

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 807 (Ochoa Bogh)
Version: April 17, 2023
Hearing Date: April 25, 2023
Fiscal: Yes
Urgency: No
AWM

SUBJECT

Adoption facilitators

DIGEST

This bill repeals the provisions authorizing adoption facilitators to engage in certain adoption-related activities and expressly prohibits a person or organization from engaging in specified activities relating to adoption unless they are licensed as an adoption agency by the Department of Social Services (DSS) or are a licensed attorney, as specified.

EXECUTIVE SUMMARY

Parents seeking to adopt have several options, including proceeding through a licensed adoption agency or contracting with an adoption facilitator. Adoption facilitators locate children available for adoption and act as intermediaries between the prospective adoptive parents and birth parents during the adoption process, all for a substantial fee; but they may not engage in some of the services that licensed agencies provide, such as taking custody of a child being placed for adoption. Adoption facilitators are not licensed by the state – they merely have to register with DSS – and are subject to significantly less oversight than licensed adoption agencies.

In 2006, the Legislature – in response to a high-profile raid on an adoption facilitator – considered whether the current framework for registering, but not licensing, adoption facilitators was enough to protect consumers. The Legislature ultimately enacted SB 1758 (Figueroa, Ch. 754, Stats. 2006), which bolstered the registration regime without meaningfully increasing DSS’s oversight.

In January of this year, the Sacramento Bee published a long exposé on a Sacramento-based adoption facilitator who failed to provide placements for many families, despite accepting tens of thousands of dollars in fees. The article posits that the framework for adoption facilitators is unsustainable and that the registration requirement might do

more harm than good, by falsely suggesting that DSS is meaningfully overseeing adoption facilitators. Several individuals writing in support of the bill recount similar experiences with adoption facilitators, including paying tens of thousands of dollars for “matches” that fell through due to facilitator misconduct.

This bill, in response to the article and other reports of adoption facilitator misconduct, repeals the provisions relating to adoption facilitators and prohibits the practice by providing that certain adoption-related services may be provided only by a licensed adoption agency or an attorney licensed in California.

This bill is sponsored by the author and is supported by Bal Jagat – Children’s World Inc., Ethical Family Building, Family Connections Christian Adoptions, Holt International, the Lifetime Healing Foundation, the National Council for Adoption, Nightlight Christian Adoptions, Pact, and nine individuals who report negative experiences with adoption facilitators. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Defines the following relevant terms:
 - a) A “licensed adoption agency” is an agency licensed by DSS to provide adoption services. An adoption agency may be a full-service adoption agency, which provides custodial services for the child, or a noncustodial adoption agency, which matches prospective adoptive parents with birth parents and supervises the placement without taking custody of the child; and may be run by a private entity or a county or consortium of counties. (Fam. Code, §§ 8513, 8521, 8530, 8533; Health & Saf. Code, § 1502.)
 - b) An “adoption facilitator” is a person not licensed as an adoption agency by the State of California and who engages in either (1) advertising for the purpose of soliciting parties to an adoption, locating children for an adoption, or acting as an intermediary between the parties to an adoption, or (2) charging a fee or other valuable consideration for services rendered relating to an adoption. (Fam. Code, § 8623.)
- 2) Requires DSS to establish regulations relating to the licensure of adoption agencies and sets criteria for the issuance of a license to serve as an adoption agency, conditions for the suspension or revocation of a license, and penalties for a violation of the licensing requirements and other laws. (Health & Saf. Code, §§ 1500 et seq.)
- 3) Establishes a separate regime for the regulation of adoption facilitators, which does not require licensure, including:
 - a) Requiring DSS to establish and adopt regulations for a statewide registration and enforcement process for adoption facilitators; all adoption facilitators

- must register with DSS, provide DSS with specified information about its staff, and post a bond. (Fam. Code, §§ 8635.2(a)-(d), 8636.)
 - b) Regulating and limiting the content of an adoption facilitator's advertisements, including prohibiting an adoption facilitator from implying that they are a licensed adoption agency. (Fam. Code, §§ 8624, 8265.)
 - c) Providing that, for a period of 72 hours after signing a contract for after the payment of any fee, the birthparents or the prospective adoptive parents may revoke the contract and request the return of any fees paid, without penalty, except for any reasonable fees actually earned by the facilitator and which are supported by written records or documentation. (Fam. Code, § 8629.)
 - d) Requiring all contracts entered into by an adoption facilitator be in writing and include certain statements, including a disclosure that they are not licensed by the State of California as an adoption agency, and requires the adoption facilitator to explain the terms of the written contract verbally to the prospective adoptive parents and birthparents. (Fam. Code, §§ 8631, 8632.)
 - e) Establishing penalties for adoption facilitators who violate the relevant statutes and regulations, including a civil action for damages or a civil penalty of \$1,000, which may be brought by a person injured by the violation or 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. (Fam. Code, §§ 8638, 8639.)
- 4) Requires DSS to post on its website the registration and bond requirements established under 3) and a list of adoption facilitators in compliance with those requirements. DSS must update the information at least once every 30 days. (Fam. Code, § 8632.5(g).)

This bill:

- 1) Repeals the provisions relating to adoption facilitators.
- 2) Expressly prohibits a person from engaging in activities relating to adoption unless the person is licensed as an adoption agency or is authorized to practice law in California, and updates existing laws to reflect the prohibition as follows:
 - a) Provides that a person or organization that, without holding either a valid or unrevoked adoption agency license or a valid and unrevoked license to practice law in California, advertises that they will provide adoption placement services or obtain children for adoption is guilty of a misdemeanor.
 - b) Removes, as part of the existing requirement that adoptive parents file with the court a report of their expenses relating to adoption-related services, the provisions referring to payments made for placement-related services to

- persons other than an attorney, physician and surgeon, or a licensed adoption agency.
- c) Eliminates, in the statute requiring DSS to adopt regulations regarding the provision of adoption services, references to adoption service providers other than county and licensed adoption agencies.

COMMENTS

1. Author's comment

According to the author:

While adoption agencies are heavily regulated in California, “adoption facilitators” receive little oversight. Unlike adoption agencies, facilitators do not need much training before charging tens of thousands of dollars to prospective parents. This lack of oversight leaves many potential families at risk. In a heartbreaking example, a recent Sacramento Bee investigation found that nearly two dozen families looking to adopt paid more than \$245,000 to the Sacramento-based “adoption facilitator” Little Angel Adoptions. Not one of these families had a child placed with them.

The vast majority of states have banned any entity other than licensed adoption agencies or lawyers from performing adoption-related services. SB 807 will increase transparency and accountability in the adoption process by ensuring only qualified and regulated entities perform adoption-related services.

2. Background on Adoption Facilitators

Adoption agencies are heavily regulated, licensed facilities that are authorized to handle an adoption from start to finish.¹

This bill does not address adoption agencies. This bill instead addresses adoption facilitators. Adoption facilitators are intermediaries. They make connections between birth parents and potential adoptive parents, but they cannot place children for adoption, supervise adoption placements, or assess birth parents, prospective adoptive parents, or children — those roles are reserved for licensed adoption agencies.²

¹ Fam. Code, §§ 8700-8720; Health & Saf. Code, §§ 1501, 1502, 1502.6, 1506-1509; Cal. Code Regs., tit. 22, div. 9, ch. 6, §§ 89001 et seq.).

² Health & Saf. Code, § 1502.

Adoption facilitators can charge tens of thousands of dollars for their services.³ Unlike adoption agencies, adoption facilitators are not required to be licensed; they merely have to register with DSS and satisfy certain educational and bonding requirements.⁴ DSS's enforcement authority is limited to taking action against an adoption facilitator who operates without satisfying the registration requirements; an aggrieved potential parent's only remedy against an adoption facilitator is a civil action to recover damages.⁵ Pact, a licensed adoption agency writing in support, states:

While California's nearly 150 adoption agencies and attorneys are licensed and subject to expansive regulations designed to protect Californians, adoption facilitators are not required to hold any social work or legal credentials, nor are they subject to any regulatory authority. Adoption facilitators are allowed to operate as for-profit businesses with no limitations on the fees they're allowed to charge. Because facilitators are unlicensed, there is no state licensing board to which an individual harmed by a facilitator may submit a complaint.

The Legislature first addressed adoption facilitators in 1996; the bill imposed prohibitions on adoption facilitators holding themselves out as adoption agencies, added requirements relating to adoption facilitation contracts, and imposed a \$10,000 bond requirement.⁶ In 2006, following a high-profile raid on a Napa-based adoption facilitator, the Senate Business, Professions & Economic Development Committee held a hearing entitled "Is There A Need for Improved Regulation and Licensing of Adoption Facilitators?"⁷ Ultimately, the Legislature declined to impose a licensing requirement on adoption facilitators, and instead implemented the current requirements that adoption facilitators register with DSS and DSS post the registered facilitators on its website, and increased the bond requirement to \$25,000.⁸

According to the bill's supporters, California is the only state that has codified the role of adoption facilitator, thereby conferring the imprimatur of state approval. Supporters claim that, despite statutory prohibitions, several of the state's registered adoption facilitators advertise themselves as licensed adoption agencies. They also claim that adoption facilitators frequently target pregnant women in crisis. For example, according to Ethical Family Building:

³ Pohl, *Facilitator or agency? What to look for before signing an adoption contract in California*, Sacramento Bee (Jan. 5, 2023), available at <https://www.sacbee.com/news/investigations/article270082417.html>. All links in this analysis are current as of April 20, 2023.

⁴ Fam. Code, §§ 8632.5, 8636.

⁵ *Id.*, §§ 8638, 8639.

⁶ See SB 2035 (Killea, Ch. 1135, Stats. 1996).

⁷ Sen. Com. on Judiciary, com. on Sen. Bill No. 1758 (2005-2006 Reg. Sess.) as amended Apr. 20, 2006.

⁸ SB 1758 (Figueroa, Ch. 754, Stats. 2006).

Over the past ten years, the internet has allowed California facilitators, along with a whole host of other unlicensed out-of-state paid adoption intermediaries, to expand their reach through aggressive and often misleading online advertisements that target low-income pregnant women in California looking for help online. These women turn to adoption facilitators amidst difficult pregnancy decisions and other challenging circumstances, unaware the facilitator holds a financial stake in their decision or that the facilitator is not actually licensed to provide adoption services.

In January of 2023, the Sacramento Bee published an investigative article about a particular adoption facilitator that took on numerous clients – and took in over \$200,000 in fees – while only rarely making matches.⁹ While the article focused on only the single adoption facilitator, it suggested that California’s current regulatory scheme, by requiring registration but not meaningful oversight, “[has] enabled private adoption facilitators to take advantage of prospective parents in an adoption system primed for abuse.”¹⁰ The article highlighted, among other issues, the risk that DSS’s posting of registered adoption facilitators implies a greater degree of oversight or approval than is actually taking place, and DSS’s lack of enforcement authority – a combination, the article states, which is unique to California.¹¹

3. This bill repeals the statutory authorization for adoption facilitators and prohibits persons other than licensed adoption agencies or licensed attorneys from providing adoption-related services

This bill prohibits a person or entity from serving as an adoption facilitator in the State of California. The author has concluded that the current regulatory regime – which permits adoption facilitators to operate with less oversight and fewer regulations than adoption agencies – is a failed experiment; there is simply no way for prospective adoptive parents and birth parents to be adequately protected while facilitators are permitted to operate in a regulatory gray area. The bill thus repeals the regulatory framework for adoption facilitators and makes clear that certain adoption-related services may be provided only by a licensed adoption agency or an attorney licensed to practice in California.¹²

⁹ Pohl, *A Sacramento woman billed families thousands to find them a baby. Many say they were scammed*, Sacramento Bee (updated Jan. 10, 2023), <https://www.sacbee.com/article270082407.html>.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Among the changes made by this bill are changes to the existing restrictions on who may advertise that they will provide adoption placement services or supply children for adoption, to clarify that only licensed agencies and attorneys – the only entities legally entitled to provide those services – may advertise those services. (See Fam. Code, § 8609.) While a restriction on advertising restricts speech, restrictions relating to licensed professions are frequently upheld as satisfying the state’s interest in protecting the public from misleading advertisements. (E.g., *American Academy of Pain Management v.*

Many other states have laws that prohibit adoption facilitators from providing adoption services. Delaware, Kansas, and Maine prohibit the use of facilitators or intermediaries entirely; nine states permit only licensed agencies to place children in adoptive homes; and six states and the District of Columbia limit placement to a combination of licensed agencies, attorneys, and family members.¹³

Going forward, the author may wish to consider measures to clarify the enforcement mechanisms for when a person engages in adoption activities without the proper licensure.

4. Arguments in support

According to Family Connections Christian Adoptions, writing in support:

Adoption facilitators...prey on women facing unplanned pregnancies. Using the Internet, they target pregnant women in California looking for help online – especially low-income women who are in dire financial situations...Due to the lack of training, adoption facilitators routinely and recklessly ignore critical legal issues when “matching” expectant mothers with adoptive parents, including: the birth father’s legal rights, [Indian Child Welfare Act] requirements, living expense payments, in-utero drug exposure, and post-adoption contact. They are told things like “Just say you don’t know who the father is,” and “Just say you don’t have any Native American Heritage.” By the time a licensed adoption agency or attorney is called upon to assess the case, the adoption facilitator has already collected their nonrefundable matchmaking fee. When the adoption fails due to issues that were not addressed through proper due diligence at the outset, both the hopeful adoptive and expectant parents are left without recourse – and are angry at the licensed professionals who had to break the bad news to them.

In summary, adoption facilitators serve no legitimate purpose in California. With over 150 licensed adoption California adoption agencies, and over 200,000 licensed California attorneys in this state, there are more than enough regulated, ethical, and competent adoption service providers without allowing unlicensed entities to continue to defraud the public and give a bad name to everyone working in the field of adoption.

SUPPORT

Bal Jagat – Children’s World Inc.

Joseph (9th Cir. 2004) 353 F.3d 1099, 1108-1109.) The existing prohibition has been in statute since 1996 and does not appear to have been challenged on First Amendment grounds.

¹³ United States Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, *Use of advertising and facilitators in adoptive placements* (Jul. 2020), p. 2, available at <https://www.childwelfare.gov/pubpdfs/advertising.pdf>.

Ethical Family Building
Family Connections Christian Adoptions
Holt International
Lifetime Healing Foundation
National Council for Adoption
Nightlight Christian Adoptions
Pact, an Adoption Alliance
Nine individuals

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 1726 (Scott, Ch. 534, Stats. 2008) added the \$100-per-day civil penalty assessable by DSS for adoption facilitators who operate without registering with DSS.

SB 1758 (Figueroa, Ch. 754, Stats. 2006) prohibited adoption facilitators from implying they are licensed adoption agencies, required DSS to adopt regulations for statewide registration by adoption facilitators, increased the amount of the bond that adoption facilitators must post, and added the treble damages and attorney fee provisions for the civil remedy.
