who desires to adopt a child may, for that  
18 purpose, file a petition in the county in which the  
19 petitioner resides. If the child has been placed for  
20 adoption, a copy of the adoptive placement agreement  
21 shall be attached to the petition. The court clerk shall  
22 immediately notify the department at Sacramento in  
23 writing of the pendency of the proceeding and of any  
24 subsequent action taken.

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

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

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



1 guardianship. The petitioners shall notify the court of any  
2 petition for guardianship or temporary guardianship filed  
3 after the adoption petition. The guardianship proceeding  
4 shall be consolidated with the adoption proceeding.

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

8 (f) This section shall become operative on January 1,  
9 1995.

10 SEC. 3. Section 8810 of the Family Code is amended  
11 to read:

12 8810. (a) Except as otherwise provided in this  
13 section, whenever a petition is filed under this chapter for  
14 the adoption of a child, the petitioner shall pay a fee to the  
15 department or delegated county adoption agency, prior  
16 to the filing of a report in the superior court by the  
17 department or delegated county adoption agency, as  
18 follows:

19 (1) For petitions filed on and after July 1, 1993, one  
20 thousand two hundred fifty dollars (\$1,250).

21 (2) For petitioners who have a valid preplacement  
22 evaluation at the time of filing a petition pursuant to  
23 Section 8811.5, six hundred twenty-five dollars (\$625) for  
24 a postplacement evaluation pursuant to Sections 8806 and  
25 8807.

26 (3) Where the adoption is interrupted prior to the  
27 filing of the report of the department or delegated county  
28 adoption agency, the adoption petition may be  
29 withdrawn and no adoption fee shall be assessed for any  
30 services rendered by the department or delegated  
31 county adoption agency, and any such fees already paid  
32 shall be refunded.

33 (b) Revenues produced by fees collected by the  
34 department pursuant to subdivision (a) shall be used,  
35 when appropriated by the Legislature, to fund only the  
36 direct costs associated with the state program for  
37 independent adoptions. Revenues produced by fees  
38 collected by the delegated county adoption agency  
39 pursuant to subdivision (a) shall be used by the county to  
40 fund the county program for independent adoptions.



1 (c) The department or delegated county adoption  
2 agency or the court may defer, waive, or reduce the fee  
3 when, in its judgment, the payment would cause  
4 economic hardship to the prospective adoptive parents  
5 and would be detrimental to the welfare of an adopted  
6 child.

7 SEC. 4. Section 8811.5 is added to the Family Code, to  
8 read:

9 8811.5. (a) A licensed private adoption agency may  
10 certify prospective adoptive parents by a preplacement  
11 evaluation that contains a finding that an individual is  
12 suited to be an adoptive parent.

13 (b) The preplacement evaluation shall include an  
14 investigation pursuant to standards included in the  
15 regulations governing independent adoption  
16 investigations established by the department.

17 (c) The preplacement evaluation, whether it is  
18 conducted for the purpose of initially certifying  
19 prospective adoptive parents or for renewing that  
20 certification, shall be completed no more than one year  
21 prior to *the* signing of an adoption placement agreement.

22 SEC. 5. Section 8814 of the Family Code is amended  
23 to read:

24 8814. (a) Except as provided in Section 7662, the  
25 consent of the birth parent or parents who did not place  
26 the child for adoption, as described in Section 8801.3, to  
27 the adoption shall be signed in the presence of an agent  
28 of the department or of a delegated county adoption  
29 agency on a form prescribed by the department. The  
30 consent shall be filed with the clerk of the appropriate  
31 superior court.

32 (b) The consent described in subdivision (a), when  
33 reciting that the person giving it is entitled to the sole  
34 custody of the child and when acknowledged before that  
35 agent, is prima facie evidence of the right of the person  
36 making it to the sole custody of the child and that person's  
37 sole right to consent.

38 (c) If the birth parent described in subdivision (a) is  
39 located outside this state for an extended period of time  
40 unrelated to the adoption at the time of signing the



1 consent, the consent may be signed before a notary or  
2 other person authorized to perform notarial acts, and in  
3 that case the consent of the department or of the  
4 delegated county adoption agency is also necessary.

5 (d) A birth parent who is a minor has the right to sign  
6 a consent for the adoption of the birth parent's child and  
7 the consent is not subject to revocation by reason of  
8 minority.

9 (e) This section shall become operative on January 1,  
10 1995.

11 SEC. 6. Section 8814.5 of the Family Code is amended  
12 to read:

13 8814.5. (a) After a consent to the adoption is signed  
14 by the birth parent or parents pursuant to Section 8801.3  
15 or 8814, the birth parent or parents signing the consent  
16 shall have 30 days, where a favorable preplacement  
17 certification has been issued, or 90 days where a favorable  
18 preplacement certification has not been issued, to take  
19 one of the following actions:

20 (1) Sign and deliver to the department or delegated  
21 county adoption agency a written statement revoking the  
22 consent and requesting the child to be returned to the  
23 birth parent or parents.

24 (2) Sign a waiver of the right to revoke consent on a  
25 form prescribed by the department in the presence of a  
26 representative of the department or delegated county  
27 adoption agency or a California adoption service  
28 provider. If neither a representative of the department  
29 nor a representative of a delegated county adoption  
30 agency is reasonably available, the waiver of the right to  
31 revoke consent may be signed in the presence of a judicial  
32 officer of a court of record if the birth parent is  
33 represented by independent legal counsel. "Reasonably  
34 available" means that a representative from either the  
35 department or the delegated county adoption agency is  
36 available to accept the signing of the waiver within 10  
37 days and is within 100 miles of the location of the birth  
38 mother.

39 The waiver of the right to revoke consent may not be  
40 signed until an interview has been completed by the



1 department or delegated county adoption agency unless  
2 the waiver of the right to revoke consent is signed in the  
3 presence of a California adoption service provider or a  
4 judicial officer of a court of record as specified in this  
5 section, in which case the interview and the witnessing of  
6 the signing of the waiver shall be conducted by the  
7 California adoption service provider or the judicial  
8 officer. *If the signing of the waiver has been conducted*  
9 *by a California adoption service provider, the consent of*  
10 *the department or delegated county adoption agency to*  
11 *that waiver shall be required.* Within 10 working days of  
12 a request made after the department, the delegated  
13 county adoption agency, or the court has received a copy  
14 of the petition for the adoption and the names and  
15 addresses of the persons to be interviewed, the  
16 department, the delegated county adoption agency, or  
17 the court shall interview, at the department or agency  
18 office or the court, any birth parent requesting to be  
19 interviewed. However, the interview, and the witnessing  
20 of the signing of a waiver of the right to revoke consent  
21 of a birth parent residing outside of California or located  
22 outside of California for an extended period of time  
23 unrelated to the adoption may be conducted in the state  
24 where the birth parent is located, by any of the following:

25 (A) A representative of a public adoption agency in  
26 that state.

27 (B) A judicial officer in that state where the birth  
28 parent is represented by independent legal counsel.

29 (C) An adoption service provider.

30 (3) Allow the consent to become a permanent consent  
31 on the 31st day after signing where a favorable  
32 preplacement certification has been issued, or on the 91st  
33 day after signing where a favorable preplacement  
34 certification has not been issued.

35 (b) The consent may not be revoked after a waiver of  
36 the right to revoke consent has been signed or after 30  
37 days or 90 days, as provided in subdivision (a), beginning  
38 on the date the consent was signed, whichever occurs  
39 first.



1 (c) This section shall become operative on January 1,  
2 1995.

3 SEC. 7. Section 9102 of the Family Code is amended  
4 to read:

5 9102. (a) An action or proceeding of any kind to  
6 vacate, set aside, or otherwise nullify an order of adoption  
7 on any ground, except fraud, shall be commenced within  
8 one year after entry of the order.

9 (b) Except as provided in subdivision (c), an action  
10 or proceeding of any kind to vacate, set aside, or nullify  
11 an order of adoption, based on fraud, shall be commenced  
12 within 18 months after entry of the order.

13 (c) An action or proceeding brought pursuant to  
14 Section 9100 based on fraud shall be commenced within  
15 five years after entry of the order.

