

AMENDED IN ASSEMBLY APRIL 20, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 941

**Introduced by Committee on Judiciary (Feuer (Chair), Brownley,
Evans, Jones, Krekorian, Lieu, and Monning)**

February 26, 2009

An act to amend Sections 8616.5, 8814.5, and 9007 of the Family Code, relating to adoption.

LEGISLATIVE COUNSEL'S DIGEST

AB 941, as amended, Committee on Judiciary. Adoption.

Existing law allows for continuing contact between the birth relatives and the child if ~~an~~ a *postadoption contact* agreement is entered into voluntarily and in the best interests of the child at the time the adoption petition is granted. Existing law limits postadoption contact to the sharing of information about the child, unless the child had an existing relationship with the birth relative.

This bill would permit contact between the child and birth relatives, including visitation and sharing of information, where there was not an existing relationship, as specified.

Existing law provides that, after a consent to an adoption is signed by the birth parent or parents, the birth parent or parents signing the consent have 30 days to take one of specified actions, including signing a waiver of the right to revoke consent. Existing law requires a waiver to be signed in the presence of a representative of the department or the delegated county adoption agency, or if the birth parents are represented by independent legal counsel, the waiver can also be signed in the

presence of a judicial officer of the court of record or an adoption service provider. Existing law allows for the witnessing and signing of a waiver of the right to revoke consent by a birth parent living outside of California to be conducted in the state where the birth parent is located, as provided.

This bill would allow for the adoption service provider who advised the birth mother and witnessed the signing of the consent to be the adoption service provider present for the signing of a waiver, if the birth parents are represented by independent legal counsel. ~~This bill would make these provisions applicable to waivers signed in California.~~

Existing law requires that in a stepparent adoption the prospective adoptive parent and the child proposed to be adopted shall appear before the court, as specified.

This bill would provide that 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 and the appearance may be made for the prospective adoptive parent by counsel, commissioned and empowered in writing for that purpose, as specified.

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

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

- 1 SECTION 1. Section 8616.5 of the Family Code is amended
- 2 to read:
- 3 8616.5. (a) The Legislature finds and declares that some
- 4 adoptive children may benefit from either direct or indirect contact
- 5 with birth relatives, including the birth parent or parents or an
- 6 Indian tribe, after being adopted. Postadoption contact agreements
- 7 are intended to ensure children of an achievable level of continuing
- 8 contact when contact is beneficial to the children and the
- 9 agreements are voluntarily entered into by birth relatives, including
- 10 the birth parent or parents or an Indian tribe, and adoptive parents.
- 11 Nothing in this section requires all of the listed parties to participate
- 12 in the development of a postadoption contact agreement in order
- 13 for the agreement to be entered into.
- 14 (b) (1) Nothing in the adoption laws of this state shall be
- 15 construed to prevent the adopting parent or parents, the birth

1 relatives, including the birth parent or parents or an Indian tribe,
2 and the child from voluntarily entering into a written agreement
3 to permit continuing contact between the birth relatives, including
4 the birth parent or parents or an Indian tribe, and the child if the
5 agreement is found by the court to have been entered into
6 voluntarily and to be in the best interests of the child at the time
7 the adoption petition is granted.

8 (2) The terms of any postadoption contact agreement executed
9 under this section shall be limited to, but need not include, all of
10 the following:

11 (A) Provisions for visitation between the child and a birth parent
12 or parents and other birth relatives, including siblings, and the
13 child's Indian tribe if the case is governed by the Indian Child
14 Welfare Act (25 U.S.C. Sec. 1901 et seq.).

15 (B) Provisions for future contact between a birth parent or
16 parents or other birth relatives, including siblings, or both, and the
17 child or an adoptive parent, or both, and in cases governed by the
18 Indian Child Welfare Act, the child's Indian tribe.

19 (C) Provisions for the sharing of information about the child in
20 the future.

21 (c) At the time an adoption decree is entered pursuant to a
22 petition filed pursuant to Section 8714, 8714.5, 8802, 8912, or
23 9000, the court entering the decree may grant postadoption
24 privileges if an agreement for those privileges has been entered
25 into, including agreements entered into pursuant to subdivision (f)
26 of Section 8620. The hearing to grant the adoption petition and
27 issue an order of adoption may be continued as necessary to permit
28 parties who are in the process of negotiating a postadoption
29 agreement to reach a final agreement.

30 (d) The child who is the subject of the adoption petition shall
31 be considered a party to the postadoption contact agreement. The
32 written consent to the terms and conditions of the postadoption
33 contact agreement and any subsequent modifications of the
34 agreement by a child who is 12 years of age or older is a necessary
35 condition to the granting of privileges regarding visitation, contact,
36 or sharing of information about the child, unless the court finds
37 by a preponderance of the evidence that the agreement, as written,
38 is in the best interests of the child. Any child who has been found
39 to come within Section 300 of the Welfare and Institutions Code
40 or who is the subject of a petition for jurisdiction of the juvenile

1 court under Section 300 of the Welfare and Institutions Code shall
2 be represented by an attorney for purposes of consent to the
3 postadoption contact agreement.

4 (e) A postadoption contact agreement shall contain the following
5 warnings in bold type:

6 (1) After the adoption petition has been granted by the court,
7 the adoption cannot be set aside due to the failure of an adopting
8 parent, a birth parent, a birth relative, an Indian tribe, or the child
9 to follow the terms of this agreement or a later change to this
10 agreement.

11 (2) A disagreement between the parties or litigation brought to
12 enforce or modify the agreement shall not affect the validity of
13 the adoption and shall not serve as a basis for orders affecting the
14 custody of the child.

15 (3) A court will not act on a petition to change or enforce this
16 agreement unless the petitioner has participated, or attempted to
17 participate, in good faith in mediation or other appropriate dispute
18 resolution proceedings to resolve the dispute.

19 (f) Upon the granting of the adoption petition and the issuing
20 of the order of adoption of a child who is a dependent of the
21 juvenile court, juvenile court dependency jurisdiction shall be
22 terminated. Enforcement of the postadoption contact agreement
23 shall be under the continuing jurisdiction of the court granting the
24 petition of adoption. The court may not order compliance with the
25 agreement absent a finding that the party seeking the enforcement
26 participated, or attempted to participate, in good faith in mediation
27 or other appropriate dispute resolution proceedings regarding the
28 conflict, prior to the filing of the enforcement action, and that the
29 enforcement is in the best interests of the child. Documentary
30 evidence or offers of proof may serve as the basis for the court's
31 decision regarding enforcement. No testimony or evidentiary
32 hearing shall be required. The court shall not order further
33 investigation or evaluation by any public or private agency or
34 individual absent a finding by clear and convincing evidence that
35 the best interests of the child may be protected or advanced only
36 by that inquiry and that the inquiry will not disturb the stability of
37 the child's home to the detriment of the child.

38 (g) The court may not award monetary damages as a result of
39 the filing of the civil action pursuant to subdivision (e) of this
40 section.

1 (h) A postadoption contact agreement may be modified or
2 terminated only if either of the following occurs:

3 (1) All parties, including the child if the child is 12 years of age
4 or older at the time of the requested termination or modification,
5 have signed a modified postadoption contact agreement and the
6 agreement is filed with the court that granted the petition of
7 adoption.

8 (2) The court finds all of the following:

9 (A) The termination or modification is necessary to serve the
10 best interests of the child.

11 (B) There has been a substantial change of circumstances since
12 the original agreement was executed and approved by the court.

13 (C) The party seeking the termination or modification has
14 participated, or attempted to participate, in good faith in mediation
15 or other appropriate dispute resolution proceedings prior to seeking
16 court approval of the proposed termination or modification.

17 Documentary evidence or offers of proof may serve as the basis
18 for the court's decision. No testimony or evidentiary hearing shall
19 be required. The court shall not order further investigation or
20 evaluation by any public or private agency or individual absent a
21 finding by clear and convincing evidence that the best interests of
22 the child may be protected or advanced only by that inquiry and
23 that the inquiry will not disturb the stability of the child's home
24 to the detriment of the child.

25 (i) All costs and fees of mediation or other appropriate dispute
26 resolution proceedings shall be borne by each party, excluding the
27 child. All costs and fees of litigation shall be borne by the party
28 filing the action to modify or enforce the agreement when no party
29 has been found by the court as failing to comply with an existing
30 postadoption contact agreement. Otherwise, a party, other than the
31 child, found by the court as failing to comply without good cause
32 with an existing agreement shall bear all the costs and fees of
33 litigation.

34 (j) The Judicial Council shall adopt rules of court and forms for
35 motions to enforce, terminate, or modify postadoption contact
36 agreements.

37 (k) The court may not set aside a decree of adoption, rescind a
38 relinquishment, or modify an order to terminate parental rights or
39 any other prior court order because of the failure of a birth parent,
40 adoptive parent, birth relative, an Indian tribe, or the child to

1 comply with any or all of the original terms of, or subsequent
2 modifications to, the postadoption contact agreement, except as
3 follows:

4 (1) Prior to issuing the order of adoption, in an adoption
5 involving an Indian child, the court may, upon a petition of the
6 birth parent, birth relative, or an Indian tribe, order the parties to
7 engage in family mediation services for the purpose of reaching a
8 postadoption contact agreement if the prospective adoptive parent
9 fails to negotiate in good faith to enter into a postadoption contact
10 agreement, after having agreed to enter into negotiations, provided
11 that the failure of the parties to reach an agreement is not in and
12 of itself proof of bad faith.

13 (2) Prior to issuing the order of adoption, if the parties fail to
14 negotiate in good faith to enter into a postadoption contact
15 agreement during the negotiations entered into pursuant to and in
16 accordance with paragraph (1), the court may modify prior orders
17 or issue new orders as necessary to ensure the best interest of the
18 Indian child is met, including, but not limited to, requiring parties
19 to engage in further family mediation services for the purpose of
20 reaching a postadoption contact agreement, initiating guardianship
21 proceeding in lieu of adoption, or authorizing a change of adoptive
22 placement for the child.

23 SEC. 2. Section 8814.5 of the Family Code is amended to read:

24 8814.5. (a) After a consent to the adoption is signed by the
25 birth parent or parents pursuant to Section 8801.3 or 8814, the
26 birth parent or parents signing the consent shall have 30 days to
27 take one of the following actions:

28 (1) Sign and deliver to the department or delegated county
29 adoption agency a written statement revoking the consent and
30 requesting the child to be returned to the birth parent or parents.
31 After revoking consent, in cases where the birth parent or parents
32 have not regained custody, or the birth parent or parents have failed
33 to make efforts to exercise their rights under subdivision (b) of
34 Section 8815, a written notarized statement reinstating the original
35 consent may be signed and delivered to the department or delegated
36 county adoption agency, in which case the revocation of consent
37 shall be void and the remainder of the original 30-day period shall
38 commence. After revoking consent, in cases in which the birth
39 parent or parents have regained custody or made efforts to exercise
40 their rights under subdivision (b) of Section 8815 by requesting

1 the return of the child, upon the delivery of a written notarized
2 statement reinstating the original consent to the department or
3 delegated county adoption agency, the revocation of consent shall
4 be void and a new 30-day period shall commence. The birth mother
5 shall be informed of the operational timelines associated with this
6 section at the time of signing of the statement reinstating the
7 original consent.

8 (2) (A) Sign a waiver of the right to revoke consent on a form
9 prescribed by the department in the presence of any of the
10 following:

11 (i) A representative of the department or delegated county
12 adoption agency.

13 (ii) A judicial officer of a court of record if the birth parent is
14 represented by independent legal counsel.

15 (iii) An adoption service provider, including, but not limited to,
16 the adoption service provider who advised the birth mother and
17 witnessed the signing of the consent, if the birth parent or parents
18 are represented by independent legal counsel. The adoption service
19 provider shall ensure that the waiver is delivered to the department,
20 the petitioners, or their counsel no earlier than the end of the
21 business day following the signing of the waiver. The adoption
22 service provider shall inform the birth parent that during this time
23 period he or she may request that the waiver be withdrawn and
24 that, if he or she makes that request, the waiver shall be withdrawn.

25 (B) An adoption service provider may assist the birth parent or
26 parents in any activity where the primary purpose of that activity
27 is to facilitate the signing of the waiver with the department, a
28 delegated county agency, or a judicial officer. The adoption service
29 provider or another person designated by the birth parent or parents
30 may also be present at any interview conducted pursuant to this
31 section to provide support to the birth parent or parents, except
32 when the interview is conducted by independent legal counsel for
33 the birth parent or parents.

34 (C) The waiver of the right to revoke consent may not be signed
35 until an interview has been completed by the department or
36 delegated county adoption agency unless the waiver of the right
37 to revoke consent is signed in the presence of a judicial officer of
38 a court of record or an adoption service provider as specified in
39 this section. If the waiver is signed in the presence of a judicial
40 officer, the interview and the witnessing of the signing of the

1 waiver shall be conducted by the judicial officer. If the waiver is
2 signed in the presence of an adoption service provider, the
3 interview shall be conducted by the independent legal counsel for
4 the birth parent or parents. If the waiver is signed in the presence
5 of an adoption service provider, the waiver shall be reviewed by
6 the independent legal counsel who (i) counsels the birth parent or
7 parents about the nature of his or her intended waiver and (ii) signs
8 and delivers to the birth parent or parents and the department a
9 certificate in substantially the following form:

10 I, (name of attorney), have counseled my client, (name of
11 client), on the nature and legal effect of the waiver of right to
12 revoke consent to adoption. I am so disassociated from the
13 interest of the petitioner(s)/prospective adoptive parent(s) as
14 to be in a position to advise my client impartially and
15 confidentially as to the consequences of the waiver. (Name of
16 client) is aware that California law provides for a 30-day period
17 during which a birth parent may revoke consent to adoption.
18 On the basis of this counsel, I conclude that it is the intent of
19 (name of client) to waive the right to revoke, and make a
20 permanent and irrevocable consent to adoption. (Name of
21 client) understands that he/she will not be able to regain
22 custody of the child unless the petitioner(s)/prospective
23 adoptive parent(s) agree(s) to withdraw their petition for
24 adoption or the court denies the adoption petition. Within 10
25 working days of a request made after the department or the
26 delegated county adoption agency has received a copy of the
27 petition for the adoption and the names and addresses of the
28 persons to be interviewed, the department or the delegated
29 county adoption agency shall interview, at the department or
30 agency office, any birth parent requesting to be interviewed.

31 ~~The following provisions apply to waivers which are signed~~
32 ~~within California. However~~

33 *(D) Notwithstanding subparagraphs (A) and (C), the*
34 *interview, and the witnessing of the signing of a waiver of the*
35 *right to revoke consent of a birth parent residing outside of*
36 *California or located outside of California for an extended*
37 *period of time unrelated to the adoption may be conducted in*
38 *the state where the birth parent is located, by any of the*
39 *following:*

40 (I) A representative of a public adoption agency in that state.

1 (II) A judicial officer in that state where the birth parent is
2 represented by independent legal counsel.

3 (III) An adoption service provider.

4 (3) Allow the consent to become a permanent consent on the
5 31st day after signing.

6 (b) The consent may not be revoked after a waiver of the right
7 to revoke consent has been signed or after 30 days, beginning on
8 the date the consent was signed or as provided in paragraph (1) of
9 subdivision (a), whichever occurs first.

10 SEC. 3. Section 9007 of the Family Code is amended to read:

11 9007. The prospective adoptive parent and the child proposed
12 to be adopted shall appear before the court pursuant to Sections
13 8612, 8613, and 8613.5.