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# Domestic Relations

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# Domestic Relations

## Domestic Relations; solemnization of marriage

Civil Code §4205 (amended).

AB 74 (Isenberg); 1985 STAT. Ch 5

Support: Judge Thomas J. MacBride, United States District Court,  
Eastern District of California

Existing law authorizes judges,<sup>1</sup> commissioners of civil marriages,<sup>2</sup> commissioners of state courts,<sup>3</sup> priests, ministers, or rabbis who are at least eighteen years old to solemnize<sup>4</sup> marriages.<sup>5</sup> Chapter 5 clarifies a recently discovered ambiguity<sup>6</sup> in the law by adding federal judges and magistrates<sup>7</sup> to the group of persons authorized to solemnize marriages.<sup>8</sup> In addition, Chapter 5 retroactively validates all previous marriages solemnized by a federal judge or magistrate, that are not otherwise invalid.<sup>9</sup>

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1. CAL. CIV. CODE §4205 (including judges who have retired or resigned from office as well as active judges).

2. The county clerk is designated as a Commissioner of Civil Marriages and may appoint a Deputy Commissioner of Civil Marriages who may solemnize marriages under the direction of the Commissioner of Civil Marriages. *Id.* §4205.1.

3. *Id.* §4205 (includes retired commissioners and assistant commissioners of courts of record or justice courts).

4. *See id.* §4206 (no particular form of marriage ceremony is required, but the parties must declare in the presence of the person solemnizing the marriage that they take each other as husband and wife).

5. *Id.* §4205.

6. *See* 67 Op. Att'y Gen. 443 (1984) (interpreting the language of CAL. CIV. CODE §4205 to include only judges within the California judicial system).

7. CAL. CIV. CODE §4205 (includes magistrates who have resigned from office).

8. *Id.* §4205.

9. *Id.*

## Domestic Relations; marital agreements

Civil Code §§5133, 5134, 5135, 5135.5, 5136, 5137, 5138 (repealed); §§5200, 5201, 5202, 5203, 5300, 5301, 5302, 5310, 5311, 5312, 5313, 5314, 5315, 5316, 5317 (new); §1624 (amended).

SB 1143 (Beverly); 1985 STAT. Ch 1315

Support: California Commission on Uniform State Laws; Family Law Section of the State Bar

Prior law contained provisions governing the execution of marriage settlement contracts.<sup>1</sup> Chapter 1315 replaces these provisions with similar provisions for the execution and enforcement of marital and premarital agreements.<sup>2</sup> Under Chapter 1315, a premarital agreement<sup>3</sup> or other marital property agreement may (1) alter statutory spousal property<sup>4</sup> rights;<sup>5</sup> (2) be entered into by an emancipated minor<sup>6</sup> or a minor otherwise capable of contracting marriage;<sup>7</sup> and, (3) be recorded, if it is executed and acknowledged or proved in the same manner required for a grant of real property.<sup>8</sup> Recording or nonrecording of an agreement has the same effect as recording or non-recording of a grant of real property.<sup>9</sup>

Prior law provided that an agreement made upon consideration of marriage, other than a mutual promise to marry, was invalid unless in writing and signed by the party to be charged.<sup>10</sup> Chapter 1315 includes the requirement that a premarital agreement be in writing, and adds that the agreement must be signed by both parties and is

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1. 1969 Cal. Stat. c. 1608, §8, at 3343 (enacting CAL. CIV. CODE §§5133-5137).

2. Compare CAL. CIV. CODE §§5200-5203 with 1969 Cal. Stat. c. 1608, §8, at 3343 (enacting CAL. CIV. CODE §§5133-5137).

3. CAL. CIV. CODE §5310(a). A premarital agreement is an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage. *Id.*

4. *Id.* §5310(b). Property means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings. *Id.*

5. *Id.* §5200. Compare *id.* with 1969 Cal. Stat. c. 1608, §8, at 3343 (enacting CAL. CIV. CODE §5133).

6. CAL. CIV. CODE §62 (definition of emancipated minor).

7. *Id.* §5201. But see *id.* §34 (a minor may not enter into a marriage contract). Compare *id.* §5201 with 1969 Cal. Stat. c. 1608, §8, at 3343 (enacting CAL. CIV. CODE §5137).

8. CAL. CIV. CODE §5202(a). An agreement may be recorded in the office of the recorder of each county in which real property affected by the agreement is located. *Id.* See also *id.* §§1180-1207 (proof and acknowledgment of instruments). Compare *id.* §5202(a) with 1969 Cal. Stat. c. 1608, §8, at 3343 (enacting CAL. CIV. CODE §§5134, 5135).

9. CAL. CIV. CODE §5202(b). See also *id.* §§1213-1220 (effect of recording). Compare *id.* §5202(b) with 1969 Cal. Stat. c. 1608, §8, at 3343 (enacting CAL. CIV. CODE §5136).

10. 1983 Cal. Stat. c. 842, §6, at 762, (amending CAL. CIV. CODE §1624).

enforceable without consideration.<sup>11</sup> Chapter 1315 further provides that parties to a premarital agreement may contract with respect to the following: (1) the property rights and obligations of either party;<sup>12</sup> (2) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;<sup>13</sup> (3) the disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;<sup>14</sup> (4) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;<sup>15</sup> (5) the death benefits from a life insurance policy;<sup>16</sup> (6) the choice of law governing the agreement;<sup>17</sup> and (7) any other matter, including personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.<sup>18</sup> Under Chapter 1315, a premarital agreement may not adversely affect child support.<sup>19</sup> Chapter 1315 states that a premarital agreement is not enforceable if the party against whom enforcement is sought proves that: (1) the party did not voluntarily execute the agreement;<sup>20</sup> or (2) that the agreement was unconscionable when executed<sup>21</sup> and, prior to execution, that the party was not provided with a reasonable disclosure,<sup>22</sup> did not waive the right to disclosure,<sup>23</sup> and did not have adequate knowledge of the property or financial obligations of the other party.<sup>24</sup> Chapter 1315 limits enforceability of a premarital agreement associated with a void marriage to the extent necessary to avoid an inequitable result.<sup>25</sup> Any statute of limitations applicable to an action for relief under a premarital agreement is tolled during the marriage of the parties to the agreement.<sup>26</sup> Finally, Chapter 1315 is only applicable to premarital agreements made on or after January 1, 1986.<sup>27</sup>

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11. CAL. CIV. CODE §5311. The amendment or revocation of an agreement must also be in writing and signed by both parties and is enforceable without consideration. *Id.* §5314.

12. *Id.* §5312(a)(1).

13. *Id.* §5312(a)(2).

14. *Id.* §5312(a)(3).

15. *Id.* §5312(a)(4).

16. *Id.* §5312(a)(5).

17. *Id.* §5312(a)(6).

18. *Id.* §5312(a)(7).

19. *Id.* §5312(b).

20. *Id.* §5315(a)(1).

21. *Id.* §5315(a)(2). An issue of unconscionability is decided by the court as a matter of law. *Id.* §5315(b).

22. *Id.* §5315(a)(2)(A).

23. *Id.* §5315(a)(2)(B) (waiver must be voluntary, express, and in writing).

24. *Id.* §5315(a)(2)(C).

25. *Id.* §5316.

26. *Id.* §5317 (equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party).

27. *Id.* §§5203, 5302.

## Domestic Relations; support

Civil Code §§ 4700.2, 4801.1 (new); §§4700, 4801 (amended).  
SB 476 (Morgan); 1985 STAT. Ch 1358  
Support: State Bar of California; Department of Finance

In any proceeding in which the support<sup>1</sup> of a minor<sup>2</sup> child is at issue, existing law authorizes a court to order either parent to pay any amount necessary for the support, maintenance, and education of the child.<sup>3</sup> Further, in any judgment decreeing the dissolution of a marriage or legal separation<sup>4</sup> of the parties, the court may order either party to pay any amount for the support of the other party.<sup>5</sup> Such an order may be for any period of time that the court deems just and reasonable.<sup>6</sup>

Under existing law, orders for the modification or revocation of child or spousal support may be made retroactive to the date of filing of the notice of motion or order to show cause seeking such modification or revocation, or to any subsequent date.<sup>7</sup> Chapter 1358 provides that all orders for child or spousal support, including the original support order, may be made retroactive to the time of filing of a motion or order to show cause seeking support.<sup>8</sup> Furthermore, in cases in which child or family support has been ordered paid, Chapter 1358 authorizes either of the parties to serve a request for the production of a completed current income and expense declaration, as specified, on the other party, without leave of court.<sup>9</sup> If the court finds that the income and expense declaration submitted by the

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1. CAL. CIVIL CODE §§196a, 206, 242 (provisions relating to duty of support).

2. *Id.* §25 (definition of minor).

3. *Id.* §4700(a). See Goodman, *Rights and Obligations of Child Support*, 7 Sw L.R. 36;

6 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Parent and Child* §2, 120-140 (8th ed. 1974).

4. CAL. CIV. CODE §4506 (grounds for dissolution or legal separation).

5. *Id.* §4801(a).

6. *Id.* See B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Husband and Wife* §§156-188 (8th ed. 1974).

7. CAL. CIV. CODE §§4700(a), 4801(a).

8. *Id.* §§4700(a), 4801(a).

9. *Id.* §§4700.2(b), 4801.1(b). Either the party ordered to pay support or the party to whom support was ordered to be paid may serve a request for the production of a completed current income and expense declaration in the form adopted by the Judicial Council. Other methods of discovery may only be employed if a motion for modification of support is pending. In the absence of a pending motion for modification of support, a request for discovery pursuant to this section may be undertaken no more than once a year. *Id.* The purpose of these sections is to permit inexpensive discovery of facts prior to the institution of an action for the modification of support. *Id.* §§4700.2(a), 4801.1(a) (may be enforced under sections 1991, 1991.1, 1991.2, 1992, 1993, and 2034 of the Code of Civil Procedure, and any other statutes applicable to the enforcement of procedures for discovery).

responding party was incomplete or inaccurate, and not submitted in good faith, sanctions may be ordered in the form of payment of all costs necessary to obtain complete and accurate information.<sup>10</sup>

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10. *Id.* §§4700.2(d), 4801.1(d).

## Domestic Relations; child and spousal support

Civil Code §4801.6 (repealed); §§4357.5, 4708 (new); §4801.6 (amended);

AB 350 (Waters); 1985 STAT. Ch 1069

Support: Family Support Council; California District Attorneys Association; Department of Finance

AB 2305 (Wright); 1985 STAT. Ch 373

Support: Department of Social Services; County Supervisors Association of California

Opposition: Western Center on Law and Poverty

Under existing law, a court may enter an order for child support during the pendency of an action for child support.<sup>1</sup> Chapter 1069 authorizes the court, during the pendency of such an action, to enter an order for child support, maintenance, and education, but only upon submission of an application requesting such relief.<sup>2</sup> The application must set forth the minimum amount of support required to be paid;<sup>3</sup> an income and expense declaration<sup>4</sup> of both parents, completed by the applicant; a worksheet setting forth the basis of the required amount; and a proposed expedited support order.<sup>5</sup> Under Chapter 1069, an expedited support order becomes effective thirty days after service upon the parent obligated to pay support has been made,<sup>6</sup> unless a response is given,<sup>7</sup> in which case a hearing may be obtained.<sup>8</sup>

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1. CAL. CIV. CODE §4357.

2. CAL. CIV. CODE §4357.5(a), (b) (to be known as "expedited support order").

3. *Id.* §4357.5(b) (pursuant to Civil Code §4722 or Welfare and Institutions Code §11452).

4. *Id.* "Income and expense declaration" means the form for an income and expense declaration used in family matters adopted by the Judicial Council. *Id.* §4357.5(a).

5. *Id.* §4357.5(b).

6. *Id.* Service of the expedited support order must include the application, the income and expense declaration, the worksheet for calculating the required amount, the proposed expedited support order, three blank response forms, three blank income and expense declarations, three blank notices of hearing, and a notice of consequences of failure to file a response. *Id.*

7. *Id.* Filing of a response and an income and expense declaration by the obligated parent any time prior to the effective date of the expedited support order will stay the order. The response must be served upon the applicant by any method by which a response to a notice of motion may be served. *Id.* §4357.5(d).

8. *Id.* §4357.5(e). A hearing must be set not less than twenty nor more than thirty days after the response is filed. The parent obligated to pay support must give notice of the hearing

Chapter 373 allows an action to recover child support payments to be brought at any time within the period otherwise specified for the enforcement of a support judgment<sup>9</sup> notwithstanding the fact that the child has attained the age of eighteen years.<sup>10</sup>

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by first class mail to other parties or their counsel no less than fifteen days before the hearing. *Id.* At the hearing the court may refuse to grant relief to any party that fails to submit any document required by the court. For example, when a tax return cannot be found, a declaration under penalty of perjury that it cannot be produced, but that a copy has been requested from the Franchise Tax Board, may be submitted. *Id.* §4357.5(g).

9. CAL. CODE §4384.

10. *Id.* §4708.

## Domestic Relations; spousal support

Civil Code §§4370.5, 4800.4 (new); §§4383, 4801.4 (amended); Code of Civil Procedure §699.560 (amended).

AB 150 (McAlister); 1985 STAT. Ch 362

Support: California Law Revision Commission; Family Law Section of the State Bar; California Federation of Business and Professional Women; Women Lawyers of Sacramento; California Family Support Council; Commission on the Status of Women; Isle City Business and Professional Women

Existing law permits a court in a proceeding under the Family Law Act<sup>1</sup> to award a spouse any amount reasonably necessary for the cost of maintaining or defending the proceeding.<sup>2</sup> Chapter 362 clarifies existing law by providing that the court is authorized to make such an award to a spouse if the making of the award and the amount of the award is just and reasonable with respect to the circumstances of each spouse.<sup>3</sup> In determining what is just and reasonable, Chapter 362 requires the court to evaluate the need and ability of each spouse to pay for an adequate presentation of the case, taking into consideration certain relevant, specified circumstances of the parties,<sup>4</sup> and the conduct of each spouse and the spouse's attorney in the furtherance

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1. See CAL. CIV. CODE §§4000-5174 (Family Law Act).

2. *Id.* §4370(a) (includes attorney's fees).

3. *Id.* §4370.5(a).

4. *Id.* §4370.5(b)(1). See *id.* §4801(a) (describing the relevant circumstances to be considered by the court).

or hindrance of settlement and reduction of litigation costs.<sup>5</sup> Prior case law held that a court could not require a wife to use capital from her separate estate<sup>6</sup> for litigation expenses.<sup>7</sup> Chapter 362 broadens the ability of the court to award costs by permitting the court to order either spouse to pay the award from any type of property,<sup>8</sup> whether community<sup>9</sup> or separate, principal<sup>10</sup> or income.<sup>11</sup>

Under existing law, in proceedings under the Family Law Act, an order or judgment against an employee pension benefit plan<sup>12</sup> is enforceable only if the plan is joined as a party to the proceeding.<sup>13</sup> Chapter 362 provides an exception by permitting a judgment or support order for the payment of child or spousal support to be enforced against the employee pension benefit plan regardless of whether the pension plan has been joined as a party.<sup>14</sup> In addition, Chapter 362 requires that an execution lien created by a levy on a judgment debtor's right to payment of benefits from an employee benefit plan, to enforce an order or judgment for the payment of child or spousal support,<sup>15</sup> must continue until the full amount of the levy has been withheld and paid to the levying officer.<sup>16</sup>

Under existing law a husband and wife may hold property as joint tenants,<sup>17</sup> tenants in common,<sup>18</sup> or as owners of community property.<sup>19</sup>

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5. *Id.* §4370.5(b)(2).

6. *Id.* §5107 (definition of separate property of wife). *Id.* §4804 (separate property does not include quasi-community property).

7. *In re Marriage of Jafeman*, 29 Cal. App. 3d 244, 264, 105 Cal. Rptr. 483, 496 (1972); *In re Marriage of Hopkins*, 74 Cal. App. 3d 591, 600, 141 Cal. Rptr. 597, 602 (1977).

8. CAL. CIV. CODE §14(1) (includes real and personal property).

9. *Id.* §§687, 5110 (definition of community property). *See also id.* §5110 (presumption as to property acquired by wife).

10. *Id.* §730.03(b) (definition of principal).

11. *Id.* §4370.5(c). *See id.* §730.03(a) (definition of income).

12. *Id.* §4363.3 (definition of employee pension benefit plan).

13. *Id.* §4351.

14. *Id.* §4383(a).

15. This provision applies notwithstanding Civil Code section 4380. *Id.* A judgment, order, or decree for the payment of child or spousal support may be enforced by a writ of execution without prior court approval for amounts that are not more than ten years overdue on the date of application for the writ. *Id.* §4383(a).

16. *Id.* The lien will continue unless the pension plan is directed by the court or the levying officer to stop withholding the benefits. This provision applies notwithstanding California Code of Civil Procedure section 697.710. *Id.* The writ of execution pursuant to which the levy is made must be returned no later than one year after the date the full amount of the levy is repaid or after the court or the levying officer directs the withholding to be stopped. *Id.* §4383(c). *See CAL. CIV. PROC. CODE* §701.010 (duties of third persons upon notice of the levy); *id.* §481.140 (definition of levying officer).

17. CAL. CIV. CODE §683 (definition of joint tenancy).

18. *Id.* §685 (definition of interests in common).

19. *Id.* §5104.



The court in a marital dissolution or legal separation proceeding has jurisdiction to divide the community and quasi-community property<sup>20</sup> of the parties.<sup>21</sup> Chapter 362 expands the jurisdiction of the court in such proceedings to include the division of any separate real<sup>22</sup> or personal<sup>23</sup> property held by the parties as joint tenants or tenants in common, wherever the property is situated and whenever it was acquired.<sup>24</sup>

Existing law authorizes the court, whenever just and reasonable under the circumstances, to require the supporting spouse to maintain a life insurance policy with the supported spouse as beneficiary, to prevent the supported spouse from being left without a means of support should the supporting spouse die.<sup>25</sup> Chapter 362 gives the court, when just and reasonable, the additional options of requiring the supporting spouse to buy an annuity or to establish a trust for the benefit of the supported spouse to provide support in the event the support- in the event the supporting spouse should die.<sup>26</sup>

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20. *Id.* §4803 (definition of quasi-community property).

21. *Id.* §4800.

22. *Id.* §§14(2), 658 (definition of real property).

23. *Id.* §§14(3), 663 (definition of personal property).

24. *Id.* §4800.4(a). This section applies to proceedings commenced on or after January 1, 1986, regardless of whether the property was acquired before that date. *Id.* §4800.4(b).

25. *Id.* §4801.4. Unless the parties agree otherwise in writing, the supported party's remarriage or either party's death terminates the support obligation. *Id.* §4801(b).

26. *Id.* §4801.4. Chapter 326 additionally provides that any order made by the court pursuant to this section can be modified or terminated at the discretion of the court at any time before the supporting party dies, unless the parties have agreed otherwise in writing. *Id.*

## **Domestic Relations; spousal support—discovery of tax returns**

Civil Code §4700.7 (amended).

SB 231 (Lockyer); 1985 STAT. Ch 303

Support: Attorney General

Existing law provides that in any proceeding involving child or spousal support,<sup>1</sup> a party may not refuse to submit copies of state

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1. CAL. CIV. CODE §§242 (every individual has a responsibility to support spouse, child or parent in need), 196 (father and mother have equal duty to support their child in a manner suitable to child's circumstances). See generally Bruch, *Developing Standards for Child Support Payments: A Critique of Current Practice*, 16 U.C.D. L. REV. 49 (1982) (discussion of problems in judicial determination of child support awards, and proposal requiring cost-of-

income tax returns to the court, whether the return is individual or joint.<sup>2</sup> Chapter 303 expands this provision by permitting either party to discover and examine state tax returns submitted to the court by the other party.<sup>3</sup> Chapter 303 also permits either party to examine the other party as to the contents of the tax returns submitted.<sup>4</sup> Chapter 303 further authorizes the court, when the tax return is relevant to the disposition of the case, to seal and maintain the tax returns as confidential records.<sup>5</sup> In all other cases the court is to return the documents to the party that submitted them.<sup>6</sup>

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living adjustments in initial support order); See generally Hoover, *Dissolution of Marriage: California Spousal Support*, 12 PEPPERDINE L. REV. 535 (1985) (review of current law regarding factors relevant to the determination of spousal support awards).

2. CAL. CIV. CODE §4700.7.

3. Compare CAL. CIVIL CODE §4700.7 with 1983 Cal. Stat. c. 1304, §6, at 1010 (enacting CAL. CIV. CODE §4700.7). Prior to the enactment of section 4700.7 in 1983, California courts prohibited coerced disclosure of information contained in state income tax returns for the benefit of another party. The policy behind this judicially created rule was to encourage full and truthful disclosure on income tax returns, without fear that such information would subsequently be used against the taxpayer. *Webb v. Standard Oil Co.*, 49 Cal. 2d 509, 513, 319 P. 2d 621, 624 (1957); *Rifkind v. Superior Court*, 123 Cal. App. 3d 1045, 1048-49, 177 Cal. Rptr. 82, 83 (1981). Although nondisclosure of information contained in income tax returns is the general rule, courts have developed a number of exceptions. The privilege against disclosure of information contained in income tax returns does not apply in the following situations: (1) in proceedings for the enforcement of child support orders when policy considerations as to whether to provide for a child's welfare outweigh the confidentiality of tax return information; (2) when there is an intentional relinquishment of the privilege; (3) where the gravamen of the lawsuit is so inconsistent with the continued assertion of the taxpayer's privilege that the privilege must be considered waived. *Miller v. Superior Court*, 71 Cal. App. 3d 145, 149, 139 Cal. Rptr. 521 (1977). But see *Sammut v. Sammut*, 103 Cal. App. 3d 557, 562, 163 Cal. Rptr. 193, 196 (1980) (the court did not extend the nondisclosure privilege to litigation between former spouses because strong public policy existed to extend the privilege, and ample discovery methods exist for spouses to determine similar information); *In re Marriage of Brown*, 99 Cal. App. 3d 702, 709, 160 Cal. Rptr. 524, 528 (1979) (litigation between former spouses prevented disclosure of income tax return information of an existing marital relationship).

4. Compare CAL. CIV. CODE §4700.7 with 1983 Cal. Stat. c. 1304, §6, at 1010 (enacting CAL. CIV. CODE §4700.7).

5. *Id.*

6. *Id.*

## Domestic Relations; child support—age limit

Civil Code §§196.5, 4728.5 (new); §§4721, 4722, 4723 (amended); 1984 Cal. Stat. c. 1605, §6 (amended).

AB 716 (Leonard); 1985 STAT. Ch 379

Support: State Bar of California

Existing law provides that in a proceeding for child support a father

and mother have an equal responsibility to support and educate their child<sup>1</sup> in a manner suitable to the child's circumstances,<sup>2</sup> taking into consideration the actual earnings<sup>3</sup> or earning capacities<sup>4</sup> of each parent.<sup>5</sup> Chapter 379 extends the class of children to whom this duty is owed by including any unmarried, eighteen-year-old child who is living with a parent and attending high school fulltime, until that child completes the twelfth grade or attains the age of nineteen, whichever occurs first.<sup>6</sup>

In determining the ability of each parent to pay the mandatory minimum child support,<sup>7</sup> existing law provides for certain deductions from gross annual income<sup>8</sup> before the income is adjusted to reflect the monthly net disposable income.<sup>9</sup> These deductions include state and federal income taxes,<sup>10</sup> mandatory union dues and retirement benefits,<sup>11</sup> employee and self-employed worker's contributions for retirement and disability benefits,<sup>12</sup> health insurance premiums,<sup>13</sup> and any child or spousal support already being paid to any person other

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1. CAL. CIV. CODE §241(d) (definition of child). The court has the authority to order either or both parents to contribute to the support of their child. *Id.* §4700(a); *In re Marriage of Koppelman*, 159 Cal. App. 3d 627, 633, 205 Cal. Rptr. 629, 633 (1984).

2. When determining the amount of child support, the court must consider the following circumstances: (a) the earning capacity and needs of each party; (b) the obligations and assets of each; (c) the duration of the marriage; (d) the ability of each party to work; (e) the time required to get an appropriate education, training, and job; (f) the age and health of each party; (g) the standard of living of each; and (h) any other factors the court deems just and equitable. CAL. CIV. CODE §246.

3. See *In re Marriage of Reese*, 73 Cal. App. 3d 120, 125-6, 149 Cal. Rptr. 589, 592 (1977) (holding that a child support award is excessive if the award is based on the parent's maximum potential earnings rather than current average earnings and nothing indicates that the parent is attempting to avoid his or her responsibilities).

4. See *In re Marriage of Barnert*, 85 Cal. App. 3d 413, 427, 149 Cal. Rptr. 616, 625 (1978) (holding that in an action to determine child support the court must look at the parent's ability to earn rather than actual income when the parent deliberately attempts to show diminished income).

5. CAL. CIV. CODE §196. See *id.* §241(e) (definition of parent). Generally, the obligation of parents to provide support for their child terminates when the child attains the age of eighteen. *City of Fresno v. Walker*, 115 Cal. App. 3d 814, 824, 171 Cal. Rptr. 572, 578 (1981).

6. CAL. CIV. CODE §196.5. When a parent has a duty to provide for the support, maintenance, or education of a child and willfully fails to do so, either parent or the child may bring an action against that parent. *Id.* §4703.

7. See *id.* §4722 (computing the amount of mandatory minimum child support). Chapter 379 also requires that a parent's ability to pay child support be determined before the determination of spousal support liability regardless of whether the order for child support is temporary or permanent. *Id.* §4722(b).

8. See *id.* §4721(a), (b) (determining gross annual income).

9. *Id.* §4721. See *id.* §4721(c) (determining monthly net disposable income).

10. *Id.* §4721(c)(1).

11. *Id.* §4721(c)(3). Such deductions must be required as a condition of employment. *Id.*

12. *Id.* §4721(c)(2) (pursuant to the Federal Insurance Contributions Act (FICA), or for persons not subject to FICA, an amount not to exceed that allowed under FICA).

13. *Id.* §4721(c)(4).

than the one for whom the award is being calculated.<sup>14</sup> Chapter 379 adds state disability insurance premiums to the list of deductions.<sup>15</sup> Finally, Chapter 379 allows the court, when ordering the payment of child support, to consider a portion of the rental value of the family residence as payment if the child being awarded the support lives there, but only to the extent that the rental value exceeds the sum of the mortgage payments, the cost of homeowner's insurance, and the property taxes.<sup>16</sup>

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14. *Id.* §4721(c)(5).

15. *Id.* §4721(c)(4).

16. *Id.* §4728.5. See generally 6 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Parent and Child* §§120-140 (8th ed. 1974 & Supp. 1984) (support of child by parent).

## Domestic Relations; child support—continuing need

Civil Code §§4351, 4700.9, 4800.7 (amended).

AB 1080 (McAlister); 1985 STAT. Ch 419

Support: Family Law Section of the State Bar

Existing law provides that the parents<sup>1</sup> and children of persons who are in need and unable to support themselves have a duty to support those persons to the extent of their ability.<sup>2</sup> Under existing law, superior courts also have jurisdiction over family law proceedings<sup>3</sup> that concern the status of a marriage, the custody and support of any *minor*<sup>4</sup> child of that marriage,<sup>5</sup> and the support and settlement of the property rights of each spouse.<sup>6</sup> Chapter 419 further authorizes a court to issue orders relating to the support of *any* children<sup>7</sup> who are unable to work to support themselves.<sup>8</sup>

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1. CAL. CIV. CODE §241(e) (definition of parent).

2. *Id.* §206 (the reciprocal duty of parents and children to provide support).

3. "Family law proceedings" refers to any proceeding brought pursuant to the Family Law Act contained in CAL. CIV. CODE §§4000-5174. See CAL. CIV. CODE §4351.

4. *Id.* §25 (definition of minor).

5. See *Johnson v. Superior Court*, 159 Cal. App. 3d 573, 581, 205 Cal. Rptr. 605, 611 (1984) (the jurisdiction of the superior court to order child support is limited to the support of minor children, in the absence of a stipulated agreement between the parties). *But see In re Marriage of Lieberman*, 114 Cal. App. 3d 583, 586, 170 Cal. Rptr. 757, 758 (1981) (holding that a parent can be required to support an adult child under CAL. CIV. CODE §206, but this obligation must be enforced in an independent civil action and not in a marriage dissolution proceeding).

6. CAL. CIV. CODE §4351.

7. A "child" means a son or daughter under the age of eighteen, and a son or daughter of any age who is not capable of earning a living and is without sufficient support. *Id.* §241(d).

8. *Id.* §4351; *id.* §206 (duty to support an adult child).

A *family home award*, under existing law, means a court order awarding the temporary use of the family home to the person with custody of a *minor* child in order to minimize the adverse effect of a divorce or a legal separation on the child.<sup>9</sup> Chapter 419 enlarges the meaning of a *family home award* by allowing such an award to be made for the benefit of *any* child to whom a duty of support is owed.<sup>10</sup>

Additionally, prior law authorized the court to approve stipulated agreements to pay child support for any adult children who were unable to provide for their own support.<sup>11</sup> Chapter 419 deletes the requirement that the adult children be unable to provide for their own support and authorizes the court to approve all stipulated agreements to pay for the support of an adult child.<sup>12</sup>

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9. *Id.* §4800.7(a).

10. *Id.* See generally CAL. CIV. CODE §206.

11. 1983 Cal. Stat. c. 1304, §7, at 1010 (enacting CAL. CIV. CODE §4700.9).

12. CAL. CIV. CODE §4700.9.

## **Domestic Relations; child support—enforcement procedure**

Code of Civil Procedure §1699.4 (new); §§1653, 1698, 1699 (amended); Civil Code §4701 (amended); Welfare and Institutions Code §11475.1 (amended).

AB 2300 (Wright); 1985 STAT. Ch 1601  
(Effective September 27, 1985)

Support: California Family Support Council; Family Law Section of the State Bar

AB 2301 (Wright); 1985 STAT. Ch 948

Under existing federal law, the Office of Child Support Enforcement establishes standards for, reviews, and approves state programs for enforcing child support orders.<sup>1</sup> Effective October 1, 1985, federal law requires<sup>2</sup> states to improve procedures for enforcing support orders

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1. 42 U.S.C. §652. See also *id.* §662(b) (definition of child support). See generally 1984 U.S. Code Cong. & Ad. News, 2401-18 (general description of the Child Support Enforcement Program).

2. The penalty for noncompliance with federal requirements is a reduction in the federal matching funds that would otherwise be payable to the state under the Aid to Families with

that are to be satisfied by a wage assignment.<sup>3</sup> With the enactment of Chapter 1601, the legislature intends to bring California law into compliance with the federal law at the earliest possible date.<sup>4</sup>

Under existing California law, when a court<sup>5</sup> in another state has issued a support order,<sup>6</sup> the obligee<sup>7</sup> is permitted to register<sup>8</sup> and enforce<sup>9</sup> the foreign support order in this state.<sup>10</sup> Chapter 948 specifies that the registration procedure also is available when a foreign court orders the assignment of wages to satisfy a support order.<sup>11</sup> A registered foreign order for the assignment of wages must be treated for all purposes in the same manner as an order for assignment of wages issued by a court of this state.<sup>12</sup> Existing law also permits a support order issued in this state to be registered in any county in which either the obligor, or the child who is the subject of the order, resides.<sup>13</sup> Chapter 948 requires the registering court<sup>14</sup> to notify the rendering court<sup>15</sup> of the registration and of any subsequent modification of the order.<sup>16</sup>

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Dependent Children program. 42 U.S.C. §§652(a)(4), 603(h). *See also* 1984 U.S. Code Cong. & Ad. News, 2427-29 (legislative history of penalty modifications for state noncompliance with federal requirements).

3. 42 U.S.C. §666(a)(1). *See generally* 1984 U.S. Code Cong. & Ad. News, 2422-26 (general description of the improvements to be made by the states in the procedures for enforcing child support orders).

4. 1985 Cal. Stat. c. 1601, §4, at \_\_\_\_\_.

5. CAL. CIV. PROC. CODE §1653(a) (definition of court).

6. *Id.* §§1653(b) (definition of duty of support), 1653(k) (definition of support order).

7. *Id.* §1653(f) (definition of obligee).

8. *Id.* §1698. The clerk of the court maintains a registry in which foreign support orders are filed. *Id.* §1698.1. *See also id.* §1698.3 (procedure for registering a foreign support order).

9. *Id.* §1699 (enforcement of a registered foreign support order). A registered foreign support order has the same effect and is treated in the same manner as a support order issued by a court of this state. *Id.*

10. *Id.* §§1698, 1699. *See also* *Gingold v. Gingold*, 161 Cal. App. 3d 1177, 1183, 208 Cal. Rptr. 123, 125 (1984) (jurisdiction over an obligor is not required for a court to confirm registration of a support order issued by a court of another state that did have jurisdiction over the obligor).

11. CAL. CIV. PROC. CODE §1698. *Compare id.* with 42 U.S.C. §666(b)(9) (the state must extend its income-withholding system to include withholding income in cases in which the applicable support orders were issued in other states and thereby assure that child support will be collected without regard to the residence of the child).

12. CAL. CIV. PROC. CODE §1699. Chapter 948 specifies the foreign order for the assignment of wages for support be handled pursuant to CAL. CIV. CODE §§4701 (assignment of wages for satisfaction of child support order) or 4801.6 (assignment of wages for satisfaction of spousal support order).

13. CAL. CIV. PROC. CODE §1697(b).

14. *Id.* §1653(m) (definition of registering court).

15. *Id.* §1653(o) (rendering court means a court that has issued a support order for which registration is sought).

16. *Id.* §1699.4.

Under existing law, each county maintains an organizational unit in the office of the district attorney which has the responsibility of promptly and effectively enforcing child and spousal support obligations.<sup>17</sup> Chapter 1601 clarifies that these enforcing obligations include, but are not limited to, the use of all interception and notification systems operated by the State Department of Social Services for the purpose of aiding in the enforcement of support obligations.<sup>18</sup>

When a parent is in arrears in payment of a child support order, existing law provides a procedure by which the recipient may petition the court to order the assignment of the wages of the obligor parent.<sup>19</sup> The obligor parent may move to quash the assignment order on the grounds that the payments are not in arrears.<sup>20</sup> If the district attorney requests a wage assignment or if the support is designated to be paid through a county officer, the assignment is mandatory.<sup>21</sup> In any case in which an arrearage is alleged, however, Chapter 1601 specifies that the obligor parent may move to quash the order for assignment of wages.<sup>22</sup>

When the court orders the assignment of wages, existing law requires the employer to withhold and forward to the court the support ordered.<sup>23</sup> Chapter 1601 provides that willful failure to withhold and forward support pursuant to a valid wage assignment order is punishable as contempt.<sup>24</sup> The employer is also liable<sup>25</sup> for the amount of support not withheld, forwarded, or otherwise paid.<sup>26</sup> Finally, existing law precludes the employer from using an assignment as grounds for dismissing the employee.<sup>27</sup> Chapter 1601 creates a civil

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17. CAL. WELF. & INST. CODE §11475.1(a). See also CAL. CIV. PROC. CODE §1698.2 (prosecuting attorney must represent obligee in enforcing foreign support orders); 42 U.S.C. §652(a) (federal guidelines for state child support enforcement units); CAL. WELF. & INST. CODE §11475 (state plan for securing child support).

18. CAL. WELF. & INST. CODE §11475.1(b). See, e.g., *id.* §11478.5 (parent locator services).

19. *Id.* §11489 (court may order assignment of wages); CAL. CIV. CODE §4701 (procedure for ordering an assignment of wages).

20. CAL. CIV. CODE §4701(b)(6).

21. *Id.* §4701(k).

22. *Id.* The motion to quash the order for wage assignment must be in the manner specified in CAL. CIV. CODE §4701(b). *Id.* See also 42 U.S.C. §666(b)(4)(A) (withholding must be carried out in accordance with all procedural due process requirements).

23. CAL. CIV. CODE §4701(b)(7).

24. *Id.* §4701(b)(7) (punishable pursuant to CAL. CIV. PROC. CODE §1218).

25. The employer is liable to the person or county officer to whom support was ordered to be paid. *Id.*

26. *Id.* Compare *id.* with 42 U.S.C. §666(b)(6)(C) (employer must be held liable for the amount not withheld following the notice of wage assignment).

27. CAL. CIV. CODE §4701(e).

penalty<sup>28</sup> to be assessed against any employer who uses a wage assignment order as a grounds for discharging, refusing to hire, or taking disciplinary action against the employee.<sup>29</sup>

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28. The civil penalty may be a maximum of \$500. *Id.*

29. *Id.* Compare *id.* with 42 U.S.C §666(b)(6)(D) (imposition of fine against employer who discharges, refuses to hire, or takes disciplinary action against an employee because of withholding obligations).



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