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Domestic Relations

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Domestic Relations

Domestic Relations; control and management of community property

Civil Code §§ 5103, 5125, 5125.1 (amended).
SB 716 (Roberti); 1991 STAT. Ch. 1026

Under existing law, management of spousal community property¹ and transactions² between a husband and wife³ are subject to the general rules which control actions between persons who are in confidential relations with each other.⁴ Chapter 1026

1. See CAL. CIV. CODE § 687 (West 1982) (definition of community property).

2. See *id.* § 1761(e) (West Supp 1991) (definition of transactions).

3. Prior to 1975, the husband had exclusive control over the spousal community property. See 1969 Cal. Stat. ch. 647, sec. 3, at 1299-1300 (amending CAL. CIV. CODE §§ 172a) (declaring that the husband has management and control of community property, with absolute power of disposition). Equal management and control was conferred upon both spouses by the legislature in 1973, in a statute which became effective in 1975. See 1973 Cal. Stat. ch. 987, sec. 14-15, at 1901-02 (amending CAL. CIV. CODE §§ 5125, 5127) (giving spouses equal management and control of community property. Case law prior to 1975 established a fiduciary standard to guide the husband's control over community property. See *Vai v. Bank of America*, 56 Cal. 2d 329, 337, 364 P.2d 247, 252, 15 Cal. Rptr. 71, 76, (1961), *overruled by, In Re Marriage of Connolly*, 23 Cal. 3d 590, 591 P.2d 911, 153 Cal. Rptr. 423 (1979) (subjecting the husband's management of community property to a fiduciary standard which was to continue until there was a division of the property); *Jorgensen v. Jorgensen*, 32 Cal. 2d 13, 21, 193 P.2d 728, 733 (1948) (recognizing the husband has a fiduciary duty to the wife in his management of community property). See also 1974 Cal. Stat. ch. 1206, sec. 4, at 2609-11 (amending CAL. CIV. CODE § 5125) (imposing an obligation on each spouse to act in good faith with regard to management of community property). After the 1973 amendment to Civil Code section 5125, confusion arose in the case law as to whether a fiduciary duty continued to exist. Compare *In re Marriage of Modnick*, 33 Cal. 3d 897, 906, 663 P.2d 187, 191, 191 Cal. Rptr. 629, 633 (1983) (holding a fiduciary duty existed between spouses regarding control of community property until the marriage was dissolved) with *In re Marriage of Stevenot*, 154 Cal. App. 3d 1051, 1070, 202 Cal. Rptr. 116, 129 (1984) (holding spouses no longer had a fiduciary duty to each other, but only a duty to act in good faith, with regard to management of community property).

4. CAL. CIV. CODE §§ 5103(b), 5125(e) (amended by Chapter 1026). In no case should the standard be interpreted to be less than good faith nor as high as that required by trustees. *Id.* The 1986 amendments to Civil Code Section 5125 were intended to impose new duties on a spouse operating a community property business and to modify and clarify the duties owed by spouses in the management and control of community property. 1986 Cal. Stat. ch. 1091, sec. 3, at 3816-17 (enacting CAL. CIV. CODE § 5125.1 and amending CAL. CIV. CODE §§ 5125). However, case law continued to interpret differently the duty of spouses towards each other with regard to community property. Compare *In re Marriage of Alexander*, 212 Cal. App. 3d 677, 683-84, 261 Cal. Rptr. 9, 13 (1989) (holding that the 1986 amendment to Civil Code section 5125 did not change the good faith

provides that a husband and wife are subject to the general rules which control actions between persons who are in a fiduciary relationship with each other, and are subject to the same rights and duties as nonmarital business partners.⁵ Chapter 1026 provides remedies for a spouse who has suffered damages due to a breach of this fiduciary duty.⁶

PLB

Domestic Relations; support--enforcement

Business and Professions Code §§ 29.5, 30, 31 (new); Civil Code §§ 4720.1, 4720.2 (repealed and new); § 4700.11 (new); §§ 4370, 4390, 4390.3, 4390.5, 4390.12, 4390.16, 4720.2 (amended); Code of Civil Procedure §§ 683.130, 683.310, 1699 (amended); Unemployment Insurance Code §§ 1255.7, 2630 (amended); Welfare and Institutions Code § 11350.6 (repealed and new); §§ 11350.1, 11478.5, 11478.8 (new); §§ 903, 11350, 11350.5, 11478.5 (amended).

SB 101 (Hart); 1991 STAT. Ch. 110.

SB 1161 (Hart); 1991 STAT. Ch. 542

standard as declared in *Stevenot*, 154 Cal. App. 3d at 1051, but did extend the statutory duty of good faith until the property is divided) with *In re Marriage of Baltins*, 212 Cal. App. 3d 66, 90-91, 260 Cal. Rptr. 403, 418 (1989) (noting that the legislature apparently rejected the holding of *Stevenot*, 154 Cal. App. 3d at 1051, and that a higher duty applies). For a general discussion of the history of this matter, as well as a discussion of the state of the law prior to the enactment of Chapter 1026, see Cheatum, *Interspousal Duties as to Agreements and Management of Property*, 13 FAMILY LAW NEWS 1, 1 (1991).

5. CAL. CIV. CODE §§ 5103(b), 5125(e) (amended by Chapter 1026). This section refers to the guidelines provided in Corporations Code sections 15019, 15020, 15021, and 15022, including providing each spouse access to any books and information kept regarding transactions, but specifically not requiring either spouse to keep detailed books and records. *Id.* § 5103(b)(1), (2) (amended by Chapter 1026).

6. *Id.* § 5125.1(a)-(c), (g), (h) (amended by Chapter 1026). Remedies include an award of 50% of any asset undisclosed or transferred in breach of the fiduciary duty plus attorney's fees and court costs; where fraud is present the remedies may include one hundred percent of any asset undisclosed or transferred in breach of the fiduciary duty.

Under existing law, an employer is required to cooperate with the district attorney by providing relevant employment and income information about any employee for the purpose of establishing or enforcing child support.¹ Chapter 110 provides examples of relevant employment and income information² and provides that an employer who fails to provide relevant information within a specified period of time from the receipt of the request for information³ may be penalized \$500 plus attorneys' fees and costs.⁴ Chapter 542 provides that employers who do not respond to the request for information within 20 days may suffer this penalty.⁵

Existing law provides that a court may order a parent to pay child support for the maintenance and education of the child.⁶ Under existing law, if a support obligor⁷ fails to pay support then the court which ordered the support to be paid can hold the obligor in contempt.⁸ Under Chapter 110, any person who is more than thirty days delinquent in paying child support will be penalized six percent of the delinquent payment for each month that it remains

1. CAL. CIV. CODE § 4390.16(a) (amended by Chapter 110). *See id.* § 4390(h) (amended by Chapter 110) (definition of support).

2. *See id.* § 4390.16(a)(1)-(8) (amended by Chapter 110) (stating that relevant information includes whether a named person has been employed by an employer, the full name of the employee, the employee's last known residence address, the employee's date of birth, the employee's social security number, the dates of employment, all earnings paid to the employee during the preceding 12 months, and whether dependent health insurance coverage is available to the employee through employment).

3. *See id.* § 4390.16(a) (amended by Chapter 110) (stating that the district attorney must notify the employer of the district attorney case file number and include at least three of the following elements in the request: (1) First and last name and middle initial, if known; (2) social security number; (3) driver's license number; (4) birth date; (5) last known address; or (6) spouse's name).

4. *Id.* § 4390.16 (amended by Chapter 110). *See id.* § 4390.16(c) (amended by Chapter 110) (stating that an individual failing to provide the required information may be fined up to \$500 plus attorneys' fees). Proceedings to impose a civil penalty shall be commenced by the filing and service of an order to show cause. *Id.*

5. *Id.* § 4390.16(c) (amended by Chapter 542).

6. *Id.* § 196(b) (West 1982).

7. *See id.* § 4390(g) (amended by Chapter 110) (definition of obligor).

8. *Id.* § 7012(c) (West Supp. 1991). *See Los Angeles v. Soto*, 35 Cal. 3d 483, 486, 674 P.2d 750, 752, 198 Cal. Rptr. 779, 781 (1984) (arguing defendant should not be held in contempt for failing to make child support payments).

thirty days delinquent in paying child support will be penalized six percent of the delinquent payment for each month that it remains unpaid.⁹ Chapter 110 also provides that any support obligor who is delinquent in paying the required support and has a license, certificate, or registration to engage in a business or profession may not have such license issued or renewed.¹⁰ Under Chapter 542, the State Department of Social Services is required to notify the appropriate licensing board within thirty days of the time the information was received from the district attorney.¹¹

9. CAL. CIV. CODE § 4700.11(a) (enacted by Chapter 110). A maximum of 72% of the unpaid balance can become due as a penalty. *Id.* The payment must be 30 days delinquent when a notice of delinquency is filed by the support obligee and then must be unpaid 30 days after the filing in order for the penalty to be imposed. *Id.* The notice of delinquency must be signed by the support obligee, state the amount owed in arrears, set forth the installments of support due and the amounts which have been paid, and must state that the obligor shall incur a penalty of six percent per month while the support is unpaid. *Id.* § 4700.11(b) (enacted by Chapter 110). The notice may be served in any manner provided for service of summons. *Id.* § 4700.11(c) (enacted by Chapter 110). No penalty may be imposed if the support obligor proves that the child support payments were not 30 days in arrears as of the date of service of the notice of delinquency, the obligor suffered serious illness, disability, or unemployment which substantially impaired the ability of the support obligor to comply fully with the support order and the obligor has made every effort to comply, the support obligor is a public employee and public fiscal difficulties have caused the obligor not to receive a paycheck for 30 or more days, or it would not be in the interest of justice to impose a penalty. *Id.* § 4700.11(d)(2)(A)-(D) (enacted by Chapter 110). Unless there is a protective order prohibiting the support obligor from knowing the whereabouts of the child for whom support is payable, the notice of delinquency shall include a current address and telephone number of all of the children for whom support is due and, if different from that of the support obligee, the address at which court papers may be served upon the obligee. *Id.* § 4700.11(g) (amended by Chapter 110).

10. CAL. WELF. & INST. CODE § 11350.6(h) (enacted by Chapter 110). The department of Social Services must give notice to the support obligor of the submission of the name to the appropriate board. *Id.* § 11350.6(d) (enacted by Chapter 110). The notice to the obligor must include the address and phone number of the district attorney's office that submitted the certification of support order and a statement of the necessity of obtaining a release from that district attorney's office. *Id.* § 11350.6(d) (amended by Chapter 542). The name will be submitted only if the obligor does not respond to the notice within 60 days. *Id.* A support obligor must be allowed to object, have the underlying debt investigated, and request a modification of the debt. *Id.* § 11350.6(e) (enacted by Chapter 110). The obligor must be given a temporary license for up to 120 days if requested from the appropriate licensing board. *Id.* § 11350.6(k) (enacted by Chapter 110). This section shall remain in effect only until January 1, 1997 unless a later enacted statute deletes or extends that date. *Id.* § 11350.6(r) (amended by Chapter 542).

11. *Id.* § 11350.6(c) (amended by Chapter 542).

of child support will be set according to a mathematical formula which takes into account an adjustment factor for the amount of income made by the support obligor, the noncustodial parent's net monthly income, the total net monthly income of the parties and the number of children being supported.¹³

Existing law provides that an application for renewal of a money judgment of past due amounts which is payable in installments may be filed before the expiration date of the ten year period of enforceability¹⁴ if the judgment has not previously been renewed, or, if the judgment has been renewed, renewal can be made as to the amount of judgment that became due after the previous renewal.¹⁵ Under Chapter 110, a child support or family support judgment payable in installments may be filed for past amounts due if the judgment has not previously been renewed and the child has not attained the age of twenty-three years and, thereafter, at any time before the expiration of the ten year period of enforceability expires.¹⁶ If the judgment has previously been renewed, the renewal can be made under the same circumstances, but only for money which came due after the previous renewal.¹⁷

Under existing law, a foreign court order for support is treated the same as a support order issued from a court of this state.¹⁸ Chapter 110 specifies that there will be no joinder of other actions with a foreign support order,¹⁹ nor will registration of an out-of-state order for support confer jurisdiction for any purpose other than income withholding.²⁰

13. CAL. CIV. CODE § 4720.2(a)-(b) (enacted by Chapter 110).

14. See CAL. CIV. PROC. CODE § 683.020(a) (West 1987) (stating that a judgement which has not been renewed is not enforceable after the ten year period of enforceability).

15. *Id.* § 683.130(b)(1)-(2) (amended by Chapter 110).

16. *Id.* § 683.130(c)(1) (amended by Chapter 110).

17. *Id.* § 683.130(c)(2) (amended by Chapter 110). Any judgment for child support or family support, for which enforcement is sought by a writ of execution, may be renewed at any time within 10 years from the entering of the judgment but cannot be renewed if the application is filed within 5 years of a previous renewal. *Id.* § 683.130(d) (amended by Chapter 110).

18. *Id.* § 1699(a) (amended by Chapter 110).

19. See *id.* § 1699(b) (amended by Chapter 110).

20. *Id.* § 1699(d) (amended by Chapter 110).

with a foreign support order,¹⁹ nor will registration of an out-of-state order for support confer jurisdiction for any purpose other than income withholding.²⁰

Under existing law, the Unemployment Insurance Code defines support obligations as child and related spousal support obligations.²¹ Chapter 110 specifies that related spousal support obligations which cannot be collected under federal law²² are not considered support obligations under the Unemployment Insurance Code.²³

Existing law specifies that in order to enforce a support order which has not been met, the district attorney may file a certification of support judgment with the State Department of Social Services²⁴ and unemployment insurance will be withheld and forwarded to the certifying county.²⁵ Chapter 110 specifies that unemployment compensation disability benefits can also be withheld to fulfill unpaid support orders.²⁶

Under existing law, the California Parent Locator Service (Locator Service)²⁷ collects and disseminates information²⁸ with respect to any parent who has deserted or abandoned any child, spouse or former spouse, or abducted any child.²⁹ Chapter 110 renames the Locator Service the California Parent Locator Service

19. *See id.* § 1699(b) (amended by Chapter 110).

20. *Id.* § 1699(d) (amended by Chapter 110).

21. CAL. UNEMP. INS. CODE § 1255.7(h) (amended by Chapter 110).

22. *See* 42 U.S.C.A. §§ 651-664 (West 1985 & Supp. 1991) (stating recoverable support under federal law).

23. CAL. UNEMP. INS. CODE § 1255.7(h) (amended by Chapter 110).

24. CAL. WELF. & INST. CODE § 10550 (West 1991) (introducing the State Department of Social Services). Under Chapter 110, the State Department of Social Services must send the list to the proper licensing board within 30 days. *Id.* § 11350.6(c) (amended by Chapter 542).

25. *Id.* § 11350.5(a)-(d) (amended by Chapter 110). The amounts withheld will be equal to 25% of each weekly unemployment compensation benefit payment rounded down to the nearest whole dollar. *Id.* § 11350.5(e) (amended by Chapter 110).

26. *Id.* § 11350.5(a)-(d) (enacted by Chapter 110).

27. *Id.* § 11478.5(a) (West 1991) (introducing the California Parent Locator Service).

28. Information includes the full name of such parent along with any known aliases, the date and place of birth, a physical description, the social security number, employment history and earnings, military status and service serial number, last known address and telephone number, any income or income tax information. *Id.* § 11478.5(a)(1)-(10)(A) (amended by Chapter 110).

29. *Id.* § 11478.5(a) (amended by Chapter 110).

and Central Registry³⁰ and provides that it can receive customer service information³¹ from public utilities.³² Under existing law, the Locator Service may provide the support obligee³³ information about the location of the obligor or the obligor's employer.³⁴ Under Chapter 110, the Locator Service may no longer give the support obligee this information.³⁵

COMMENT

Under Chapter 110, any person with a license, certificate, or registration to practice a profession who is delinquent in making support payments may fail to have an issued license renewed.³⁶ Case law suggests that in order for a license to practice a lawful occupation to be revoked, the reasons for the denial of the license must bear a "rational relation to a valid governmental purpose."³⁷ Some case law provides that the revocation of a license to practice a lawful profession must be related to the individual's fitness to practice that profession.³⁸ If held to this requirement, Chapter 110

30. *Id.* § 11478.5(a) (amended by Chapter 110).

31. Information includes the individual's full name, address, telephone number, date of birth, and social security number. *Id.* § 11478.5(c)(1) (amended by Chapter 110). In order to receive this information, the Locator Service must submit the request for information in writing, have the signature of a representative authorized by the Locator Service, and contain at least three of the following elements: (1) First and last name and middle initial, if known; (2) Social security number; (3) driver's license number; (4) birth date; (5) last known address; and (6) spouse's name. *Id.* § 11478.5(c)(2)(A)-(C)(VI) (amended by Chapter 110).

32. *Id.* § 11478.5(c)(1) (amended by Chapter 110).

33. See CAL. CIV. CODE § 4390(f) (amended by Chapter 110) (definition of obligee).

34. CAL. WELF. & INST. CODE § 11478.5(d)(2)(A)-(B) (amended by Chapter 110).

35. *Id.* § 11478.5(e)(1) (amended by Chapter 110).

36. *Id.* § 11350.6(h) (enacted by Chapter 110).

37. *Perrine v. Municipal Court*, 5 Cal. 3d 656, 663, 488 P.2d 648, 652, 97 Cal. Rptr. 320, 324 (1971) (holding that an ordinance regulating the right to practice a lawful occupation must bear a rational relationship to a valid governmental purpose).

38. *Newland v. Bd. of Governors*, 19 Cal. 3d 705, 711, 566 P.2d 254, 258, 139 Cal. Rptr. 620, 624 (1977) (citing *Schwartz v. Bd. of Bar Examiners*, 353 U.S. 232, 238-39 (1957)). *Schwartz v. Bar Examiners*, 353 U.S. 232 (1957), held that a statute can only bar a person from practicing a lawful profession for reasons relating to competence to practice that profession. *Schwartz*, at 238-239. See *Arneson v. Fox*, 28 Cal. 3d 440, 448-49, 621 P.2d 817, 821-22, 170 Cal. Rptr. 778, 782-83 (1980) (holding that "a rational relationship to a valid governmental purpose" expresses much the same principle as competence to practice a profession). See generally 8 B. WITKIN, SUMMARY OF CALIFORNIA LAW § 885 (1988) (stating that examinations for licensing of businesses or professions must only test conditions which show qualifications of practicing the profession).

would likely be held invalid.³⁹ However, case law has also held that a valid governmental purpose is sufficient to justify the revocation of an individual's license.⁴⁰ Thus it appears that the valid governmental interest in increasing the collection of child support⁴¹ would support the validity of Chapter 110.⁴²

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39. See *Newland v. Bd. of Governors*, 19 Cal. 3d 705, 711, 566 P.2d 254, 258, 139 Cal. Rptr. 620, 624 (1977) (citing *Schwartz v. Bd. of Bar Examiners*, 353 U.S. 232, 238-39 (1957)).

40. See generally *Jennings v. Karpe*, 36 Cal. App. 3d 709, 712, 111 Cal. Rptr. 776, 778 (1974) (holding that limiting licensees of the Real Estate Commission to persons with the qualifications of honesty, truthfulness and good reputation is a sufficient governmental interest to allow revocation of a real estate license).

41. See 1991 Cal. Stat. Ch. 110, sec. 1(a), at ____ (stating that the citizens of the State of California have an interest in increasing enforcement of court orders for child and spousal support). Increased collection of child support obligations will result in a decrease in the reliance of families on government assistance. *Id.* sec. 1(b), at ____.

42. See *Miller v. Board of Public Works*, 195 Cal. 477, 485, 234 P. 381, 383 (1925) (holding that the legislature's police power is elastic and changes with the need for its application). See generally *Berman v. Parker*, 348 U.S. 26, 28-34 (1954) (stating that public safety, health, and morality are some of the traditional applications of the police power but that they merely illustrate the scope of the power and do not limit it).