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Domestic Relations

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Domestic Relations

Domestic Relations; adoption—termination of alleged father's parental rights

Civil Code §§ 7006, 7017 (amended); Welfare and Institutions Code §§ 11350.1, 11475.1, 11484 (amended).

SB 903 (Presley); 1986 STAT. Ch. 1370

Sponsor: Author

Support: Social Services

Opposition: Assemblyman Isenberg

SB 1751 (Hart); 1986 STAT. Ch. 1408

Under prior law, an action determining the paternity of a child, and an action terminating the parental rights of an alleged father, were brought separately.¹ In addition, any adoption proceedings² were suspended until a paternity action judgment was final.³ Pursuant to Chapter 1408, paternity actions and actions to terminate parental rights must be consolidated into one proceeding.⁴

Prior law provided that if the alleged father claimed custodial rights,⁵ the court had the authority to determine the parental and custodial rights of the alleged father in whatever order the court deemed proper.⁶ Chapter 1370 requires a court to establish the paternity of a child before determining the custodial rights of a father.⁷ Furthermore, existing law provides that parental custody

1. 1979 Cal. Stat. ch. 752, secs. 1-2, at 2607 (amending CAL. CIV. CODE §§ 7006, 7017). An alleged father's parental rights must be terminated prior to the adoption of a child. CAL. CIV. CODE § 7017(b).

2. See CAL. CIV. CODE §§ 224, 226-227(p) (adoption proceedings).

3. 1979 Cal. Stat. ch. 752, sec. 1, at 2607 (amending CAL. CIV. CODE § 7006).

4. CAL. CIV. CODE § 7006(c). Notice of a proceeding to terminate parental rights must be given to every person identified as the father or possible father. *Id.* § 7017(f). If an alleged father fails to appear at the proceeding, or if he appears and fails to claim parental rights, his parental rights to the child will be terminated. *Id.* § 7017(d)(1).

5. See *id.* §§ 4600-4609 (sections concerning child custody rights of parents).

6. 1979 Cal. Stat. ch. 752, sec. 2, at 2608 (amending CAL. CIV. CODE § 7017).

7. CAL. CIV. CODE § 7017(d)(2).

rights may be terminated only if a court determines that the continuance of such rights would be detrimental to the child and that another placement would be in the child's best interests.⁸ Chapter 1370 restricts existing law by requiring a court, after determining paternity of the child, to determine whether the child's best interests will be served by either permitting the father to retain his parental rights, or allowing the adoption to proceed.⁹ In making this determination, the court is authorized to consider all relevant evidence, including (1) efforts made by the father to obtain custody, (2) the age and prior placement of the child, and (3) the effects of a change of placement on the child.¹⁰ If the court finds the child's best interests are served by permitting the father to retain his parental rights, the court must order that the father's consent is required for an adoption.¹¹ If the court determines that the man claiming parental rights is not the father, or that an adoption is in the child's best interest, the court must order that the father's consent is not required for the adoption.¹² Such an order terminates all parental rights and responsibilities concerning the child.¹³

SLP

8. *Id.* § 4600(c). Before awarding custody of a child to a nonparent without the consent of the parents, the court must find that awarding custody to a parent would be detrimental to the child, and that awarding custody to a nonparent is required to serve the best interests of the child. *Id.* Chapter 1370 specifies that § 4600 does not apply to Chapter 1370 provisions regarding the determination of paternal rights. *Id.* § 7017(d)(2). *But see* *Baby Girl M.*, 37 Cal. 3d 65, 70, 688 P.2d 918, 920, 207 Cal. Rptr. 309, 311 (1984) (the court must apply the detriment standard in all proceedings that terminate parental rights).

9. CAL. CIV. CODE § 7017(d)(2).

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

Domestic Relations; child health care costs—reimbursement

Civil Code § 4358.5 (new).

SB 1938 (Petris); 1986 STAT. Ch. 1217

Sponsor: Author

Existing law authorizes a court in family law proceedings¹ to order either or both parents to pay any amount necessary for the support, maintenance, and education of their child.² When an order is made requiring either party to provide coverage for a dependent under a health plan,³ Chapter 1217 requires the court to order the covered party to assign to the other party the right to reimbursement for payments made by the other party for health care services provided to a dependent.⁴ Chapter 1217 also provides that the court must order the covered party to provide the appropriate information and forms to enable the other party to seek reimbursement.⁵ To further expedite indemnification, the court must notify the health plan of the order and instruct the health plan to assist the party seeking reimbursement.⁶

SJB

1. See CAL. CIV. CODE §§ 4000-5317 (proceedings brought pursuant to the Family Law Act).

2. *Id.* § 4700(a). In any action for support, the judge must consider the medical insurance of the parties to the action. *Id.* § 4706. See *id.* § 241(d) (definition of child).

3. For the purposes of Chapter 1217, a health plan includes, but is not limited to, a disability insurance plan, a nonprofit hospital service plan, a self-insured employee welfare benefit plan, and a health care service plan. *Id.* § 4358.5. See CAL. INS. CODE §§ 106 (definition of disability insurance plan); 11491-11517 (nonprofit hospital service plans); 10123 (self-insured employee welfare benefit plans); CAL. HEALTH & SAFETY CODE §§ 1340-1399.64 (health care service plans).

4. CAL. CIV. CODE § 4358.5.

5. *Id.*

6. *Id.* (the health plan will be instructed to assist the party seeking reimbursement by providing the necessary forms and information).

Domestic Relations; child support—dismissal

Civil Code § 4357 (amended); Code of Civil Procedure § 583.161 (new).

AB 4284 (Wright); 1986 STAT. Ch. 366

Sponsor: California Family Support Council; Support Department of Social Services

Existing law authorizes a court, during the pendency of specified family law proceedings,¹ to issue orders for child or spousal support.² In addition, existing law provides for the dismissal of proceedings not brought to trial within specified time periods.³ Under Chapter 366, any order for child support entered during the pendency of a family law proceeding will remain in full force and effect until revoked by the court or terminated by operation of law,⁴ even if the proceeding is not brought to trial within the required time limits.⁵ Chapter 366, however, provides that a child support order is not enforceable during any period in which the parties have reconciled and are living together, unless the order specifies otherwise.⁶ Furthermore, Chapter 366 provides that no petition for marital dissolution or legal separation will be dismissed for failing to go to trial within the time limits, if an order for child support has been issued in connection with the proceeding and has not been revoked by the court or terminated by operation of law.⁷

SJB

1. CAL. CIV. CODE §§ 4501-4556 (marital dissolution proceedings); 4600-4609 (child custody proceedings); 4700-4732 (child support proceedings).

2. *Id.* § 4357.

3. CAL. CIV. PROC. CODE § 583.360. *See id.* §§ 583.130 (state policy requires that a plaintiff proceed with reasonable diligence in the prosecution of an action); 583.210 (the summons and complaint must be served upon a defendant within three years after the action is commenced against the defendant); 583.310 (an action must be brought to trial within five years after the action is commenced against the defendant).

4. *See* CAL. CIV. CODE §§ 196, 196.5, 4700 (orders for child support may terminate upon the happening of specified contingencies such as emancipation, marriage, or attaining the age of majority).

5. *Id.* § 4357(b).

6. *Id.*

7. CAL. CIV. PROC. CODE § 583.161.

Domestic Relations; child support enforcement—wage assignment

Civil Code § 4701 (amended).

AB 3975 (Wright); 1986 STAT. Ch. 1409

Sponsor: Department of Social Services

Under existing law, a court may order either or both parents to assign¹ a portion of their salary sufficient to pay court-ordered child support² that is due or will be due in the future.³ Chapter 1409 requires the court, in child support proceedings brought on and after January 1, 1987,⁴ to include in all support orders a provision assigning the obligor's⁵ wages to an assigned payee⁶ unless the parent ordered to pay support demonstrates to the court's satisfaction that payment will be made.⁷ A provision for wage assignment is effective only upon an application signed under penalty of perjury by the assigned payee, stating that the obligor has not paid an amount equal to payment for one month.⁸ Chapter 1409 provides that if a child support order does not include a wage assignment provision, the

1. CAL. CIV. CODE § 4701(a) (assigned to either the person who is to receive support payments, or the county officer designated by the court to receive payment). Under Chapter 1409, the "county officer" alternative is replaced by a "district attorney" alternative. *Id.*

2. *Id.* (money ordered to be paid for the support, maintenance, and education of the minor child).

3. *Id.* An order for wage assignment is binding on any existing or future employer of the defaulting parent who is served with a copy of the order. Any wage assignment can be modified or revoked by the court at any time. *Id.* The obligor must also notify the assigned payee of employment changes and the name and address of the new employer. *Id.* § 4701(e). Under Chapter 1409, if an assigned payee cannot be located within six months, because that person has failed to notify the obligor's employer or the district attorney of a change of address, no further payments will be made, and undeliverable payments must be returned to the obligor. *Id.* § 4701(b)(3).

4. *Id.* § 4701(b)(1) (includes any court order for modification of child support entered after January 1, 1987).

5. *See id.* (obligor refers to the parent ordered to pay support).

6. *Id.* § 4701(m) (assigned payee means either the person to whom support has been ordered to be paid, or the district attorney designated by the court to receive payment).

7. *Id.* § 4701(a)(1) (demonstration may include proof of timely payment of previously ordered support). Wage assignment must be ordered at the time of trial or entry of judgment establishing child support, other than a temporary order pending trial. *Id.*

8. *Id.* § 4701(b)(1). The court must issue a wage assignment order, without notice to the obligor, sufficient to pay support due or to be due in the future. *Id.* Both current and overdue support payments will be withheld, with priority given to the current support payments. *Id.* § 4701(b)(11). Under Chapter 1409, the obligor's employer must deliver a copy of the wage assignment order, along with a written statement of the obligor's rights to quash the wage assignment, to the obligor within 10 days of service. *Id.* § 4701(b)(5). Chapter 1409 further requires that the withheld wages be forwarded to the assigned payee within 10 days of the date the obligor is paid. *Id.* § 4701(b)(7).

assigned payee's application must state that the obligor has received written notice⁹ of the assigned payee's intent to seek a wage assignment in the event of default in support payments.¹⁰

Under existing law, an obligor can move to quash a wage assignment order by stating, under oath, that the amount alleged is not owed, or a default in the amount alleged has not occurred within the last twenty-four month period.¹¹ Chapter 1409 modifies existing law by permitting the obligor to move to quash an assignment if the obligor states under oath that (1) there is an error in the amount of current or overdue support;¹² (2) the amount to be withheld exceeds limits set by federal law;¹³ (3) the default is less than one monthly payment; or (4) the alleged obligor is not the obligor from whom support is due.¹⁴

Under existing law, an initial wage assignment is terminated, upon petition by the obligor and proof that support payments are fully paid for the period indicated.¹⁵ Chapter 1409 increases the requirements for terminating wage assignments, by requiring all past due support to be paid in full, and requiring a finding that (1) delivery of assigned wages is impossible due to failure of the assigned payee to provide a new address, (2) the supported child has died or has been emancipated, or (3) the assignment has continued for twenty-four months following complete payment of any past due support.¹⁶

KDB

9. The application must state that written notice was sent by certified mail, or personally served on the obligor, at least 15 days prior to the filing of the application. Written notice may be given at the time of filing the petition or complaint for support, or at any earlier time. *Id.* § 4701(b)(2).

10. *Id.* A false declaration that notice has been served is subject to punishment as contempt. *Id.* See also CAL. CIV. PROC. CODE § 1209 (acts or omissions constituting contempt). An obligor may waive the required written notice. CAL. CIV. CODE § 4701(b)(2).

11. CAL. CIV. CODE § 4701(b)(6). The obligor must move to quash within 10 days after notice of the assignment is served by the obligor's employer. *Id.*

12. An error in the amount of overdue support, if less than one month's support, results in the assignment of wages being quashed. Any error in the amount of overdue support in excess of one month's support, will not effect an assignment of current wages. Error in the amount of current support withheld does not affect the assignment of overdue support withheld. *Id.*

13. *Id.* (pursuant to 15 U.S.C. § 1673(b)(1982)).

14. *Id.*

15. *Id.* § 4701(b)(10).

16. *Id.* § 4701(b)(10)(A)-(C). Under Chapter 1409, if the assignment was pursuant to a second or subsequent application for wage assignment, the assignment must not be terminated unless the obligor petitions showing good cause. *Id.* § 4701(b)(10)(C).

Domestic Relations; community personal property— management and control

Civil Code § 5125.1 (new); § 5125 (amended).

SB 1071 (Lockyer); 1986 STAT. Ch. 1091

(Effective July 1, 1987)

Sponsor: Commission on the Status of Women

Support: California National Organization of Women; League of Women Voters

Existing law provides that either spouse has equal management and control of the community personal property,¹ with the same absolute power of disposition that a spouse has over separate property.² Under prior law, a spouse operating or managing a business, or an interest in a business, that was community personal property had sole management and control of the business or interest.³ Chapter 1091 provides instead that a spouse who is operating or managing a business, or an interest in a business, that is substantially all community personal property has *primary* management and control of that business or interest.⁴ Under Chapter 1091, primary management and control means the managing spouse may act alone in all transactions, provided the other spouse is given prior written notice of any sale, lease, exchange, encumbrance, or other disposition of the personal property used in operating the business.⁵ With the enactment of Chapter 1091, the legislature intends to establish a standard for

1. Community property is property acquired by either spouse during marriage, that is not acquired as the separate property of either spouse. CAL. CIV. CODE § 687. See *id.* § 663 (all property that is not real property is personal property).

2. *Id.* § 5125(a) (whether acquired before or after January 1, 1975). Separate property is all property owned by a spouse before marriage, or acquired after marriage by gift, bequest, devise, or descent, including the rents, issues, and profits of such property. A spouse may, without the written consent of the other spouse, convey that separate property. *Id.* §§ 5107, 5108. See *In re Marriage of Bouquet*, 16 Cal. 3d 583, 591, 546 P.2d 1371, 1376, 128 Cal. Rptr. 427, 432 (1976) (the status of property as community or separate is determined at the time of acquisition).

3. 1982 Cal. Stat. ch. 497, sec. 23, at 2149 (amending CAL. CIV. CODE § 5125). See generally Comment, *New Community Property Law: Its Effect on Interspouse Mismanagement Litigation*, 5 PAC. L.J. 723 (1974) (discussion of the history of community property management and control in California).

4. CAL. CIV. CODE § 5125(d) (business includes personal property used for agricultural purposes). Chapter 1091 applies whether or not title to the property is held in the name of only one spouse. *Id.*

5. *Id.* No prior written consent is needed for any change of the form of business or, when otherwise prohibited by law. In addition, failure to give prior written notice to the other spouse will not effect the validity of the transaction with third parties. *Id.* § 5125. See *id.* § 5125.1 (remedies available upon failure of the managing spouse to give prior written notice).

marital financial and property rights, to promote an equal marital partnership protecting the rights of, and specifying the responsibilities of, both parties equally.⁶

Existing law requires each spouse to act in good faith, with respect to the other spouse, in the management and control of the community property.⁷ Chapter 1091 further specifies that this duty to act in good faith includes an obligation to make full disclosure to the other spouse upon request, of all existing community assets and debts.⁸ In addition, Chapter 1091 creates a cause of action against a spouse for breaching this duty to act in good faith, if the breach results in substantial impairment to the claimant spouse's present undivided one-half interest in the community estate.⁹ Chapter 1091 also provides that if a spouse breaches this duty, that court may order an accounting of the spouses' marital property and obligations, and determine the rights of ownership, beneficial enjoyment of, or access to the community property.¹⁰ In addition, the court may order the name of the spouse to be added to community property held only in the name of the other spouse, or the court may change the form of title to clarify the community character of the property.¹¹ Chapter 1091 further provides that in transactions affecting community property in which the consent of both spouses is required, the court may dispense with this consent requirement if the proposed transaction is in the best interest of the community,¹² and the consent has been arbitrarily refused or cannot be obtained.¹³ All transactions must be commenced either (1) within three years if a petitioning spouse had actual knowledge that the transaction or event arose,¹⁴ or (2) upon

6. 1986 Cal. Stat. ch. 1091, sec. 3(b), at _____.

7. CAL. CIV. CODE § 5125(e).

8. *Id.* See *id.* § 5103(b) (in transactions between themselves, a husband and wife are subject to the general rules which control the actions of persons occupying a confidential relationship). Prior to the date of separation or filing of a petition for dissolution, there exists a confidential relationship which imposes trust and confidence between spouses. The duty to disclose existing community assets continues until all assets are divided. *In re Marriage of Stevenot*, 154 Cal. App. 3d 1051, 1070, 202 Cal. Rptr. 116, 129, (1984). See generally Note, *The Husband's Fiduciary Duty—More Protection for the California Wife*, 14 STAN. L. REV. 587 (1962) (discussion against extending community property fiduciary duties).

9. CAL. CIV. CODE § 5125.1(a). See generally Note, *Equal Rights and Equal Protection and Who Has Management and Control*, 46 S. CAL. L. REV. 892 (1973) (discussion of the inadequacies of the wife's after-the-fact remedies and the constitutional ramifications).

10. CAL. CIV. CODE § 5125.1(b).

11. *Id.* § 5125.1(c). See *id.* § 5125.1(c)(1)-(4) (limitations on when a court may order changes in title).

12. *Id.* § 5125.1(e)(1).

13. *Id.* § 5125.1(e)(2) (due to physical incapacity, mental incapacity, or prolonged absence of the nonconsenting spouse).

14. *Id.* § 5125.1(d)(1).

the death of the spouse, or in conjunction with legal separation, marital dissolution, or nullification proceedings.¹⁵

MGB

15. *Id.* § 5125.1(d)(2).

Domestic Relations; community property presumption—joint tenancy

Civil Code § 4800.1 (amended).

AB 625 (McAlister); 1986 STAT. Ch. 49

Sponsor: California Law Revision Commission

Support: California State Bar-Family Law Section

AB 2897 (Harris); 1986 STAT. Ch. 539

Sponsor: Justice Donald King; Court of Appeal; First Appellate District

Support: California State Bar-Family Law Section

Under existing law, all property acquired during marriage in joint tenancy¹ form is presumed to be community property² for the purposes of dividing the property in any marital dissolution³ or legal separation⁴ proceeding.⁵ This presumption affects the burden of proof and is rebuttable by either a clear statement in the document of title that the property is separate property, or proof of a written agreement to that effect.⁶ Chapter 539 broadens existing law by extending this presumption of community property to property taken in *any* joint form, including property held in joint tenancy, tenancy in common,⁷ tenancy by the entirety,⁸ and as community property.⁹

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

2. *Id.* § 687 (definition of community property).

3. *Id.* § 4350 (methods of dissolution of marriage).

4. *Id.* § 4506 (grounds for dissolution or legal separation).

5. *Id.* § 4800.1.

6. *Id.* *But see In re Marriage of Lucas*, 27 Cal. 3d 808, 813, 614 P.2d 285, 287, 166 Cal. Rptr. 853, 855 (1980) (evidence of an oral agreement between spouses that property is to remain separate may be used to rebut the community property presumption).

7. CAL. CIV. CODE § 4800.4(a) (division of property held in tenancy in common in marital dissolution proceedings).

8. *Cf. Swan v. Walden*, 156 Cal. 195, 196, 103 P. 931, 931 (1909) (tenancy by the entirety is not recognized in California).

9. CAL. CIV. CODE § 4800.1(b).

The legislature intended the existing joint tenancy presumption of community property to apply retroactively to any proceedings commenced on or after January 1, 1984, and any proceedings commenced before January 1, 1984, to the extent the proceedings are not final.¹⁰ In *In re Marriage of Boul*,¹¹ however, the California Supreme Court held that retroactive application of this joint tenancy presumption is unconstitutional to the extent that such application deprives a person of a vested right without due process of law.¹² The imprecise scope of the *Boul* decision has led to various interpretations¹³ that have frustrated legislative intent to correct a serious problem regarding division of assets at dissolution.¹⁴ This problem has resulted in the inequitable treatment of many parties.¹⁵ Chapter 539 was enacted in response to an express legislative finding that case and statutory law have resulted in inconsistent treatment of property interests held by spouses in joint title, and have created confusion as to which law applies to property at a particular point in time, depending on the form of title.¹⁶ As a result, attorneys are not able to reliably advise their clients regarding the applicable law.¹⁷ Accordingly, Chapter 539

10. See 1983 Cal. Stat. ch. 342, sec. 4, at 2501; *In re Marriage of Martinez*, 156 Cal. App. 3d 20, 29, 202 Cal. Rptr. 646, 652-53 (1985) (the legislature clearly intended the joint tenancy presumption of community property to apply retroactively to prevent the abuse and unpredictability which has resulted from applying the *Lucas* standard in property division proceedings). The *Lucas* standard permits an agreement between spouses that property is separate property to be either written or oral, and express or implied. *In re Marriage of Lucas*, 27 Cal. 3d 808, 815, 614 P.2d 285, 288, 166 Cal. Rptr. 853, 857 (1980). This standard allows the community property presumption to be overcome by tracing to separate property the source of funds used to acquire the property. *Id.* at 815, 614 P.2d at 288, 166 Cal. Rptr. at 857.

11. 39 Cal. 3d 751, 705 P.2d 354, 218 Cal. Rptr. 31 (1985).

12. *Boul*, 39 Cal. 3d at 751, 705 P.2d at 354, 218 Cal. Rptr. at 31 (under CAL. CIV. CODE § 4800.1, an oral agreement between spouses, that property is to remain the wife's separate property, is insufficient to overcome the community property presumption). *But see In re Marriage of Martinez*, 156 Cal. App. 3d 20, 29, 202 Cal. Rptr. 646, 653 (1985) (retroactive application of the joint tenancy presumption does not interfere with vested rights, but merely alters the evidentiary burden of proof when spouses take property in joint tenancy form).

13. Interpretations of *Boul* include: (1) proof of an oral agreement in cases tried before the operative date of the new legislation is allowed; (2) proof of an oral agreement in cases in which the alleged agreement was made before the operative date of the new legislation is allowed; and (3) no aspect of the new legislation may be applied to any case where property was acquired before the operative date of new legislation. California Law Revision Commission, *Recommendation Relating to Civil Code Sections 4800.1 and 4800.2*, 18 CAL. L. REV. COMM'N REP. 383, 388 (1986) [hereinafter *Recommendation*]. See *In re Marriage of Kahan*, 174 Cal. App. 3d 63, 219 Cal. Rptr. 700 (1985) (court followed *Boul* in finding retroactive application of Civil Code § 4800.1 unconstitutional, and applied the *Lucas* standard allowing an oral agreement when § 4800.1 was enacted while appeal was pending).

14. 1986 Cal. Stat. ch. 49, sec. 2, at _____. See CAL. CIV. CODE § 4800.1(a)(3) (the legislature finds that a compelling state interest exists to provide for the uniform treatment of property).

15. 1986 Cal. Stat. ch. 49, sec. 2, at _____.

16. CAL. CIV. CODE § 4800.1(a)(2); *Recommendation*, *supra* note 13, at 383.

17. CAL. CIV. CODE § 4800.1(a)(2).

clarifies existing law by specifying that the legislature intends the joint title presumption of community property, and the separate property right of reimbursement,¹⁸ to apply in all dissolution proceedings commenced on or after January 1, 1984, involving property held in joint title, regardless of the date the property was acquired.¹⁹

COMMENT

The *Boul* decision indicates the joint tenancy presumption may not be applied retroactively to property acquired before January 1, 1984, by stating that the applicable law in property division proceedings is the law which governed at the time the property was acquired.²⁰ To the extent Chapter 539 retroactively applies the joint tenancy presumption, and the separate property right of reimbursement to property acquired before January 1, 1984, Chapter 539 may unconstitutionally interfere with the vested rights of individual property owners without due process of law.²¹

SBH

18. Under existing law, absent a written waiver, a party in a marital dissolution proceeding has the right to be reimbursed for any contributions to the acquisition of property, to the extent those contributions are traced to a separate property source. *Id.* § 4800.2.

19. *Id.* § 4800.1(a)(3) (regardless of the date of any agreement affecting the character of the property). Chapter 539 does not apply to property settlement agreements or judgments executed prior to January 1, 1987, regardless of whether those judgments have become final. *Id.* See also 1986 Cal. Stat. ch. 49, sec. 2, at _____ (enacted specifically to reaffirm that the legislature intended CAL. CIV. CODE §§ 4800.1 and 4800.2 to apply to any proceedings commenced on or after January 1, 1984, regardless of the date the property subject to the proceedings was acquired).

20. *Boul*, 39 Cal. 3d at 757, 705 P.2d at 357, 218 Cal. Rptr. at 34. See also *In re Marriage of Bouquet*, 16 Cal. 3d 583, 591, 546 P.2d 1371, 1375-76, 128 Cal. Rptr. 427, 431-32 (1976) (the status of property, as community or separate, is normally determined at the time of acquisition).

21. See *Boul*, 39 Cal. 3d at 760, 705 P.2d at 359, 218 Cal. Rptr. at 36. See generally *In re Marriage of Delgado*, 176 Cal. App. 3d 666, 222 Cal. Rptr. 119 (1986) (discussion of three possible interpretations of the court's opinion in *Boul*); ADAMS & SEVITCH, CAL. FAM. L. REP. 2985 (1985) (discussion of refusal by the California Supreme Court to modify the *Boul* decision and limit the application of Civil Code § 4800.1 to cases tried before January 1, 1984); Comment, *Retroactive Application of California Civil Code Section 4800.1: Procedural Rule or Violation of Due Process?*, 16 PAC. L.J. 1007 (1985) (discussion of the constitutional implications of Civil Code § 4800.1).

Domestic Relations; discovery of federal income tax returns

Civil Code § 4700.7 (amended).

AB 3782 (Cortese); 1986 STAT. Ch. 707

Sponsor: The State Bar Conference of Delegates

Under existing law, state income tax returns¹ are subject to discovery in any child or spousal support proceeding.² In addition, the refusal to submit copies of state tax returns to a court is prohibited.³ Chapter 707 extends discovery in a child or spousal support proceeding to include federal income tax returns.⁴

SLP

1. CAL. CIV. CODE § 4700.7 (includes individual and joint returns).

2. *Id.* (a party may be examined about tax return contents by the other party). Discovery of tax returns is necessary to assure fair and adequate child and spousal support awards. See 2 C. MARKEY, CALIFORNIA FAMILY LAW § 23.12 (1986). State and federal tax returns are discoverable in proceedings to enforce child support obligations. *Miller v. Superior Court*, 71 Cal. App. 3d 145, 149, 139 Cal. Rptr. 521, 523-24 (1977). The discovery of federal tax returns, however, is limited to child support enforcement proceedings. *Id.* See also *Review of Selected 1985 California Legislation*, 17 PAC. L.J. 702 (1986) (discovery of state tax returns is permissible in child or spousal support proceedings).

3. CAL. CIV. CODE § 4700.7.

4. *Id.* A judge may retain a copy of a party's tax return if relevant to the case. If retained, the tax return must be sealed and maintained as a confidential record of the court. If the court finds the tax return is not relevant to disposition of the case, all copies of the tax return must be returned to the party who submitted the return. *Id.*

Domestic Relations; division of community property

Civil Code § 4800 (amended).

AB 351 (Waters); 1986 STAT. Ch. 215

Sponsor: Author

Support: Family Law Section of the California State Bar

Under existing law, community property¹ is liable for all debts² incurred³ by either spouse before or during marriage.⁴ In addition,

1. CAL. CIV. CODE §§ 687, 5110, 5120.020 (definitions of community property). The interests of both spouses in community property during marriage are present, existing, and equal. *Id.* § 5105.

2. *Id.* § 5120.030 (definition of debt).

3. *Id.* § 5120.040 (definition of incurred).

4. *Id.* § 5120.110(a). Community property is liable for a debt regardless of which spouse has management and control of the property, and regardless of whether one or both spouses

existing law provides that, when assigning debts in a marital dissolution or legal separation proceeding, the court must protect the rights of creditors, while assuring that the net division of the community estate⁵ is equal.⁶ Chapter 215 clarifies existing law by specifying that, in a marital dissolution or legal separation proceeding, community debts⁷ must be confirmed or divided in the following manner: (1) debts incurred before marriage must be confirmed without offset to the spouse who incurred them;⁸ (2) debts incurred after marriage but before separation must be divided equally;⁹ (3) debts incurred for the common necessities of life,¹⁰ after the date of separation but prior to entry of the dissolution judgment, must be confirmed¹¹ to either spouse according to the parties' respective needs and abilities to pay;¹² (4) debts for nonnecessaries,¹³ after the date

are parties to the debt or to a judgment for the debt. *Id.* Separate property of one spouse, however, is not liable for a debt incurred by the other spouse before or during marriage. *Id.* § 5120.130(b)(1); *see id.* §§ 5102, 5107, 5108 (definitions of separate property). In addition, a spouse's earnings during marriage are not liable for a debt incurred by the other spouse before marriage. *Id.* § 5120.110(b). *See also id.* § 5120.120 (quasi-community property is liable for a debt incurred by either spouse before or during marriage); *id.* § 4803 (definition of quasi-community property).

5. Under Chapter 215, community estate includes both community and quasi-community assets and liabilities of the parties. *Id.* § 4800(a).

6. *Id.* (unless the parties agree otherwise in writing, or by oral stipulation in open court, the community estate must be divided equally); *see id.* § 4800.6 (marital dissolution or legal separation judgments must contain a notice that if the spouse to whom the obligation was assigned defaults on the contract, the creditor may have a cause of action against the other spouse). *See also id.* § 4800(b) (procedures for division of a community estate); California Law Revision Commission, *Recommendation Relating to Liability of Marital Property for Debts*, 17 CAL. L. REV. COMM'N REP. 9, 23-24 (1984) (when assigning liabilities, the court must ensure sufficient property is available to satisfy the assigned debt); *In re Marriage of Schultz*, 105 Cal. App. 3d 846, 854, 164 Cal. Rptr. 653, 659 (1980) (when assets of a marriage exceed the liabilities, the court has no discretion to adjust division of property to reflect equitable considerations). If liabilities of a marriage exceed the assets, the court has authority to make an equitable assignment of liabilities. CAL. CIV. CODE § 4800(b)(4).

7. CAL. CIV. CODE § 4800(c) (community debts include any community estate debts that are unpaid at the time of trial, or that the community estate is liable for after trial).

8. *Id.* § 4800(c)(1). *See generally* 1 C. MARKEY, CALIFORNIA FAMILY LAW § 5.71 (1986) (spousal liability for debts incurred prior to marriage).

9. *See* CAL. CIV. CODE § 4800(c)(2). All separate debts, including those debts incurred by a spouse during marriage and before the date of separation that were not incurred for the benefit of the community, must be confirmed without offset to the spouse who incurred the debt. *Id.* § 4800(d). *See generally* 1 C. MARKEY, *supra* note 8, § 5.72(1)-(3) (spousal liability for debts incurred during marriage).

10. CAL. CIV. CODE § 4800(c)(3)(A) (includes the common necessities of either spouse or any minor children of the marriage).

11. Confirmation is required in the absence of a court order or written agreement for support or payment of these debts. *Id.*

12. *Id.* The parties' needs and abilities to pay are measured as of the time the debt was incurred. *Id.* *See generally* 1 C. MARKEY, *supra* note 8, § 5.72(4) (spousal liability for debts incurred after separation).

13. CAL. CIV. CODE § 4800(c)(3)(B) (nonnecessaries of that spouse or minor children of the marriage).

of separation but prior to entry of the dissolution judgment, must be confirmed without offset to the spouse who incurred the debt;¹⁴ and (5) debts incurred after entry of the dissolution judgment, but prior to termination of the marital status of the parties, must be confirmed without offset to the spouse who incurred the debt.¹⁵

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14. *Id.*

15. *Id.* § 4800(c)(4). The court has jurisdiction to order reimbursement for debts paid after separation but prior to trial, if appropriate. *Id.* § 4800(e).

Domestic Relations; division of community property— retirement plans

Civil Code § 4800.8 (new).

AB 3345 (McAlister); 1986 STAT. Ch. 686

Sponsor: Commission on the Status of Women

Support: California Federation of Business and Professional Women, Inc.

Existing law provides that in a legal separation or marital dissolution¹ proceeding, the court must divide community property² and quasi-community property³ equally among the parties, unless they have agreed or stipulated otherwise in open court.⁴ Under existing law, retirement benefits accumulated during marriage are community property subject to equal division at divorce.⁵ Prior case law, however, provided that a spouse's community property interest in the other

1. CAL. CIV. CODE § 4350 (methods of dissolution). *Id.* § 4501 (effect of dissolution of marriage).

2. *Id.* § 687 (definition of community property).

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

4. *Id.* § 4800(a).

5. *See, e.g., In re Brown*, 15 Cal. 3d 838, 841-42, 544 P.2d 561, 562-63, 126 Cal. Rptr. 633, 634-35 (1976) (pension rights, whether vested or not, represent a property interest and, to the extent that such property rights derive from employment during marriage, are a community asset subject to division in a dissolution proceeding); *Phillipson v. Board of Admin.*, 3 Cal. 3d 32, 40, 473 P.2d 765, 769, 89 Cal. Rptr. 61, 65 (1970) (retirement contributions withdrawn from an employee's salary, and employer contributions to the retirement fund, are community property); *Waite v. Waite*, 6 Cal. 3d 461, 469, 492 P.2d 13, 18, 99 Cal. Rptr. 325, 330 (1972) (pension benefits, as well as pension fund contributions, are community property subject to equal division).

spouse's benefits ended upon the death of either spouse.⁶ With the enactment of Chapter 686, the legislature intends to abolish the terminable interest rule,⁷ to permit retirement benefits to be divided equally.⁸ Chapter 686 authorizes a court to make whatever orders are necessary or appropriate to assure the equal division of any retirement benefits payable upon or after the death of either party.⁹ Additionally, Chapter 686 requires the court to order a spouse to elect a survivor benefit annuity, in any case in which a retirement plan provides for such an election.¹⁰

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6. *Benson v. City of Los Angeles*, 60 Cal. 2d 355, 360-61, 384 P.2d 649, 651-52, 33 Cal. Rptr. 257, 260 (1963) (a former spouse's interest in an employee spouse's retirement benefits exists only during the employee spouse's lifetime); *Waite v. Waite*, 6 Cal. 3d 461, 474, 492 P.2d 13, 21, 99 Cal. Rptr. 325, 333 (1972) (a spouse's right to a former spouse's retirement benefits is limited to the lifetime of the former spouse and is not an inheritable legacy).

7. See *Chirmside v. Board of Admin.*, 143 Cal. App. 3d 205, 208, 191 Cal. Rptr. 605, 606 (1983) (an interest in a retirement plan traceable to contribution of community funds or labor constitutes community property; but under the terminable interest rule, the interest of the nonparticipant spouse does not extend to benefits payable after the death of *either* spouse); *Estate of Allen*, 108 Cal. App. 3d 614, 616, 166 Cal. Rptr. 653, 654 (1980) (applying the terminable interest rule, the court held that the community property interest of the nonemployee spouse terminated at the nonemployee spouse's death).

8. 1986 Cal. Stat. ch. 686, sec. 2, at _____ (the legislature intends to abolish the terminable interest rule set forth in *Waite v. Waite* and *Benson v. City of Los Angeles*).

9. CAL. CIV. CODE § 4800.8(a) (private and public retirement plans must be divided equally).

10. *Id.* § 4800.8(b).

Domestic Relations; failure to assume child caretaker responsibilities

Civil Code § 4700 (amended).
AB 4380 (Hughes); 1986 STAT. Ch. 945
Sponsor: Author
Support: Department of Social Services

Under existing law, a court in a child support proceeding may order either or both parents to pay any amount necessary for the support, education, and maintenance of the child.¹ Existing law also

1. CAL. CIV. CODE § 4700(a). Both parents have an equal responsibility to support and educate their child. *Id.* § 196.

authorizes the court to determine the child custody² and visitation³ rights of each parent.⁴ Chapter 945 permits the court to order financial compensation for periods when a parent fails to assume caretaker responsibilities, in accordance with a custody or visitation order, or an oral or written agreement between the parents.⁵ In addition, Chapter 945 limits the financial compensation that may be awarded a parent to reasonable caretaking expenses incurred on behalf of the child, resulting from the other parent's failure to assume caretaker responsibility, or from a parent's thwarting of the other parent's efforts to exercise visitation or custody rights.⁶ Under Chapter 945, in order to recover expenses,⁷ the parent must allege, under penalty of perjury, a minimum of one hundred dollars in expenses,⁸ or allege the other parent missed at least three scheduled custodial or visitation periods within the six months prior to filing the motion or order for compensation.⁹ Furthermore, Chapter 945 provides the prevailing party may recover attorney's fees, upon a showing of the other parent's ability to pay.¹⁰

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2. *Id.* § 4600 (method by which the courts determine custody rights).

3. *Id.* § 4601 (reasonable visitation rights will be awarded to a parent unless such visitation would be detrimental to the best interests of the child).

4. *Id.* §§ 4600-4609.

5. *Id.* § 4700(b).

6. *Id.*

7. *Id.* (compensation may be requested by noticed motion or an order to show cause).

8. *Id.* (these expenses may include the value of caretaker services, but are not limited to the cost of services provided by a third party during the relevant period).

9. *Id.*

10. *Id.*

Domestic Relations; investigation of proposed guardians

Probate Code § 1513 (repealed and new); §§ 1513.1, 1516 (new); §§ 1540, 1600 (amended).

AB 3327 (Connelly); 1986 STAT. Ch. 1017

Sponsor: Author

Support: Family Law Section of California State Bar; Children's Lobby; The National Council of Jewish Women; The California Association of Court Investigators

Under prior law, in guardianship proceedings, the court could

request that a court investigator,¹ probation officer, or domestic relations investigator make an investigation of a proposed guardian and file with the court a written confidential report of the findings.² Chapter 1017 requires a court investigator³ to make an investigation and file a court report and recommendation concerning every proposed guardianship, unless waived by the court.⁴ The investigator's report is confidential and may be made available only to persons served in the proceedings and their attorneys.⁵

Existing law allows a parent of a ward to nominate a relative or nonrelative guardian.⁶ Under prior law, any guardian nominated by a parent of the ward was exempt from the suitability report required of all proposed nonrelative guardians.⁷ Chapter 1017 deletes the exemption from suitability reports for nonrelative guardians nominated by a parent.⁸

Existing law provides that a guardianship of a person terminates when the ward dies, marries, or attains majority.⁹ Chapter 1017 further provides that a guardianship terminates upon adoption of the ward.¹⁰

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1. 1979 Cal. Stat. ch. 726, sec. 3, at 2335 (enacting CAL. PROB. CODE § 1513(a)). See CAL. PROB. CODE § 1454 (court investigator defined).

2. 1979 Cal. Stat. ch. 726, sec. 3, at 2335 (enacting CAL. PROB. CODE § 1513(a)).

3. CAL. PROB. CODE § 1513(a) (including probation officers and domestic relations officers). Under Chapter 1017, relative guardians are investigated by a probate court investigator, and nonrelative guardians are investigated by the county agency designated to investigate potential dependency. *Id.*

4. *Id.* The report must include (1) a social history of the guardian; (2) a social history of the proposed ward, including an assessment of any special needs and the proposed guardian's ability to meet those needs; (3) an assessment of the relationship between the proposed guardian and ward; and (4) the duration of the guardianship, and any plans for provision of a stable and permanent home for the ward (may be waived for relative guardians). *Id.* § 1513(a)(1)-(4).

5. *Id.* § 1513(d). A copy of the petition for guardianship and a notice of the hearing must be mailed by the petitioner to the State Director of Social Services in Sacramento at least 15 days prior to the hearing. The proposed guardian's name will be screened for prior referrals of neglect or abuse of minors, and results of the screening will be provided to the court. *Id.* § 1516. Any party to the proceedings may call and examine the court investigator who prepared the report. In addition, the court must read and consider the report prior to ruling on the petition for guardianship. *Id.* § 1513(b).

6. *Id.* § 1500.

7. 1980 Cal. Stat. ch. 246, sec. 4.1, at 492 (amending CAL. PROB. CODE § 1540). A suitability report, similar to that required of potential foster parents, is required of proposed nonrelative guardians. CAL. PROB. CODE § 1543.

8. CAL. PROB. CODE § 1540.

9. *Id.* § 1600(a), (b).

10. *Id.* § 1600(b).

Domestic Relations; legal separation by default—proof of grounds

Civil Code § 4511 (amended).
SB 1719 (Ellis); 1986 STAT. Ch. 143

Existing law requires that, in a marital dissolution¹ granted because of a default,² proof³ of the grounds for the dissolution be given either by affidavit⁴ or in a personal appearance before the court.⁵ If proof is given by affidavit, a personal appearance is required only in special circumstances.⁶ Chapter 143 extends this expedited proof procedure to legal separation⁷ proceedings in which a party defaults.⁸

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1. CAL. CIV. CODE § 4506 (grounds for dissolution).
 2. CAL. CIV. PROC. CODE § 585 (definition of default judgment).
 3. CAL. EVID. CODE § 190 (definition of proof).
 4. CAL. CIV. PROC. CODE § 2003 (definition of affidavit).
 5. CAL. CIV. CODE § 4511(a). No dissolution decree will be granted upon the default of one of the parties or upon any statement or finding of fact made by a referee. *Id.* The affiants must stipulate in the affidavit that they understand the affidavit will be used as proof and that they need not appear unless ordered by the court. *Id.* § 4511(c). See CAL. R. CT. 1237 (default in family law proceedings). See also *In re McKim*, 6 Cal. 3d 673, 682, 493 P.2d 868, 873, 100 Cal. Rptr. 140, 146 (1972) (proof of grounds for default marital dissolution may be by affidavit, in lieu of a personal appearance in exceptional circumstances). See generally 6 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Husband and Wife* § 108 (8th ed. 1974 & Supp. 1984) (summary of default procedure); *Review of Selected 1980 California Legislation*, 12 PAC. L.J. 380 (1981) (discussion of proof by affidavit or personal appearance in default dissolution proceedings).
 6. CAL. CIV. CODE § 4511(b). A personal appearance is required only if the court finds that (1) reconciliation is reasonably possible, (2) a proposed child custody order is not in the child's best interests, (3) a child support order is less than a noncustodial parent is capable of paying, or (4) personal appearance is in the best interests of justice. *Id.*
 7. *Id.* § 4506 (grounds for legal separation).
 8. *Id.* § 4511(a).

Domestic Relations; paternity tests—rebuttable presumption

Evidence Code § 895.5 (new).

AB 3326 (Moore); 1986 STAT. Ch. 629

Sponsor: Author

Support: California Family Support Council; Department of Social Services

Existing law provides that in any civil action¹ in which paternity is a relevant fact, the court may order the mother, child, and the alleged father to submit to blood tests.² If all experts³ agree that the blood tests are conclusive, and the alleged father is not the natural father, the question of paternity is resolved accordingly.⁴ If the experts disagree in their findings, or the tests show a probability of the alleged father's paternity, the question must be submitted upon all the evidence,⁵ including the blood tests.⁶ Under existing law, the plaintiff has the burden of proving⁷ all allegations.⁸ With the enact-

1. CAL. EVID. CODE § 120 (definition of civil action).

2. *Id.* § 892. The court may order blood tests upon the suggestion of any person whose blood is involved, or on the court's own initiative, and must order blood tests upon the motion of any party, if the testing would not delay the proceedings unduly. If any party refuses to submit to such tests, the court may resolve the question of paternity against the noncomplying party, or enforce the court order for blood testing, if the rights of others and the interest of justice so require. *Id.* See generally Peterson, *A Few Things You Should Know About Paternity Tests (But Were Afraid to Ask)*, 22 SANTA CLARA L. REV. 667 (1982) (discussion of how blood tests work, and what the calculations mean and do not mean).

3. The tests are made by court-appointed experts qualified as examiners of blood types. The experts must testify to their findings in court and are subject to cross-examination by the parties. In addition, any person who suggests that the tests be ordered may also demand the court to order other qualified experts to perform independent tests which may be offered as evidence. CAL. EVID. CODE § 893. See *Fresno County v. Superior Court*, 92 Cal. App. 3d 133, 137, 154 Cal. Rptr. 660, 662 (1979) (court has no discretion to deny Human Leukocyte Antigen testing upon demand by any party).

4. CAL. EVID. CODE § 895. See *Hodge v. Gould*, 274 Cal. App. 2d 806, 808, 79 Cal. Rptr. 245, 246 (1969) (blood tests may be used to exclude a defendant as a possible father, but no inference or presumption of paternity arises from the mere fact that such tests fail to exclude the defendant). See generally *Review of Selected 1981 California Legislation*, 13 PAC. L.J. 669 (1982) (analysis of Evidence Code § 895 as amended).

5. CAL. EVID. CODE § 140 (definition of evidence).

6. *Id.* § 895. See generally Comment, *A Survey of Blood Group Decisions and the Legislature in the American law of Evidence*, 16 S. CAL. L. REV. 161 (1942-43) (historical view of admissibility and weight of blood grouping evidence); Dodson, *Human Leukocyte Antigen Testing: Technology Versus Policy in Cases of Disputed Parentage*, 36 VAND. L. REV. 1556 (1983) (history and admissibility of blood tests in legal settings); 2 B. WITKIN, CALIFORNIA EVIDENCE § 871 (3d ed. 1986) (discussion of prior law and the California enactment of the Uniform Act on Blood Tests to Determine Paternity).

7. CAL. EVID. CODE § 115 (definition of burden of proof).

8. *Bragg v. District of Columbia*, 98 A.2d 784, 785 (D.C. Ct. App. 1955) (the burden is on the plaintiff to prove all material allegations in the information). See CAL. EVID. CODE § 500 (except as otherwise provided by law, a party has the burden of proof as to each fact

ment of Chapter 629, the legislature intends to standardize the process by which paternity is established, to achieve a greater degree of equity and consistency in determining paternity.⁹ Under Chapter 629, if the court finds the paternity index,¹⁰ as calculated by qualified experts,¹¹ is 100 or greater, a rebuttable presumption¹² is created and the burden of proof shifts to the putative father.¹³ This presumption is only rebuttable by a preponderance of the evidence.¹⁴

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the existence or nonexistence of which is essential to the claim for relief or the defense being asserted). *See also* Walsh v. Palma, 154 Cal. App. 3d 290, 293, 201 Cal. Rptr. 142, 144 (1984) (in a suit to establish paternity, the plaintiff must prove by a preponderance of the evidence that the defendant is the father of the child).

9. 1986 Cal. Stat. ch. 629, sec. 1, at _____. Chapter 629 was enacted in response to a finding by the legislature that the science of genetic testing has advanced to the degree that paternity determinations resulting from such testing are so reliable that the burden of proof can be shifted to the putative father. *Id.*

10. Paternity index means the commonly accepted indicator used for denoting the existence of paternity. The index represents the mathematically computed probability that the putative father is the true father of the child. CAL. EVID. CODE § 895.5(b)(2).

11. *See supra* note 3. The experts must be qualified as examiners of genetic markers. CAL. EVID. CODE § 895.5(a). *See id.* § 895.5(b)(1) (definition of genetic markers).

12. CAL. EVID. CODE § 601 (classifications of presumptions).

13. *See id.* § 895.5(a). *See also id.* §§ 605 (a presumption affecting the burden of proof is designed to implement a public policy, such as the policy in favor of establishment of a parent and child relationship); 606 (the effect of a presumption affecting the burden of proof is to impose upon the party against whom the presumption operates the burden of proof as to the nonexistence of the presumed fact).

14. *Id.* § 895.5(a).

Domestic Relations; Revised Uniform Reciprocal Enforcement of Support Act

Code of Civil Procedure § 1654 (amended).

AB 2306 (Wright); 1986 STAT. Ch. 183

Sponsor: California Family Support Council

Support: Commission on the Status of Women

Prior to the enactment of Chapter 183, the law was unclear regarding the power of courts to award attorney's fees in actions brought to enforce child support orders¹ against an obligor-parent,²

1. CAL. CIV. PROC. CODE § 1653(k) (definition of support order).

2. *Id.* § 1653(g) (definition of obligor).

who had moved from the state³ of the obligee-parent,⁴ pursuant to the Revised Uniform Reciprocal Enforcement of Support Act of 1968 (RURESA).⁵ Chapter 183 clarifies existing law by prohibiting courts from awarding attorney's fees in actions brought under RURESA.⁶ A court retains the power to award attorney's fees, however, when the opposing party has not litigated the action in good faith.⁷

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3. *Id.* § 1653(j) (definition of state).

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

5. *Compare Viner v. Utrecht*, 26 Cal. 2d 261, 272, 158 P.2d 3, 9 (1945) (general rule is that attorney's fees are not recoverable from the opposing party either as costs or damages, unless there is statutory or contractual authority to the contrary) with CAL. CIV. CODE § 4370(c) (directing courts to award attorney's fees to a custodial parent in actions to enforce existing child support orders) and *Review of Selected 1979 California Legislation*, 11 PAC. L.J. 481, 482 (1980) (arguing that while RURESA does not specifically authorize awarding attorney's fees to the obligee, Civil Code § 4370 requires the court to award such fees in a RURESA action that is brought to enforce an existing child support order) and *Lindholtz v. Lindholtz*, No. 738684 Dept. 25 (Cal. Super. Ct. Aug. 21, 1984) (endorsing award of attorney's fees in connection with action brought under RURESA). "The primary purpose of [RURESA] is to provide a person in one state with the means expeditiously to secure money for support from a person residing in another state who is legally liable for support." *Banks v. McMorris*, 47 Cal. App. 3d 723, 728, 121 Cal. Rptr. 185, 189 (1975). See also CAL. CIV. PROC. CODE § 1652 (purpose of the Act). See generally Comment, *Enforcement of Child Support Obligations of Absent Parents—Social Services Amendments of 1974*, 30 Sw. L.J. 625, 629-31 (1976) (discussing RURESA as an approach to collect child support payments from parents who have left the state).

6. CAL. CIV. PROC. CODE § 1654(b). This provision states that attorney's fees may not be awarded, notwithstanding subdivision (a) of § 1654 of the Civil Procedure Code, which provides that the remedies available pursuant to RURESA are in addition to and not in substitution for any other remedies. *Id.*

7. *Id.* § 1654(b).

Domestic Relations; spousal support

Civil Code § 4801 (amended).

SB 2153 (Marks); 1986 STAT. Ch. 1096

Sponsor: Commission on the Status of Women

Support: California National Organization of Women

Existing law provides that in a legal separation or marital dissolution proceeding, the court may order one spouse to financially support the other to the extent that the court deems just and reasonable.¹ Existing law also requires the court, when awarding

1. CAL. CIV. CODE § 4801(a). The amount and duration of support are determined by the court. *Id.*

spousal support, to consider the earning capacity of each spouse, taking into account certain circumstances.² Chapter 1096 expands existing law by requiring the court to consider the following factors when determining the earning capacity of each spouse: (1) the marketable skills of the supported spouse;³ (2) the job market for those skills;⁴ (3) the time and expenses required to acquire the appropriate education or training to develop those skills;⁵ (4) the possible need for retraining or education to develop other, more marketable skills or employment;⁶ and (5) the extent to which the supported spouse contributed to the attainment of the career position of the other spouse.⁷

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2. *Id.* § 4801(a)(1). When considering the earning capacity of each spouse, a court will take into account (1) the impairment of the supported spouse's earning capacity due to periods of unemployment incurred to devote time to domestic duties; (2) the extent to which the supported spouse contributed to the attainment of an education, training, or a license by the other spouse; (3) the needs of each party; (4) the obligations and assets of each party; (5) the duration of the marriage; (6) the degree to which possible employment of the supported spouse would interfere with responsibility relating to the custody of dependent children; (7) the age and health of the parties; (8) the standard of living of the parties; (9) the time required for the supported spouse to acquire marketable skills; and (10) any other just and equitable factors. *Id.* § 4801(a)(1)-(9).

3. *Id.* § 4801(a)(1)(A).

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.* See *id.* § 4801(a)(1)(C).