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Jacquelyn Loyd

Pacific McGeorge School of Law

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Family

Chapter 743 Lowers Adoption Costs: More Families Made Whole, More Children Kept Safe

Jacquelyn Loyd

Code Sections Affected

Family Code §§ 8700.5, 8730, 8810 (amended).
AB 848 (Patterson); 2013 STAT. Ch. 743

I. INTRODUCTION

Children are undoubtedly a blessing, albeit an expensive one, and adopted children are no exception.¹ It is not uncommon for families to spend upwards of \$15,000 in application, agency, and attorney's fees during an adoption.² In the end though, adopting a child can be every bit as rewarding to a family as giving birth to a biological child.³

In 2007, Justin and Eleece Sanders applied to adopt a baby girl.⁴ They were thrilled when, eight weeks after applying, it looked like they would be bringing their new daughter home.⁵ Unfortunately, the birth father decided he could not give up his baby, and the adoption fell through.⁶ The whole family was heartbroken.⁷ Thankfully, the Sanders' story ends happily.⁸ In 2008, their dreams came true when they found another birth mother who wanted to give her child up, and they brought their beautiful daughter home at last.⁹ Sadly, unlike the

1. See MARK LINO, PH.D., U.S. DEP'T OF AGRIC., EXPENDITURES ON CHILDREN BY FAMILIES, 2011 iv (2012), available at <http://www.cnpp.usda.gov/Publications/CRC/crc2011.pdf> (on file with the *McGeorge Law Review*) (indicating annual expenses for a child cost anywhere between \$8,760 and \$24,510 annually depending on the household income).

2. See Interview with Eleece Sanders, Adoptive Parent, in Penryn, Cal. (July 11, 2013) [hereinafter Sanders interview] (notes on file with the *McGeorge Law Review*) (totaling the amount her husband and her spent adopting their daughter at over \$15,000 after agency fees, including lawyer fees and paying for birth mother expenses); *The Costs of Adopting: A Factsheet for Families*, ADOPTION, <http://costs.adoption.com/articles/the-costs-of-adopting-a-factsheet-for-families.html> (last visited July 24, 2013) (on file with the *McGeorge Law Review*) (indicating that an adoption in California can cost anywhere from \$0 to over \$40,000).

3. See Sanders interview, *supra* note 2 (stating that adopting her daughter was just as fulfilling and rewarding as giving birth to any of her other four children).

4. *Id.* (describing the timeline of events she experienced when adopting her daughter).

5. *Id.*

6. *Id.*

7. *Id.* (highlighting the emotional turmoil the process of adoption can produce).

8. *Id.*

9. *Id.*

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Sanders, the extraordinary expense of adoption prevents many families from building the family they long for.¹⁰

II. LEGAL BACKGROUND

In order to adopt a child in California, prospective parents spend months or even years of their time in pursuit of having a child; they must meet many requirements, including investigations, paperwork, and fees.¹¹ In recent years, the legislature has made three significant changes to the California Family Code in an attempt to ease the financial burden on these prospective parents and the state by expediting the long, agonizing process of adoption.¹²

A. Chapter 983: the Origin of Abbreviated Assessments

The California Legislature enacted Chapter 983 in 1998, creating Section 8730 of the Family Code.¹³ This Section allowed an abbreviated assessment of those prospective parents who had been foster parents to the child they were seeking to adopt for at least six months, or when the prospective parent was a relative caregiver with whom the child had a significant relationship.¹⁴ Chapter 983 established minimum safeguards: a criminal background check,¹⁵ a determination that the parent had the financial means to support the child,¹⁶ that the parent had never abused or neglected the child¹⁷ (nor were they likely to in the future¹⁸), and that the parent could address other issues affecting the child's well-being.¹⁹ While this change increased the ease of adoption for some prospective parents, it left others stuck with lengthy and expensive assessments.²⁰

10. See Interview with Alison Foster Davis, Exec. Dir., Family Connections Christian Adoptions and Fellow, Acad. of Cal. Adoption Lawyers, (July 18, 2013) [hereinafter Davis interview] (notes on file with the *McGeorge Law Review*) (explaining that cost is a prohibitive factor to many adoptions, especially grandparent adoptions).

11. See *Adoption FAQs*, DEP'T. OF SOC. SERVICES, <http://www.childsworld.ca.gov/PG1302.htm> (last visited July 7, 2013) (on file with the *McGeorge Law Review*) (summarizing the requirements for adoption in California).

12. *Infra* Part II.A–C.

13. 1998 Cal. Stat. ch. 983, § 3 (enacting CAL. FAM. CODE § 8730).

14. *Id.*

15. *Id.* § 8730(a).

16. *Id.* § 8730(b).

17. *Id.* § 8730(c).

18. *Id.* § 8730(d).

19. *Id.* § 8730(e).

20. See *Adoption FAQs*, *supra* note 11 (stating that adoptions involve many fees and take between six months to a year).

*McGeorge Law Review / Vol. 45**B. Chapter 638: Termination of Parental Rights*

Prior to 2012, birth parents had thirty days in which to rescind their agreement to relinquish the child.²¹ Chapter 638 enacted Section 8700.5 of the Family Code, which allows the birth parents to waive that thirty-day period.²² Birth parents must sign the waiver in the presence a state or county representative,²³ an officer of the court,²⁴ or “an authorized representative of a licensed private adoption agency.”²⁵ The waiver is valid immediately if signed in front of an officer of the court. However, it does not become final until “the close of the next business day” if signed by any of the other designated representatives.²⁶

C. A Break in Fees for Low Income Parents

In 2008, the legislature amended Section 8810 of the Family Code, allowing parents with “very low income, according to . . . the Department of Housing and Community Development” to pay a lesser adoption fee.²⁷ All adoption petitions filed after October 1, 2008 required the prospective parent to pay \$4,500.²⁸ Applicants with very low income, however, may now have that fee reduced to \$500.²⁹ The Department of Housing and Community Development determines what is “very low income” based on the county of residence and the number of members in the household.³⁰ For example, a couple making \$30,000 per year in Sacramento and a family of four making \$48,000 in Orange County would both be classified as “very low income.”³¹

III. CHAPTER 743

Chapter 743 amends three separate sections of the Family Code in an effort to increase the ease and speed of adoptions.³² It clarifies a vague code section

21. CAL. FAM. CODE § 8700(h) (West 2013).

22. 2012 Cal. Stat. ch. 638, § 8 (enacting CAL. FAM. CODE § 8700.5).

23. *Id.* § 8700.5(a)(1).

24. *Id.* § 8700.5(a)(2).

25. *Id.* § 8700.5(a)(3).

26. *Id.* § 8700.5(c).

27. *Id.* § 8700.5(c).

28. 2008 Cal. Stat. ch. 759, § 12 (amending CAL. FAM. CODE § 8810(a)(1)).

29. *Id.* at § 8810(c).

30. See Memorandum from Lisa Bates, Deputy Dir. Div. of Hous. Pol’y Dev. to Interested Parties (Feb. 25, 2013) [hereinafter Housing Department Memo] (on file with the *McGeorge Law Review*) (listing income levels for each county in California).

31. *Id.*

32. CAL. FAM. CODE §§ 8700.5, 8730, 8810 (amended by Chapter 743).

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created by a 2012 bill,³³ modifies the requirements for abbreviated home assessments to make them faster and more affordable for family members,³⁴ and raises the minimum income level that prospective parents need to qualify for an application fee reduction.³⁵

A. Section 8700.5 of the Family Code

Section 8700.5 affects the birth parents' waiver to rescind the adoption.³⁶ The changes to this Section mostly clarify the previous law.³⁷ For example, if a birth parent signs the waiver "in the presence of an authorized representative of a private licensed adoption agency," then the parent loses the right to revoke the adoption at the close of the business day after the parent signs the waiver, or at the end of a specified holding period, whichever is later.³⁸ Additionally, Chapter 743 adds that a waiver will be void if the relinquishment is invalid, revoked during a holding period, or revoked pursuant to Section 8700.³⁹

B. Section 8730 of the Family Code

The changes to Section 8730 allow abbreviated assessments not only for foster parents and relative caregivers, but for nonrelated extended family members, court appointed guardians that have had custody for at least a year, and prospective adoptive parents that have adopted another child through an agency within the last two years.⁴⁰ Chapter 743 also amends the minimum requirements of the assessment, requiring that the criminal background check on prospective parents complies with state and federal law,⁴¹ and that inspectors evaluate issues affecting the child's "physical health, mental health, and educational needs"⁴² rather than merely "racial and cultural issues."⁴³

Additionally, Chapter 743 adds language requiring the release of state-conducted in home studies so that the current agency that is overseeing the adoption may review it. However, the study will not be released if there is a

33. *Infra* Part III.A.

34. *Infra* Part III.B.

35. *Infra* Part III.C.

36. CAL. FAM. CODE § 8700.5 (amended by Chapter 743).

37. *Compare* CAL. FAM. CODE § 8700.5 (amended by Chapter 743), with 2012 Cal. Stat. ch. 638, § 8 (enacting CAL. FAM. CODE § 8700.5) (illustrating the vague language in the law as enacted in 2012 and the changes made by Chapter 743).

38. CAL. FAM. CODE. § 8700.5(c) (amended by Chapter 743).

39. *Id.* § 8700.5(e) (amended by Chapter 743).

40. *Id.* § 8730(a) (amended by Chapter 743).

41. *Id.* § 8730(b)(1) (amended by Chapter 743).

42. *Id.* § 8730(b)(5) (amended by Chapter 743).

43. 1998 Cal. Stat. ch. 983, § 3 (enacting CAL. FAM. CODE § 8730(e)).

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privacy violation.⁴⁴ This amendment also gives the California Department of Social Services the ability to make its own regulations as needed.⁴⁵ Lastly, but importantly, none of the changes pursuant to Chapter 743 apply to private adoptions.⁴⁶

C. Section 8810 of the Family Code

Finally, Chapter 743 amends Section 8810 to allow “lower” income parents rather than just “very low” income parents to receive a discount on the adoption fee.⁴⁷ The Department of Housing defines these categories, which vary based on the number of members in the household and the county in which the family lives.⁴⁸

IV. ANALYSIS

With over 58,000 children in foster care in California, the need for adoptive parents is great.⁴⁹ But adoption is both an expensive and lengthy process.⁵⁰ With the interests of prospective parents and safety of children in mind, the Academy of California Adoption Lawyers sponsors legislation each year in order to clarify the many laws regulating adoption.⁵¹ Chapter 743 corrects a drafting error made in last year’s legislation,⁵² allows more potential parents to adopt by lowering adoption fees for a greater percentage of Californians,⁵³ and adds new categories of prospective adoptive parents that qualify for an abbreviated home study.⁵⁴

A. A Clarification of Birth Parent Waivers

In 2012, clarifications to Section 8700.5 requested by the California Department of Social Services (CDSS) failed to make it into the final version of the bill.⁵⁵ The sponsors⁵⁶ of Chapter 743 did not intend for it to change birth

44. FAM. § 8730(b)(7) (amended by Chapter 743).

45. *Id.* § 8730(c) (amended by Chapter 743).

46. *Id.* § 8730(d) (amended by Chapter 743).

47. *Id.* § 8810(c) (amended by Chapter 743).

48. Housing Department Memo, *supra* note 30.

49. *About Adoption*, CAL. KIDS CONNECTION, <http://www.cakidsconnection.org/> (last visited July 9, 2013) (on file with the *McGeorge Law Review*).

50. *See Adoption FAQs*, *supra* note 11 (summarizing the requirements for adoption in California).

51. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 848, at 1 (June 4, 2013).

52. CAL. FAM. CODE § 8700.5 (amended by Chapter 743); *see also infra* Part IV.A.

53. CAL. FAM. CODE § 8810(c) (amended by Chapter 743).

54. *Id.* § 8730 (amended by Chapter 743).

55. *See* Davis interview, *supra* note 10 (stating that the modifications Chapter 743 makes to existing law were supposed to be included in Chapter 638 in 2012).

56. *See id.* (explaining that the CDSS and the ACAL co-sponsored and drafted AB 848).

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parents' rights to a waiver, only to clarify the existing law.⁵⁷ The main concern of the CDSS revolved around the terms “rescission” and “revocation” in the language of Section 8700.5.⁵⁸ To lay people, these words often seem interchangeable, but they are actually very specific terms of art.⁵⁹

A birth parent may revoke his or her waiver of parental rights for any reason within the first thirty days after signing the waiver.⁶⁰ The term “rescission” only applies to the special circumstance in which a birth parent has chosen the adoptive parents and given up all parental rights, but the chosen parents cannot take the child for some reason.⁶¹ The changes to Section 8700.5 clarify that signing a waiver does not terminate the birth parents' rights to a rescission, only to a revocation.⁶² This is a small change, but it is important because it ensures no inconsistent decisions will be made due to difficult, easily misunderstood terms of art.⁶³

B. Lower Fees Allow More Parents to Afford Adoption

Adoption is expensive: just applying in California costs prospective parents \$4,500,⁶⁴ and the total cost can be much higher.⁶⁵ By allowing “lower income” families, as well as “very low income” families, to pay the reduced fee of \$500, Chapter 743 allows more people the option of affordable adoption.⁶⁶ In many counties, “lower income” families make less than \$38,000 a year,⁶⁷ meaning the application fee alone would cost over twelve percent of their income. That does not include additional fees paid to the adoption agencies, courts, and attorneys.⁶⁸ Adopting the child alone could conceivably cost nearly half of a family's income, leaving little left over to actually support the child and family.⁶⁹

57. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 848, at 2 (Apr. 2, 2013).

58. Davis interview, *supra* note 10.

59. *Id.*

60. *See* CAL. FAM. CODE § 8815 (West 2013) (explaining that parents can revoke at any time before the consent becomes permanent).

61. *See id.* § 8700 (g)–(h) (West 2013) (outlining the specific circumstances in which rescission is appropriate, such as when a private or state adoption agency makes the decision that the chosen adoptive family is not suitable for the child).

62. Davis interview, *supra* note 10.

63. *Id.*

64. CAL. FAM. CODE § 8810(a)(1) (amended by Chapter 743).

65. *See* Sanders interview, *supra* note 2 (quoting their total cost of adoption at well over 15,000 dollars).

66. CAL. FAM. CODE § 8810(c) (amended by Chapter 743).

67. *See* Housing Department Memo, *supra* note 30 (indicating the lower income mark is at \$37,050 for many Californian counties, including Colusa, Del Norte, and Fresno counties).

68. *See Adoption FAQs*, *supra* note 11 (explaining that court fees can cost up to \$500 initially, and that adoption agencies not regulated by the state can charge undetermined amounts).

69. *See* Sanders interview, *supra* note 2 (spending \$15,000 on an adoption was feasible for this family, but would be impractical, if not impossible, for a family living close to the poverty line).

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This problem is especially acute when it comes to grandparents adopting their grandchildren.⁷⁰ Because the CDSS did not want independent adoptions⁷¹ to qualify for abbreviated home studies,⁷² this prevented many relatives from adopting.⁷³ As a compromise, Chapter 743 increases the minimum income level from “very low income” to “low income” and allows more grandparents to adopt their grandchildren, thus keeping more families together.⁷⁴

C. Abbreviated Home Studies Save Money

In California, a full adoption home study can take months and cost as much as \$5,000.⁷⁵ It requires three separate face-to-face visits with each prospective parent, including one in the home, as well as visits with every member living in the home, including other children.⁷⁶ Other requirements include full disclosure of many different topics, including any criminal activity (typically discovered through extensive background checks), providing references, listing all blood relatives, and health questionnaires, among others.⁷⁷ The agency conducting the home study must consider many factors when evaluating the prospective parents and their home, including the motivation for adopting the child, financial stability, and the child’s basic needs.⁷⁸ If the prospective parent is related to the child, additional findings as to that person’s relationship with other members of the family and the birth parents must be made.⁷⁹

The abbreviated home study is somewhat shorter and less expensive.⁸⁰ Rather than three face-to-face visits with each parent, the revised law requires only one.⁸¹ All the background check information remains the same, except that the

70. See Davis interview, *supra* note 10 (stating that many grandparents who wish to adopt their grandchildren when the parents can no longer care for them are unable to do so because of the high application fees required, and although she doesn’t suggest this, it is reasonable to assume this affects other relatives such as aunts or uncles as well).

71. See *Independent Adoption*, BUILDING YOUR FAMILY, <http://www.theadoptionguide.com/options/articles/independent-adoption> (last visited Jan.18, 2014) (on file with the *McGeorge Law Review*) (explaining that in an independent adoption, the birth parent(s) signs the child over directly to the adoptive parent(s) and that attorneys or other private representatives handle the paperwork rather than an agency).

72. *Infra* Part IV.C.

73. See Davis interview, *supra* note 10 (expounding on the ACAL’s desire to increase the ease of family adoptions).

74. See *id.* (claiming that the change to Section 8810 was a compromise between the ACAL and the CDSS).

75. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 848, at 3 (June 4, 2013).

76. CAL. CODE REGS. tit. 22, § 35181(a) (2013).

77. *Id.* § 35181(b) (2013).

78. *Id.* § 35181(c) (2013).

79. *Id.* § 35181(d) (2013).

80. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 848, at 3 (June 4, 2013).

81. CAL. CODE REGS. tit. 22, § 35183(b) (2013).

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prospective parents have the option of submitting a health questionnaire rather than taking a full exam.⁸² While the full home study requires most of the \$4,500 application fee, the abbreviated study only costs about \$2,000.⁸³ While Chapter 743 lays out the bare minimum requirements for the abbreviated home study, the statute also includes language—requested by CDSS—stating that CDSS may promulgate additional regulations directing readers to existing CCR provisions.⁸⁴

Interestingly, there is no statutory requirement for the depth of the interviews or how to make a determination of the child's welfare, so agencies still have a great deal of leeway on the home study requirement.⁸⁵ In fact, the CDSS expressed discomfort at the prospect that independent adoption coordinators⁸⁶ might be able to use the abbreviated home study, because it might not be as thorough.⁸⁷ Ironically, many independent adoption coordinators use the inherent flexibility in home study requirements to do a less extensive study.⁸⁸ In an independent adoption, the birth parent has chosen the family, and therefore policy concerns do not demand as much investigation.⁸⁹ However, this policy offers less protection to the child than an abbreviated home study, which is still quite thorough.⁹⁰

To protect the safety of the child undergoing a state adoption agency, the abbreviated study is available only to close relatives or foster parents of the child, a court-appointed guardian, or prospective parents that have previously had a home study conducted pursuant to adoption.⁹¹ In all of these cases, someone already conducted an investigation of the parents, whether a foster agency, the court, or an adoption agency.⁹² A guardianship assessment, however, is not

82. *Id.* at § 35183(c)(6)(C) (2013).

83. Davis interview, *supra* note 10.

84. *See id.* (describing why the CDSS requested the ACAL include the promulgation language in the text of the legislation).

85. *See* CHILD WELFARE INFO. GATEWAY, CHILDREN'S BUREAU, DEP'T OF HEALTH & HUMAN SERVS., HOME STUDY REQUIREMENTS FOR PROSPECTIVE PARENTS IN DOMESTIC ADOPTION 19 (2012), *available at* https://www.childwelfare.gov/systemwide/laws_policies/statutes/homestudyreqs_adoption.pdf (on file with the *McGeorge Law Review*) (commenting on the flexible requirements of a home study in California).

86. *See Independent Adoption*, *supra* note 71 (describing the many tasks lawyers undertake when assisting with an adoption such as completing paperwork, finding a birth mother, and arranging home studies compliant with state law).

87. *See* Davis interview, *supra* note 10 (explaining why section 8730 does not apply to independent adoptions).

88. *Id.*

89. *Id.*

90. *See id.* (stating that this practice in independent adoptions is rather backwards).

91. CAL. FAM. CODE § 8730(a) (amended by Chapter 743).

92. *See Foster Parent Program*, DEP'T. OF SOC. SERVICES, <http://www.cdss.ca.gov/cdssweb/PG123.htm> (last visited July 13, 2013) (on file with the *McGeorge Law Review*) (explaining that a license is required to become a foster parent and that obtaining that license involves an investigation).

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enough, because such assessments vary county-to-county and are sometimes quite minimal.⁹³

Two cases decided in 2013 drove these changes to Section 8730.⁹⁴ Both involved grandparents who had never been assessed in a home study.⁹⁵ These grandparents argued that they were “relative caregivers” under Section 8730 and so qualified for an abbreviated study.⁹⁶ However, “relative caregiver” is a term of art.⁹⁷ Confusion over this term led to inconsistent judgments that Chapter 743 seeks to clarify.⁹⁸ Chapter 743 clears up this uncertainty by listing the specific categories of prospective parents who qualify for abbreviated studies.⁹⁹ Even prospective parents who do not qualify for abbreviated home studies might be able to adopt a child at a lesser expense after Chapter 743 because of the change in Section 8810 allowing lower income families to pay a lower application fee.¹⁰⁰

D. Fiscal Effect of Chapter 743

Chapter 743 will save prospective parents money by raising the minimum level of income that qualifies for a discounted application fee.¹⁰¹ Additionally, it will save the state money by allowing more prospective parents access to abbreviated home studies, which are substantially cheaper than full home studies.¹⁰² The Senate expressed concern that the change to Section 8730 requiring a state adoption agency to review all previous home study reports on the prospective parent(s) would increase state spending.¹⁰³ However, such a review of previous reports is already standard practice in home studies, and simply adding the requirement to the statute will not increase costs to the state.¹⁰⁴

93. Davis interview, *supra* note 10.

94. *See id.* (explaining that these cases are unpublished, and so they cannot be cited).

95. *Id.*

96. *See id.* (explaining the circumstances of these unpublished cases).

97. *See* CAL. CODE REGS. tit. 22, § 110718 (2013) (defining a relative caregiver as an adult related to the child in question who assumed primary care over that child while the child was living with them).

98. *See* ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 848, at 3 (Apr. 2, 2013) (adding that these opinions are all unpublished).

99. CAL. FAM. CODE § 8730(a) (amended by Chapter 743).

100. *Supra* Part IV.B.

101. *Id.*

102. *Supra* Part IV.C.

103. *See* Davis interview, *supra* note 10 (explaining why AB 848 had been sent to the Senate Appropriations Committee).

104. *Id.*

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V. CONCLUSION

Before Chapter 743, the high costs of adoption prohibited many potential parents from adopting.¹⁰⁵ Now that lower income families can receive up to a \$4,000 reduction in adoption fees, and more prospective parents qualify for abbreviated home studies, adopting a child is a realistic option for many more Californians.¹⁰⁶ Chapter 743 opens the door for parents to experience the joy of raising a child, and for many children in foster care to be placed in loving homes.¹⁰⁷

105. *Id.*

106. *Supra* Part IV.B–C.

107. *Supra* Part IV.