

Senate Bill No. 1758

Passed the Senate August 31, 2006

Secretary of the Senate

Passed the Assembly August 28, 2006

Chief Clerk of the Assembly

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

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 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, 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 \$25,000, 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 replenish the bond or file a new bond if the former bond cannot be replenished 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 require adoption facilitators to post 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 authorize the department to deny inclusion in the registry to an applicant who has been convicted of a crime for which the department may deny a license to an adoption agency. 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 submit fingerprint images to the Department of Justice in order to obtain criminal offender information and to impose fees for covering the costs of processing fingerprint cards and recovering all other costs associated with the bill's requirements. The bill would require the Department of Justice to forward the request for information to the Federal Bureau of Investigation, to review the information received in response, and to disseminate that information to the State Department of Social Services.

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, as specified. The bill would also authorize the department to create an Adoption Facilitator Account for the deposit of fees received and would require the department to make recommendations for the registry program to the Legislature on or before January 1, 2008. The bill would provide that the adoption facilitator registry shall become operative upon receipt of an appropriation, as specified.

(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.

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

SECTION 1. (a) The Legislature hereby finds and declares the following:

(1) The sharp rise in the number of adoptions, and a significant increase in adoption fees, has created an expanding industry for adoption facilitators in California.

(2) Adoption facilitators are not licensed as adoption agencies, but are adoption intermediaries who are required to hold a business license, be bonded in the amount of ten thousand dollars (\$10,000), and are regulated by California law in the areas of disclosure and advertising.

(3) Recent accounts of fraudulent practices by adoption facilitators demonstrate that current regulations are not strict or extensive enough to safeguard birth parents and prospective adoptive parents from fraud.

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

SEC. 2. Section 8625 of the Family Code is amended to read: 8625. An adoption facilitator shall not:

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

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

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

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

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

8632.5. (a) The department shall establish and adopt regulations for a statewide registration process for adoption facilitators. The department shall also establish and adopt regulations to require adoption facilitators to post a bond as required by this section.

(b) The department may adapt the process it uses to register adoption service providers in order to provide a similar registration process for adoption facilitators. The process used by the department shall include a procedure for determining the status of bond compliance by adoption facilitators, a means for accepting or denying organizations seeking inclusion in the adoption facilitator registry, and an appeals process for those entities denied inclusion in the adoption facilitator registry. The department may deny inclusion in the registry for adoption facilitators to an applicant who has been convicted of any crime for which the department may deny a license to an adoption agency.

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

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

(1) Proof that the facilitator and any member of the staff who provides direct adoption services has completed two years of

college courses, with at least half of the units and hours focusing on social work or a related field.

(2) Proof that the facilitator and any member of staff who provides direct adoption services has a minimum of three years of experience employed by a public or private adoption agency, a registered adoption facilitator, or an adoption attorney who assists in bringing adopting persons and placing parents together for the purpose of adoption placement.

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

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

(ii) He or she has not been found liable of malfeasance in connection with providing adoption services.

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

(I) A licensed public or private adoption agency.

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

(III) The State Department of Social Services.

(B) An adoption facilitator who is registered with the department may also register staff members under the designation of “trainee.” A trainee may provide direct adoption services without meeting the requirements of this paragraph. Any trainee registered with the department shall be directly supervised by an individual who meets all registration requirements.

(3) A valid business license.

(4) A valid, current, government-issued identification to determine the adoption facilitator’s identity, such as a California driver’s license, identification card, passport, or other form of identification that is acceptable to the department.

(5) Fingerprint images for a background check to be used by the department for the purposes described in this section.

(e) The State Department of Social Services may submit fingerprint images of adoption facilitators to the Department of Justice for the purpose of obtaining criminal offender record

information regarding state and federal level convictions and arrests, including arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal.

(1) The Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the department.

(2) The Department of Justice shall provide a response to the department pursuant to subdivision (n) of Section 11105 of the Penal Code.

(3) The department shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code.

(4) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

(f) The department may impose a fee upon applicants for each set of classifiable fingerprint cards that it processes pursuant to paragraph (5) of subdivision (d).

(g) The department shall post on its Internet Web site information that shows if an adoption facilitator is in compliance with the registration and bond requirements of this chapter. The department shall ensure that the information is current and shall update the information at least once every 30 days. However, pursuant to the provisions of Section 11142 of the Penal Code, neither the department nor any employee of the department shall reveal the state summary criminal history record or any information from the record to a member of the public.

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

(i) The department may charge adoption facilitators an annual filing fee to recover all costs associated with the requirements of this section and that fee shall be set by regulation.

(j) The department may create an Adoption Facilitator Account for deposit of fees received from registrants.

(k) On or before January 1, 2008, the department shall make recommendations for the registry program to the Legislature,

including a recommendation on how to implement a department program to accept and compile complaints against registered adoption facilitators and to provide public access to those complaints, by specific facilitator, through the department's Internet Web site.

(l) The adoption facilitator registry established pursuant to this section shall become operative on the first day of the first month following an appropriation from the Adoption Facilitator Account to the State Department of Social Services for the startup costs and the costs of administration of the adoption facilitator registry.

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

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

8636. (a) Prior to engaging in the business of, or acting in the capacity of, an adoption facilitator, any person shall (1) obtain a business license in the appropriate jurisdiction, and (2) post a bond in the amount of twenty-five thousand dollars (\$25,000), executed by a corporate surety admitted to do business in this state, with the department in accordance with Section 8632.5.

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

(c) Whenever there is a recovery from a bond required by subdivision (a), the person shall replenish the bond or file a new bond if the former bond cannot be replenished in accordance with subdivision (a) before that person may conduct further business as an adoption facilitator.

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

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

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

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

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

(d) The Attorney General, a district attorney, or a city attorney may 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.

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

SEC. 7. The repeal of Section 8635 of the Family Code by this act is not retroactive and does not apply to actions that are pending before January 1, 2007.

Approved _____, 2006

Governor