
THIRD READING

Bill No: SB 807
Author: Ochoa Bogh (R)
Amended: 4/17/23
Vote: 21

SENATE JUDICIARY COMMITTEE: 11-0, 4/25/23
AYES: Umberg, Wilk, Allen, Ashby, Caballero, Durazo, Laird, Min, Niello,
Stern, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Adoption facilitators

SOURCE: Author

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.

ANALYSIS:

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) Prohibits, expressly, 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.
- 3) 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

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.¹ 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

¹ Fam. Code, §§ 8632.5, 8636.

civil action to recover damages.² Nevertheless, adoption facilitators can charge tens of thousands of dollars for their services.³

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.⁴ 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?”⁵ 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 \$25,000.⁶

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, and 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.⁷

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

² *Id.*, §§ 8638, 8639.

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 May 15, 2023.

⁴ See SB 2035 (Killea, Ch. 1135, Stats. 1996).

⁵ Sen. Com. on Judiciary, com. on Sen. Bill No. 1758 (2005-2006 Reg. Sess.) as amended Apr. 20, 2006.

⁶ SB 1758 (Figueroa, Ch. 754, Stats. 2006).

⁷ 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. 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.

in adoptive homes; and six states and the District of Columbia limit placement to a combination of licensed agencies, attorneys, and family members.⁸

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 5/15/23)

Bal Jagat – Children’s World Inc.
 Ethical Family Building
 Family Connections Christian Adoptions
 Family to Family Support Network
 Holt International
 Lifetime Healing Foundation
 National Council for Adoption
 Nightlight Christian Adoptions
 Pact, an Adoption Alliance
 Nine individuals

OPPOSITION: (Verified 5/15/23)

AdoptLink
 Adoption Answer Resource Center
 Adoption Center of San Diego
 Adoption Choices of Northern California
 Adoption Consultants, Inc.
 The Family Network, Inc.
 14 individuals

ARGUMENTS IN SUPPORT: According to Family Connections Christian Adoptions:

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

⁸ 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>.

“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.

ARGUMENTS IN OPPOSITION: According to The Family Network, Inc.:

To ban facilitators is to scapegoat one entity of adoptions as the “problem.” The truth is that there are individuals, agencies, facilitators, and attorneys who have questionable adoption practices that should be regulated, as evidenced by the IAC nightmare. There are absolutely facilitators that should be banned and there should be a process to ban any unethical adoption provider, regardless of title.

However, to ban only facilitators will not solve the problem and ultimately will leave many birth parents without the loving support that the ethical facilitators provide. It would be taking away a much needed resource from women who have unplanned pregnancy.

I work with several facilitators in CA that are the most ethical entities and provide the best care to birth parents – they offer support groups, unlimited support, resources, parenting support, and adoption support. In fact, I often refer to them when an adoptive family wants an ethical birth mother supported entity to assist in their adoption.

Ultimately, I would be interested in adoption reform to rid the adoption world of those who should be eliminated regardless of their title of facilitator, agency, or attorney. However, this bill will not

solve this problem – it will only leave birth parents with even less support and without some amazing programs to assist them. Therefore, I oppose this bill as a short sided attempt at adoption reform but not actually solving the problems and leaving the vulnerable birth parents without the support they deserve.

Prepared by: Allison Whitt Meredith / JUD. / (916) 651-4113
5/17/23 15:09:45

**** END ****