Senate Bill No. 1325

Passed the Senate August 23, 2006

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Secretary of the Senate

Passed the Assembly August 10, 2006

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Chief Clerk of the Assembly

This bill was received by the Governor this _____ day of _____, 2006, at _____ o'clock ____M.

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Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 7620, 7630, 7633, 7825, and 8700 of, and to add Sections 7606 and 8613.5 to, the Family Code, relating to adoption.

LEGISLATIVE COUNSEL'S DIGEST

SB 1325, Scott. Adoption.

(1) Existing law requires a person who may have conceived a child by an act of intercourse to submit to the jurisdiction of the courts of this state and specifies the venue where an action may be filed by or against that person. Existing law permits a child, a child's natural mother, a presumed father or other interested party, as specified, to bring an action to determine the existence or nonexistence of a father and child relationship.

This bill would additionally require a person who causes conception through assisted reproduction in this state to submit to the jurisdiction of the courts of this state. This bill would additionally permit a person who enters an assisted reproduction agreement, as specified, to bring an action to establish a parent and child relationship.

(2) Under existing law, an action to determine a parent and child relationship may be brought before the birth of that child.

This bill would permit the court to enter an order or judgment based on that action before the birth of the child. This bill would further prohibit enforcement of that order or judgment until the birth of the child.

(3) Under existing law, if a parent is convicted of a felony, a proceeding to terminate parental rights may be filed.

This bill would additionally permit the court, as part of a proceeding to terminate parental rights, to consider a parent's criminal record prior to the felony conviction, as specified, in making a finding that a parent is unfit to have future custody or control of his or her child.

(4) Under existing law, if a proceeding to terminate the parental rights of a presumed father has been filed, an action to determine the parent and child relationship between the

presumed father and child is required to be consolidated with the termination proceeding.

This bill would require an action to determine the existence or nonexistence of a parent and child relationship between a presumed father and child to be consolidated with a proceeding that has been filed for the emancipation of the child.

(5) Under existing law, a birth parent may relinquish a child to a licensed adoption agency for the adoption of that child. Existing law requires the licensed adoption agency to forward a written relinquishment signed by the birth parent to the Department of Social Services. Under existing law, that relinquishment is final within 10 business days after the relinquishment is filed with the department, unless a longer period of time is necessary, as specified.

This bill would require the relinquishment to be final 10 business days after the relinquishment is filed with the department unless the department sends written acknowledgment of receipt of the relinquishment before that date.

(6) Under existing law, if a prospective adoptive parent is in military service or service for another recognized entity, as specified, and shows by satisfactory evidence that it is impossible or impracticable to appear in court for an adoption proceeding, the prospective adoptive parent may make his or her appearance at the proceeding through an attorney.

This bill would additionally permit a prospective adoptive parent to appear at an adoption proceeding through an attorney if the prospective adoptive parent shows by satisfactory evidence that it is impossible or impracticable to appear at the adoption proceeding.

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

SECTION 1. Section 7606 is added to the Family Code, to read:

7606. As used in this part, the following definitions shall apply:

(a) “Assisted reproduction” means conception by any means other than sexual intercourse.

(b) “Assisted reproduction agreement” means a written contract that includes a person who intends to be the legal parent

of a child or children born through assisted reproduction and that defines the terms of the relationship between the parties to the contract.

SEC. 2. 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) The county in which a licensed California adoption agency maintains an office if that agency brings the action.

(3) 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. 3. 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 through 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 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) 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. 4. Section 7633 of the Family Code is amended to read:

7633. An action under this chapter may be brought, an order or judgment may be entered before the birth of the child, and enforcement of that order or judgment shall be stayed until the birth of the child.

SEC. 5. Section 7825 of the Family Code is amended to read:

7825. (a) A proceeding under this part may be brought where both of the following requirements are satisfied:

(1) The child is one whose parent or parents are convicted of a felony.

(2) The facts of the crime of which the parent or parents were convicted are of such a nature so as to prove the unfitness of the parent or parents to have the future custody and control of the child. In making a determination pursuant to this section, the court may consider the parent's criminal record prior to the felony conviction to the extent that the criminal record demonstrates a pattern of behavior substantially related to the welfare of the child or the parent's ability to exercise custody and control regarding his or her child.

(b) The mother of a child may bring a proceeding under this part against the father of the child, where the child was conceived as a result of an act in violation of Section 261 of the Penal Code, and where the father was convicted of that violation. For purposes of this subdivision, there is a conclusive presumption that the father is unfit to have custody or control of the child.

SEC. 6. Section 8613.5 is added to the Family Code, to read:

8613.5. (a) (1) 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. The appearance may be made for the prospective adoptive parent by counsel, commissioned and empowered in writing for that purpose. The power of attorney may be incorporated in the adoption petition.

(2) For purposes of this section, if the circumstances that make an appearance in person by a prospective adoptive parent impossible or impracticable are temporary in nature or of a short duration, the court shall not waive the personal appearance of that prospective adoptive parent.

(b) If the prospective adoptive parent is permitted to appear by counsel, the agreement may be executed and acknowledged by the counsel, or may be executed by the absent party before a notary public, or any other person authorized to take acknowledgments including the persons authorized by Sections 1183 and 1183.5 of the Civil Code.

(c) If the prospective adoptive parent is permitted to appear by counsel, or otherwise, the court may, in its discretion, cause an examination of the prospective adoptive parent, other interested person, or witness to be made upon deposition, as it deems

necessary. The deposition shall be taken upon commission, as prescribed by the Code of Civil Procedure, and the expense thereof shall be borne by the petitioner.

(d) The petition, relinquishment or consent, agreement, order, report to the court from any investigating agency, and any power of attorney and deposition shall be filed in the office of the clerk of the court.

(e) The provisions of this section permitting an appearance by counsel are equally applicable to the spouse of a prospective adoptive parent who resides with the prospective adoptive parent outside this state.

(f) If, pursuant to this section, neither prospective adoptive parent need appear before the court, the child proposed to be adopted need not appear. If the law otherwise requires that the child execute any document during the course of the hearing, the child may do so through counsel.

(g) If none of the parties appears, the court may not make an order of adoption until after a report has been filed with the court pursuant to Section 8715, 8807, 8914, or 9001.

SEC. 7. Section 8700 of the Family Code is amended to read:

8700. (a) Either birth parent may relinquish a child to the department or a licensed adoption agency for adoption by a written statement signed before two subscribing witnesses and acknowledged before an authorized official of the department or agency. The relinquishment, when reciting that the person making it is entitled to the sole custody of the child and acknowledged before the officer, is prima facie evidence of the right of the person making it to the sole custody of the child and the person's sole right to relinquish.

(b) A relinquishing parent who is a minor has the right to relinquish his or her child for adoption to the department or a licensed adoption agency, and the relinquishment is not subject to revocation by reason of the minority.

(c) If a relinquishing parent resides outside this state and the child is being cared for and is or will be placed for adoption by the department or a licensed adoption agency, the relinquishing parent may relinquish the child to the department or agency by a written statement signed by the relinquishing parent before a notary on a form prescribed by the department, and previously signed by an authorized official of the department or agency, that

signifies the willingness of the department or agency to accept the relinquishment.

(d) If a relinquishing parent and child reside outside this state and the child will be cared for and will be placed for adoption by the department or a licensed adoption agency, the relinquishing parent may relinquish the child to the department or agency by a written statement signed by the relinquishing parent, after that parent has satisfied the following requirements:

(1) Prior to signing the relinquishment, the relinquishing parent shall have received, from a representative of an agency licensed or otherwise approved to provide adoption services under the laws of the relinquishing parent's state of residence, the same counseling and advisement services as if the relinquishing parent resided in this state.

(2) The relinquishment shall be signed before a representative of an agency licensed or otherwise approved to provide adoption services under the laws of the relinquishing parent's state of residence whenever possible or before a licensed social worker on a form prescribed by the department, and previously signed by an authorized official of the department or agency, that signifies the willingness of the department or agency to accept the relinquishment.

(e) (1) The relinquishment authorized by this section has no effect until a certified copy is sent to, and filed with, the department. The licensed adoption agency shall send that copy by certified mail, return receipt requested, or by overnight courier or messenger, with proof of delivery, to the department no earlier than the end of the business day following the signing thereof. The relinquishment shall be final 10 business days after receipt of the filing by the department, unless any of the following apply:

(A) The department sends written acknowledgment of receipt of the relinquishment prior to the expiration of that 10-day period, at which time the relinquishment shall be final.

(B) A longer period of time is necessary due to a pending court action or some other cause beyond control of the department.

(2) After the relinquishment is final, it may be rescinded only by the mutual consent of the department or licensed adoption

agency to which the child was relinquished and the birth parent or parents relinquishing the child.

(f) The relinquishing parent may name in the relinquishment the person or persons with whom he or she intends that placement of the child for adoption be made by the department or licensed adoption agency.

(g) Notwithstanding subdivision (e), if the relinquishment names the person or persons with whom placement by the department or licensed adoption agency is intended and the child is not placed in the home of the named person or persons or the child is removed from the home prior to the granting of the adoption, the department or agency shall mail a notice by certified mail, return receipt requested, to the birth parent signing the relinquishment within 72 hours of the decision not to place the child for adoption or the decision to remove the child from the home.

(h) The relinquishing parent has 30 days from the date on which the notice described in subdivision (g) was mailed to rescind the relinquishment.

(1) If the relinquishing parent requests rescission during the 30-day period, the department or licensed adoption agency shall rescind the relinquishment.

(2) If the relinquishing parent does not request rescission during the 30-day period, the department or licensed adoption agency shall select adoptive parents for the child.

(3) If the relinquishing parent and the department or licensed adoption agency wish to identify a different person or persons during the 30-day period with whom the child is intended to be placed, the initial relinquishment shall be rescinded and a new relinquishment identifying the person or persons completed.

(i) If the parent has relinquished a child, who has been found to come within Section 300 of the Welfare and Institutions Code or is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code, to the department or a licensed adoption agency for the purpose of adoption, the department or agency accepting the relinquishment shall provide written notice of the relinquishment within five court days to all of the following:

(1) The juvenile court having jurisdiction of the child.

(2) The child's attorney, if any.

(3) The relinquishing parent's attorney, if any.

(j) The filing of the relinquishment with the department terminates all parental rights and responsibilities with regard to the child, except as provided in subdivisions (g) and (h).

(k) The department shall adopt regulations to administer the provisions of this section.

Approved _____, 2006

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Governor