

AMENDED IN SENATE APRIL 20, 2006

AMENDED IN SENATE APRIL 6, 2006

AMENDED IN SENATE MARCH 28, 2006

SENATE BILL

No. 1758

Introduced by Senator Figueroa

February 24, 2006

An act to amend Sections ~~8623~~, 8625, 8636, and 8638 of, to repeal Section 8635 of, and to add Section 8632.5 to, the Family Code, relating to adoption.

LEGISLATIVE COUNSEL'S DIGEST

SB 1758, as amended, Figueroa. Adoption facilitators.

(1) Existing law provides a comprehensive scheme regarding adoption regulation, and also provides for the regulation of adoption facilitators, as defined. Existing law requires a person, prior to engaging in the business of or acting in the capacity of an adoption facilitator, to obtain a business license in the appropriate jurisdiction and be bonded in the amount of \$10,000.

This bill would instead require a person to post a bond in the amount of \$50,000, executed by a corporate surety admitted to do business in this state, with the State Department of Social Services. The bill would also require a person, whenever there is recovery from a bond, to file a new bond before that person may conduct further business as an adoption facilitator. The bill would require the adoption facilitator to notify the department in writing within 30 days when a surety bond is renewed, and provide the department with changes in personal information, as specified.

The bill would also require the State Department of Social Services to establish and adopt regulations for a statewide registration process for adoption facilitators and to establish and adopt regulations to ensure that adoption facilitators comply with the requirements of posting a bond. The bill would authorize the department to adapt the process it uses to register adoption service providers in order to provide a similar registration process for adoption facilitators. The bill would also require an adoption facilitator, when posting a bond, to file with the department a disclosure form containing specified information about the person's educational background and identity, including fingerprint cards. Certain of these requirements would extend to staff members who provide direct adoption services. The bill would authorize the department to impose specified fees for covering the costs of processing fingerprint cards, maintaining a statewide registration system, and processing bonds of adoption facilitators.

The bill would also require the State Department of Social Services to post on its Internet Web site information that shows if an adoption facilitator is *in* compliance with the registration and bond requirements and to draft an adoption fraud manual, to be made available on the department's Web site and at county adoption orientations, as specified. The bill would also require the department to create a task force to study the activities of adoption facilitators and make recommendations for future legislation.

~~Existing law provides that a person or organization is an adoption facilitator if the person or organization is not licensed as an adoption agency by the State of California and advertises for the purpose of soliciting parties to an adoption, locating children for an adoption, or acting as an intermediary between parties to an adoption.~~

~~This bill would revise that provision to include offering adoption consulting services.~~

(2) Existing law prohibits an adoption facilitator from misleading a person into believing that the adoption facilitator is a licensed adoption agency or representing to a person that he or she is able to provide services for which the facilitator is not properly licensed.

This bill would also prohibit an adoption facilitator from making use of photolisting to advertise minor children for placement in adoption and from advertising specific information about particular minor children available for adoption.

(3) Existing law authorizes a person aggrieved by a violation of the provisions regarding adoption facilitators to bring a civil action for damages, rescission, or any other civil or equitable remedy.

This bill would revise that provision to specifically authorize a person to bring a civil action for injunctive relief. The bill would also provide that if the court finds a person has violated those provisions, it shall award actual damages plus an amount equal to treble the amount of the actual damages or \$1,000 per violation, whichever is greater. The bill would also authorize the Attorney General, a district attorney, or a city attorney to bring a civil action for injunctive relief, restitution, or other equitable relief against the adoption facilitator in the name of the people of the State of California. The bill would further authorize any other person claiming a violation of those provisions to bring a civil action for injunctive relief on behalf of the general public.

(4) Existing law also authorizes a party, in any action to revoke or enforce a contract with an adoption facilitator, to recover reasonable attorneys' fees and costs.

This bill would expand that provision to apply to all civil actions regarding adoption facilitators. The bill would also set forth related findings and declarations.

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. (a) The Legislature hereby finds and declares
2 the following:
3 (1) The sharp rise in the number of adoptions, and a significant
4 increase in adoption fees, has created an expanding industry for
5 adoption facilitators in California.
6 (2) Adoption facilitators are not licensed as adoption agencies,
7 but are adoption intermediaries who are required to hold a
8 business license, be bonded in the amount of ten thousand dollars
9 (\$10,000), and are regulated by California law in the areas of
10 disclosure and advertising.
11 (3) Recent accounts of fraudulent practices by adoption
12 facilitators demonstrate that current regulations are not strict or
13 extensive enough to safeguard birth parents and prospective
14 adoptive parents from fraud.

1 (b) It is the intent of the Legislature to enact legislation that
2 ensures the protection of birth parents and prospective adoptive
3 parents in dealing with adoption facilitators.

4 ~~SEC. 2. Section 8623 of the Family Code is amended to read:~~

5 ~~8623. A person or organization is an adoption facilitator if the~~
6 ~~person or organization is not licensed as an adoption agency by~~
7 ~~the State of California and engages in either the following~~
8 ~~activities:~~

9 ~~(a) Advertises for the purpose of soliciting parties to an~~
10 ~~adoption, locating children for an adoption, acting as an~~
11 ~~intermediary between the parties to an adoption, or offering~~
12 ~~adoption consulting services.~~

13 ~~(b) Charges a fee or other valuable consideration for services~~
14 ~~rendered relating to an adoption.~~

15 ~~SEC. 3.~~

16 ~~SEC. 2. Section 8625 of the Family Code is amended to read:~~

17 ~~8625. An adoption facilitator shall not:~~

18 ~~(a) Mislead any person into believing, or imply by any~~
19 ~~document, including any form of advertising or by oral~~
20 ~~communications, that the adoption facilitator is a licensed~~
21 ~~adoption agency.~~

22 ~~(b) Represent to any person that he or she is able to provide~~
23 ~~services for which the facilitator is not properly licensed.~~

24 ~~(c) Make use of photolisting to advertise minor children for~~
25 ~~placement in adoption.~~

26 ~~(d) Post in any advertising specific information about~~
27 ~~particular minor children who are available for adoption~~
28 ~~placement.~~

29 ~~SEC. 4.~~

30 ~~SEC. 3. Section 8632.5 is added to the Family Code, to read:~~

31 ~~8632.5. (a) The department shall establish and adopt~~
32 ~~regulations for a statewide registration process for adoption~~
33 ~~facilitators. The department shall also establish and adopt~~
34 ~~regulations to ensure that adoption facilitators comply with the~~
35 ~~requirements of posting a bond, in accordance with this chapter.~~

36 ~~(b) The department may adapt the process it uses to register~~
37 ~~adoption service providers in order to provide a similar~~
38 ~~registration process for adoption facilitators. The process used by~~
39 ~~the department shall include a procedure for determining the~~
40 ~~status of bond compliance by adoption facilitators, a means for~~

1 accepting or denying organizations seeking inclusion in the
2 adoption facilitator registry, and an appeals process for those
3 entities denied inclusion in the adoption facilitator registry.

4 (c) Upon the establishment by the department of a registration
5 process, all adoption facilitators that operate independently from
6 a licensed public or private adoption agency or an adoption
7 attorney in this state shall be required to register with the
8 department.

9 (d) An adoption facilitator, when posting a bond, shall also file
10 with the department a disclosure form containing the adoption
11 facilitator's name, date of birth, residence address, business
12 address, residence telephone number, business telephone number,
13 and the number of adoptions facilitated for the previous year.
14 Along with the disclosure form, the adoption facilitator shall
15 provide all of the following information to the department:

16 (1) (A) Proof that the facilitator and any member of the staff
17 who provides direct adoption services has completed two years
18 of college courses, with at least half of the units and hours
19 focusing on social work or a related field.

20 (B) An adoption facilitator and any member of the staff
21 subject to this paragraph may waive the educational requirements
22 by satisfying all of the following requirements:

23 (i) He or she has over five years of work experience providing
24 direct adoption services.

25 (ii) He or she has not been found liable, and has no pending
26 lawsuits, in connection with providing adoption services.

27 (iii) He or she provides three separate letters of support
28 attesting to his or her ethics and work providing direct adoption
29 services from any of the following:

30 (I) A licensed public or private adoption agency.

31 (II) A member of the Academy of California Adoption
32 Attorneys Lawyers.

33 (III) The State Department of Social Services.

34 (2) Proof of a minimum of three years of experience employed
35 by a public or private adoption agency or adoption attorney who
36 assists in bringing adopting persons and placing parents together
37 for the purpose of adoption placement.

38 (3) A valid business license.

39 (4) A valid, current, government-issued identification to
40 determine the adoption facilitator's identity, such as a California

1 driver's license, identification card, passport, or other form of
2 identification that is acceptable to the department.

3 (5) Two classifiable fingerprint cards of the adoption
4 facilitator and all staff members, for purposes of submitting to a
5 criminal background check.

6 (e) The department may impose a fee upon applicants of no
7 more than three dollars (\$3.00) for each set of classifiable
8 fingerprint cards that it processes pursuant to subparagraph (5) of
9 subdivision (d), except that it shall not charge a fee for those
10 submitted into an electronic fingerprint system using electronic
11 fingerprint technology.

12 (f) The department shall post on its Internet Web site
13 information that shows if an adoption facilitator is in compliance
14 with the registration and bond requirements of this chapter. The
15 department shall ensure that the information is current and shall
16 update the information at least once every 30 days.

17 (g) The department shall draft an adoption fraud manual,
18 which shall include recourse information for victims of fraud by
19 adoption facilitators. This manual shall be made available in
20 electronic format by a link that may be accessed from the
21 department's Internet Web site and shall also be made available
22 in written format at county adoption orientations.

23 (h) The department shall develop the disclosure form required
24 pursuant to subdivision (d) and shall make it available to any
25 adoption facilitator posting a bond.

26 (i) The department may charge adoption facilitators an annual
27 filing fee to cover the cost of maintaining a statewide registration
28 system and processing bonds of adoption facilitators.

29 (j) The department shall create a taskforce to study the
30 activities of adoption facilitators and make recommendations for
31 future legislation.

32 ~~SEC. 5.~~

33 *SEC. 4.* Section 8635 of the Family Code is repealed.

34 ~~SEC. 6.~~

35 *SEC. 5.* Section 8636 of the Family Code is amended to read:

36 8636. (a) Prior to engaging in the business of, or acting in the
37 capacity of, an adoption facilitator, any person shall (1) obtain a
38 business license in the appropriate jurisdiction, and (2) ~~shall~~ post
39 a bond in the amount of fifty thousand dollars (\$50,000),

1 executed by a corporate surety admitted to do business in this
2 state, with the department in accordance with Section 8632.5.

3 (b) The surety bond required by subdivision (a) shall be in
4 favor of, and payable to, the people of the State of California and
5 shall be for the benefit of any person damaged by fraud,
6 misstatement, misrepresentation, unlawful act or omission, or
7 failure to provide the services of the adoption facilitator, or the
8 agents, representatives, or employees of the adoption facilitator,
9 while acting within the scope of that employment or agency.

10 (c) Whenever there is a recovery from a bond required by
11 subdivision (a), the person shall file a new bond in accordance
12 with subdivision (a) before that person may conduct further
13 business as an adoption facilitator.

14 (d) An adoption facilitator shall notify the department in
15 writing within 30 days when a surety bond required by this
16 section is renewed, and of any change of name, address,
17 telephone number, or agent for service of process.

18 SEC. 6. Section 8638 of the Family Code is amended to read:

19 8638. (a) Any person aggrieved by any violation of this
20 chapter may bring a civil action for damages, rescission,
21 injunctive relief, or any other civil or equitable remedy.

22 (b) If the court finds that a person has violated this chapter, it
23 shall award actual damages, plus an amount equal to treble the
24 amount of the actual damages or one thousand dollars (\$1,000)
25 per violation, whichever is greater.

26 (c) In any civil action under this chapter, a prevailing party
27 may recover reasonable ~~attorneys'~~ attorney's fees and costs.

28 (d) The Attorney General, a district attorney, or a city attorney
29 may bring a civil action for injunctive relief, restitution, or other
30 equitable relief against the adoption facilitator in the name of the
31 people of the State of California.

32 (e) Any other person who ~~based~~, based upon information or
33 belief, claims a violation of this chapter has been committed,
34 may bring a civil action for injunctive relief on behalf of the
35 general public.