

Memorandum 93-6

Subject: F-1001 — Family Code Generally (Miscellaneous Revisions)

Attached to this memorandum are drafts of some additional technical revisions that need to be included in the 1993 Family Code bill.

The Family Code bill is currently being prepared in proper form by the Legislative Counsel Bureau. Assemblywoman Jackie Speier will carry the bill. After we get the bill draft back from Legislative Counsel, we will add any additional minor and technical Family Code revisions approved by the Commission at the January meeting, including the technical material on custody and domestic violence, if approved. It is possible that either or both of the custody and domestic violence reorganizations may be placed in separate bills, depending on the way the legislative winds are blowing. For example, if a legislator is working on legislation in the custody area, it might be best to use that bill as a vehicle for the custody reorganization, assuming no objection from Assemblywoman Speier. Similarly, a legislator interested in domestic violence legislation might want to carry the domestic violence reorganization. We have also been contacted by legislative staff in an effort to coordinate revisions to Penal Code Sections 12031, 12076, and 12078 that will be made in bill authored by Assembly Member Murray. We anticipate that there will be a need to work with many legislative members during this session to coordinate their amendments with the Commission's cleanup bill.

Implementation of 1992 Family Law Bills

Several earlier memorandums have presented technical revisions of the Family Code necessary to carry 1992 family law bills into the new code. Since the Family Code is subject to a one-year delayed operative date, 1992 bills were directed toward statutes such as the Family Law Act (Civ. Code §§ 4000 *et seq.*), which are repealed by the Family Code legislation. In addition, many of the conforming revisions to the Family Code (in AB 2641, 1992 Cal. Stat. ch. 163) were chaptered out by other legislation last year and need to be restored before the new code becomes operative. A table of 1992 bills involved in this process is attached as Exhibit 1. (See Exhibits pp. 1-6.)

Civil Code Sections 4800.1 and 4800.2 and the Hilke Case

Civil Code Sections 4800.1 and 4800.2 were enacted on recommendation of the Law Revision Commission in 1983. The statutes ensure that a married person who puts separate property in joint form with a spouse will be reimbursed for the separate property contribution at dissolution of marriage, and that any appreciation in the jointly-held property will be divided equally.

The statutes were intended to apply retroactively to property acquired before their operative date, even if litigation to divide the property was pending on the operative date. The California cases, beginning with *In re Marriage of Buol*, 39 Cal. 3d 751 (1985) and *In re Marriage of Fabian*, 41 Cal. 3d 440 (1986), have consistently held that these statutes can only be applied to property acquired after their operative date, and there have been dozens of appellate court cases now following them. In redrafting these statutes for the Family Code, we finally threw in the towel on the retroactivity issue and, acceding to the cases, wrote the statutes so they would only apply to property acquired after their operative date. See Fam. Code § 2580.

Now comes the *Hilke* case (copy attached to Memorandum 93-10), in which the California Supreme Court does an about face and holds that Civil Code Section 4800.1 is intended to and does in fact apply retroactively to property acquired before its operative date. The court distinguishes the earlier Supreme Court decisions by limiting them to their facts — they involved litigation where an appeal was pending on the operative date of the new law.

In light of this reversal, it is important to restore the retroactivity language of Civil Code Sections 4800.1 and 4800.2 to the Family Code. This will preserve existing law, which was our central purpose in compiling the Family Code. Proposed amendments to accomplish this are attached as Exhibit 2. (See Exhibits pp. 7-10.)

Inclusion of 1992 Legislation in Family Code (Final Installment)

Also attached are the final exhibits in the series implementing 1992 family law legislation in the Family Code. (See Exhibits p. 11 *et seq.*) The first 29 exhibits were attached to Memorandums 92-33 and 92-66. (For ease of reference, the exhibit and page numbers continue from the exhibits attached to Memorandum 92-66, which left off at Exhibit 29 and page 158.)

<u>Ex.</u>	<u>Bill #</u>	<u>Ch. #</u>	<u>Author</u>
30.	SB 1148	Ch. 1353	Bergeson
31.	SB 1959	Ch. 849	Hart
32.	SB 1614	Ch. 848	Hart
33.	AB 3399	Ch. 356	Speier

Exhibit 34 contains a number of miscellaneous amendments necessitated by 11 other bills that chaptered out Family Code legislation.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

EXHIBIT 1

1992 LEGISLATION RELEVANT TO AB 2650 & AB 2641

Staff Note. This table is sorted on the third column, "Section Affected."

<i>Bill</i>	<i>Ch.</i>	<i>Section Affected</i>	<i>Disposition</i>	<i>Notes</i>
<i>SB 1343</i>	<i>919</i>			<i>Contingent on SB 25 (vetoed)</i>
<i>AB 3696</i>	<i>934</i>			<i>Contingent on SB 25 (vetoed)</i>
<i>AB 2762</i>	<i>1209</i>			<i>Contingent on SB 25 (vetoed)</i>
<i>AB 92</i>	<i>vetoed</i>			
<i>SB 794</i>	<i>vetoed</i>			
<i>SB 937</i>	<i>vetoed</i>			
<i>SB 1148</i>	<i>1353</i>	<i>B&P § 4996.21 (am)</i>	<i>Ex 30, M.93-6</i>	
<i>AB 3353</i>	<i>252</i>	<i>CC § 25.9 (am)</i>	<i>Ex 14, M.92-33</i>	
<i>SB 2016</i>	<i>821</i>	<i>CC § 64 (am)</i>	<i>Ex 26, M.92-66</i>	
<i>SB 2016</i>	<i>821</i>	<i>CC § 65 (am)</i>	<i>Ex 26, M.92-66</i>	
<i>AB 568</i>	<i>718</i>	<i>CC § 196.5 (am)</i>	<i>Ex 22, M.92-66</i>	
<i>SB 1148</i>	<i>1353</i>	<i>CC § 220.15 (add)</i>	<i>Ex 30, M.93-6</i>	
<i>AB 2887</i>	<i>472</i>	<i>CC § 220.20 (am)</i>	<i>Ex 18, M.92-33</i>	<i>Chaptered-out by SB 1148</i>
<i>SB 1148</i>	<i>1353</i>	<i>CC § 220.20 (am)</i>	<i>Ex 30, M.93-6</i>	<i>Chapters out AB 2887</i>
<i>SB 1148</i>	<i>1353</i>	<i>CC § 221.05 (add)</i>	<i>Ex 30, M.93-6</i>	
<i>SB 1148</i>	<i>1353</i>	<i>CC § 221.07 (add)</i>	<i>Ex 30, M.93-6</i>	
<i>AB 3456</i>	<i>667</i>	<i>CC § 222.10 (am)</i>	<i>Ex 24, M.92-66</i>	
<i>SB 1564</i>	<i>455</i>	<i>CC § 222.71 (add)</i>	<i>Ex 17, M.92-33</i>	
<i>SB 1148</i>	<i>1353</i>	<i>CC § 224.21 (add)</i>	<i>Ex 30, M.93-6</i>	
<i>SB 1148</i>	<i>1353</i>	<i>CC § 224.24 (add)</i>	<i>Ex 30, M.93-6</i>	
<i>SB 1148</i>	<i>1353</i>	<i>CC § 224.26 (add)</i>	<i>Ex 30, M.93-6</i>	
<i>SB 1148</i>	<i>1353</i>	<i>CC § 224.30 (am)</i>	<i>Ex 30, M.93-6</i>	
<i>SB 1148</i>	<i>1353</i>	<i>CC § 224.36 (am)</i>	<i>Ex 30, M.93-6</i>	

<i>Bill</i>	<i>Ch.</i>	<i>Section Affected</i>	<i>Disposition</i>	<i>Notes</i>
SB 1148	1353	CC § 224.44 (add)	Ex 30, M.93-6	
AB 3355	427	CC § 224.50 (am)	----->	Self-repealing. [What change?]
SB 1148	1353	CC § 224.62 (add)	Ex 30, M.93-6	
SB 1148	1353	CC § 224.63 (add)	Ex 30, M.93-6	
SB 1148	1353	CC § 224.64 (add)	Ex 30, M.93-6	
AB 2840	435	CC § 226.23 (am)	Ex 34, M.93-6	
AB 2840	435	CC § 226.69 (add)	Ex 34, M.93-6	
AB 2887	472	CC § 227.20 (am)	Ex 18, M.92-33	
AB 2887	472	CC § 227.30 (am)	Ex 18, M.92-33	
AB 2887	472	CC § 227.40 (am)	Ex 18, M.92-33	
AB 2887	472	CC § 227.46 (am)	Ex 18, M.92-33	
AB 2887	472	CC § 227.50 (am)	Ex 18, M.92-33	
AB 2887	472	CC § 233 (am)	Ex 18, M.92-33	
SB 370	46	CC § 246 (rep)	Ex 1, M.92-33	
AB 1101	318	CC § 4100 (am)	Ex 4, M.92-33	
AB 1101	318	CC § 4200 (am)	Ex 4, M.92-33	
AB 1101	318	CC § 4202 (am)	Ex 4, M.92-33	
AB 1101	318	CC § 4203 (am)	Ex 4, M.92-33	
AB 1101	318	CC § 4204 (am)	Ex 4, M.92-33	
AB 1101	318	CC § 4206 (am)	Ex 4, M.92-33	
AB 1101	318	CC § 4208 (am)	Ex 4, M.92-33	
AB 1101	318	CC § 4210 (am)	Ex 4, M.92-33	
AB 1101	318	CC § 4213 (am)	Ex 4, M.92-33	
AB 1101	318	CC § 4216 (am)	Ex 4, M.92-33	
SB 1614	848	CC § 4357.5 (am)	Ex 32, M.93-6	
SB 1541	1136	CC § 4359 (am)	See M.92-67	
AB 3399	356	CC § 4370.5 (am)	Ex 33, M.93-6	
AB 3399	356	CC § 4372 (add)	Ex 33, M.93-6	
AB 3399	356	CC § 4373 (add)	Ex 33, M.93-6	
AB 568	718	CC § 4384.5 (rep/add)	Ex 22, M.92-66	

<i>Bill</i>	<i>Ch.</i>	<i>Section Affected</i>	<i>Disposition</i>	<i>Notes</i>
SB 1614	848	CC § 4390 (am)	Ex 32, M.93-6	
SB 1614	848	CC § 4390.3 (am)	Ex 32, M.93-6	
SB 1680	1157	CC § 4395 (add)	Ex 27, M.92-66	
AB 3355	427	CC § 4602 (am)	Ex 34, M.93-6	What change?
SB 1541	1136	CC § 4612 (add)	See M.92-60/1s	
AB 1394	50	CC § 4700.11 (am)	Ex 12, M.92-33	
SB 1614	848	CC § 4702 (am)	Ex 32, M.93-6	
SB 1614	848	CC § 4720 (am)	Ex 32, M.93-6	Chapters out SB 370
SB 370	46	CC § 4720 (rep/add)	Ex 1, M.92-33	Chaptered-out by SB 1614
SB 370	46	CC § 4720.1 (rep)	Ex 1, M.92-33	
SB 370	46	CC § 4720.2 (rep)	Ex 1, M.92-33	
SB 1614	848	CC § 4721 (am)	Ex 32, M.93-6	Chapters out SB 370
SB 370	46	CC § 4721 (rep/add)	Ex 1, M.92-33	Chaptered-out by SB 1614
SB 1614	848	CC § 4722 (am)	Ex 32, M.93-6	Chapters out SB 370
SB 370	46	CC § 4722 (rep/add)	Ex 1, M.92-33	Chaptered-out by SB 1614
SB 370	46	CC § 4723 (rep)	Ex 1, M.92-33	
SB 370	46	CC § 4724 (rep)	Ex 1, M.92-33	
SB 370	46	CC § 4725 (rep)	Ex 1, M.92-33	
SB 370	46	CC § 4727 (rep)	Ex 1, M.92-33	
SB 370	46	CC § 4728 (rep)	Ex 1, M.92-33	
SB 370	46	CC § 4728.5 (rep)	Ex 1, M.92-33	
SB 370	46	CC § 4729 (rep)	Ex 1, M.92-33	
SB 370	46	CC § 4730 (rep)	Ex 1, M.92-33	
SB 1817	411	CC § 4760 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4761 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4762 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4763 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4764 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4765 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4766 (rep/add)	Ex 13, M.92-33	

<i>Bill</i>	<i>Ch.</i>	<i>Section Affected</i>	<i>Disposition</i>	<i>Notes</i>
SB 1817	411	CC § 4767 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4768 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4769 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4770 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4771 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4772 (rep/add)	Ex 13, M.92-33	
SB 1817	411	CC § 4773 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4774 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4775 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4776 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4777 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4778 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4778.5 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4779 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4780 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4781 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4782 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4783 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4784 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4785 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4786 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4787 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4788 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4789 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4790 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4791 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4792 (add)	Ex 13, M.92-33	
SB 1817	411	CC § 4793 (add)	Ex 13, M.92-33	
AB 1437	37	CC § 4800.10 (add) C/O	----->	Chaptered-out by AB 3399
AB 3399	356	CC § 4800.10 (am)	Ex 33	Chapters out AB 1437

<i>Bill</i>	<i>Ch.</i>	<i>Section Affected</i>	<i>Disposition</i>	<i>Notes</i>
AB 1396	36	CC § 4800.11 (add) C/O	----->	Chaptered-out by AB 3399
AB 3399	356	CC § 4800.11 (am)	Ex 33	Chapters out AB 1396
AB 3630	159	CC § 4800.6 (am)	Ex 9, M.92-33	
SB 2018	431	CC § 4800.8 (am)	Ex 16, M.92-33	Chapters out SB 1129
SB 1129	176	CC § 4800.8 (am) C/O	----->	Chaptered-out by SB 2018
AB 3355	427	CC § 4801 (am)	Ex 34, M.93-6	
AB 1719	51	CC § 5110.740 (am)	Ex 3, M.92-33	
AB 3399	356	CC § 5127 (am)	Ex 33, M.93-6	
SB 804	392	CC § 5152 (am)	Ex 10, M.92-33	
SB 804	392	CC § 5157 (am)	Ex 10, M.92-33	
SB 804	392	CC § 5158 (am)	Ex 10, M.92-33	
AB 1296	559	CC § 7004 (am)	Ex 19, M.92-33/1s	Chaptered-out by SB 1959
SB 1959	849	CC § 7004 (am)	Ex 31, M.93-6	Chapters out AB 1296
SB 1541	1136	CC § 7009 (add)	See M.92-60/1s	
SB 1541	1136	CC § 7020 (am)	See M.92-67	
SB 1541	1136	CCP § 545.5 (am)	See M.92-67	
SB 1541	1136	CCP § 547.7 (add)	See M.92-67	
AB 2634	149	CCP § 548 (am)	Ex 8, M.92-33	
AB 568	718	CCP § 683.130 (am)	Ex 22, M.92-66	
SB 1372	283	CCP § 699.560 (am)	Ex 2, M.92-33	
SB 1530	851	CCP § 704.114 (am)	Ex 29, M.92-66	
SB 1614	848	CCP § 704.160 (am)	Ex 32, M.93-6	Ref to CC § 4390 <i>et seq.</i>
SB 1614	848	CCP § 1699 (am)	Ex 32, M.93-6	Ref to CC § 4390 <i>et seq.</i>
SB 1804	615	CCP § 2032 (am)	Ex 34, M.93-6	Done
SB 1885	1166	Educ C. § 22253 (add)	Ex 25, M.92-66	
SB 1885	1166	Educ C. § 22253.5 (add)	Ex 25, M.92-66	
SB 1885	1166	Educ C. § 22401.6 (add)	Ex 25, M.92-66	
SB 1885	1166	Educ C. § 22401.7 (add)	Ex 25, M.92-66	
SB 1959	849	Evid C § 621.1 (add)	Ex 31, M.93-6	
SB 1530	851	Evid C § 895.5 (am)	Ex 29, M.92-66	

<i>Bill</i>	<i>Ch.</i>	<i>Section Affected</i>	<i>Disposition</i>	<i>Notes</i>
SB 1614	848	GC § 6159 (am)	Ex 32, M.93-6	“Child or spousal support”
AB 2809	751	GC § 21215 (am)	Ex 34, M.93-6	Done
AB 1344	696	GC § 26840.3 (am)	Ex 34, M.93-6	Done
<i>SB 5</i>	<i>916</i>	<i>GC § 26840.8 (am)</i>	----->	<i>Already refers to FC op. 1/1/94</i>
SB 1129	176	GC § 75050 (am)	Ex 5, M.92-33	
AB 1344	696	GC § 77003 (am)	Ex 34, M.93-6	Done
SB 1420	360	H&S § 10605 (am)	Ex 7, M.92-33	
<i>SB 1545</i>	<i>183</i>	<i>Penal C § 273.5 (am)</i>	<i>Ex 6, M.92-33</i>	<i>Chaptered out by AB 2439</i>
AB 2439	184	Penal C § 273.5 (am)	Ex 34, M.93-6	Chapters out SB 1545
AB 2439	184	Penal C § 273.6 (am)	Ex 34, M.93-6	
AB 1101	318	Penal C § 360 (am)	Ex 4, M.92-33	
AB 2628	863	Penal C § 977 (am)	Ex 23, M.92-66	
AB 3544	475	Penal C § 1377 (am)	Ex 15, M.92-33	Reference to CCP § 542
AB 3773	1227	Penal C § 11105.3 (am)	Ex 34, M.93-6	Done
AB 3491	316	Penal C § 11167 (am)	Ex 11, M.92-33	
<i>SB 1184</i>	<i>1338</i>	<i>Penal C § 11170 (am)</i>	----->	<i>Already refers to FC op. 1/1/94</i>
SB 1541	1136	Penal C § 12028.5 (am)	See M.92-67	
AB 3552	<i>1326</i>	<i>Penal C § 12070 (am)</i>	----->	<i>Murray bill (Nowick 12/16/92)</i>
AB 3552	1326	Penal C § 12076 (am)	----->	DVPA cross-references. Murray?
AB 3552	<i>1326</i>	<i>Penal C § 12078 (am)</i>	----->	<i>Murray bill (Nowick 12/16/92)</i>
AB 3589	1223	R&T § 19001 (add)	Ex 28, M.92-66	
SB 1564	455	W&I § 361.5 (am)	Ex 17, M.92-33	
SB 1741	288	W&I § 366.2 (am)	Ex 34, M.93-6	Done
AB 1394	50	W&I § 903 (am)	Ex 12, M.92-33	Ref to CC § 4720 <i>et seq.</i>
AB 973	1192	W&I § 11478 (am)	Ex 21, M.92-66	
AB 973	1192	W&I § 11478.1 (am)	Ex 21, M.92-66	
AB 973	1192	W&I § 11478.5 (am)	Ex 21, M.92-66	
SB 1614	848	W&I § 11478.8 (am)	Ex 32, M.93-6	Relevant to DA enforcement.
AB 1773	939	W&I § 12300 (am)	Ex 34, M.93-6	Done
SB 485	722	W&I § 16120 (am)	Ex 34, M.93-6	Done

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EXHIBIT 2

Civil Code Sections 4800.1 and 4800.2 and the *Hilke* Case

Fam. Code § 2580 (repealed). Community property presumption for property held in joint form

SEC. _____. Section 2580 of the Family Code is repealed.

2580. (a) For the purpose of division of property upon dissolution of marriage or legal separation of the parties:

(1) Property acquired by the parties during marriage on or after January 1, 1984, and before January 1, 1987, in joint tenancy form is presumed to be community property.

(2) Property acquired by the parties during marriage on or after January 1, 1987, in joint form, including property held in tenancy in common, joint tenancy, tenancy by the entirety, or as community property is presumed to be community property.

(b) The presumptions under subdivision (a) are presumptions affecting the burden of proof and may be rebutted by either of the following:

(1) A clear statement in the deed or other documentary evidence of title by which the property is acquired that the property is separate property and not community property.

(2) Proof that the parties have made a written agreement that the property is separate property.

(c) Nothing in this section affects the character of property acquired by married persons that is not described in subdivision (a).

Interim Comment. Section 2580 is repealed and restated in Section 2581.

Fam. Code § 2580 (added). Legislative findings and declarations

SEC. _____. Section 2580 is added to the Family Code, to read:

2580. The Legislature hereby finds and declares as follows:

(a) It is the public policy of this state to provide uniformly and consistently for the standard of proof in establishing the character of property acquired by spouses during marriage in joint title form, and for the allocation of community and separate interests in that property between the spouses.

(b) The methods provided by case and statutory law have not resulted in consistency in the treatment of spouses' interests in property which they hold in joint title, but rather, have created confusion as to which law applies at a particular point in time to property, depending on the form of title, and, as a result, spouses

cannot have reliable expectations as to the characterization of their property and the allocation of the interests therein, and attorneys cannot reliably advise their clients regarding applicable law.

(c) Therefore, the Legislature finds that a compelling state interest exists to provide for uniform treatment of property; thus the Legislature intends that former Sections 4800.1 and 4800.2 of the Civil Code, as operative on January 1, 1987, and as continued in Sections 2580 and 2640 of this code, apply to all property held in joint title regardless of the date of acquisition of the property or the date of any agreement affecting the character of the property, and that those sections apply in all proceedings commenced on or after January 1, 1984. However, those sections do not apply to property settlement agreements executed before January 1, 1987, or proceedings in which judgments were rendered before January 1, 1987, regardless of whether those judgments have become final.

Comment. Section 2580 continues subdivision (a) of former Civil Code Section 4800.1 without substantive change. *Cf.* Marriage of Hilke [citation]. The references to both the former Civil Code provisions (Sections 4800.1 and 4800.2, repealed by 1992 Cal. Stat. ch. 162, § 3, operative Jan. 1, 1994) and their Family Code successors is consistent with Section 2 (“A provision of this code, insofar as it is substantially the same as a previously existing provision relating to the same subject matter, shall be considered as a restatement and continuation thereof and not as a new enactment.”)

Under Section 2581, all property held in joint form by the spouses is presumed to be community property, absent a written agreement otherwise. Under Section 2640, all community property is divided subject to a right of reimbursement for separate property contributions, absent an express agreement otherwise. When enacted in 1983 (as former Civil Code Sections 4800.1 and 4800.2), these provisions were intended to remedy the rank injustice in former law that resulted from the following two factors:

(1) The Supreme Court’s interpretation of former law in the *Lucas* case of the community property presumption for a joint tenancy single-family residence to find a gift of separate funds used to acquire a community asset absent an express agreement otherwise. See *In re Marriage of Lucas*, 27 Cal. 3d 808, 614 P.2d 285, 166 Cal. Rptr. 853 (1980). The *Lucas* decision was widely considered to cause injustice to persons who contributed their separate funds for use by the community and then lost the funds entirely to the community at dissolution of marriage. Often the parties were unaware that taking title in joint tenancy had the effect of making a gift of the separate property to the community.

(2) The rule that a spouse could disprove the community property presumption for a joint tenancy single-family residence under former law by evidence of an oral agreement that the residence is separate property. This rule promoted actions characterized by conflicting and inconsistent testimony, with each side offering different explanations for the effect of a joint tenancy deed. Often the intent of the parties who long before filed a joint tenancy deed could be confused by faded memories or altered to self-serving testimony. The requirement of a writing provides a reliable test by which to determine the understanding of the parties. It seeks to prevent the abuses and unpredictability that have resulted from the oral agreement standard. See discussion in *In re Marriage of Martinez*, 156 Cal. App. 3d 20, 29, 202 Cal. Rptr. 646 (1984), *disapproved in In re Marriage of Buol*, 39 Cal. 3d 751, 705 P.2d 354, 218 Cal. Rptr. 31 (1985).

Fam. Code § 2581 (added). Community property presumption for property held in joint form

SEC. _____. Section 2581 is added to the Family Code, to read:

2581. For the purpose of division of property upon dissolution of marriage or legal separation of the parties, property acquired by the parties during marriage in joint form, including property held in tenancy in common, joint tenancy, tenancy by the entirety, or as community property is presumed to be community property. This presumption is a presumption affecting the burden of proof and may be rebutted by either of the following:

(a) A clear statement in the deed or other documentary evidence of title by which the property is acquired that the property is separate property and not community property.

(b) Proof that the parties have made a written agreement that the property is separate property.

Comment. Section 2581 continues former Civil Code Section 4800.1(b) without substantive change. Section 2581 is intended to apply to all property acquired during marriage in joint form regardless of the date of acquisition. Section 2580 (legislative finding and declaration); Marriage of Hilke [citation]. See also Section 2551 (division of property in nullity proceeding).

The community property presumptions created by Section 2581 are applicable only in dissolution and legal separation proceedings. The presumptions govern both real and personal property, whether situated in California or another jurisdiction, and include property acquired during marriage while domiciled in another jurisdiction. The presumptions also govern property initially acquired before marriage, the title to which is taken in joint form or as community property by the spouses during marriage. The measure of the separate property contribution under Section 2640 in such a case is the value of the property at the time of its conversion to joint or community property form.

Section 2581 requires a writing to rebut the community property presumption. To permit oral statements to defeat the community property presumption for purposes of dissolution of marriage would frustrate the strong public policy favoring community ownership of property acquired during marriage. The requirement of a writing is important to help ensure that a party waives his or her community property rights only upon mature consideration.

Section 2581 does not affect the validity of an oral agreement for any purpose other than division of property at dissolution of marriage. For purposes of division, Section 2581, together with Section 2640, recognizes and reimburses separate property contributions. This treatment of an oral agreement for purposes of division is fair because an oral agreement, whatever other purpose it might have (management and control, disposition at death, etc.), is not ordinarily intended to affect rights at dissolution or to make a present gift for that purpose. Casual statements made during marriage generally are not made with full knowledge of their consequences or with the intention that they change the rights of the parties if the marriage is dissolved.

For background on former Civil Code Section 4800.1, see *Recommendation Relating to Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage*, 16 Cal. L. Revision Comm'n Reports 2165 (1982); 17 Cal. L. Revision Comm'n Reports 863 (1984); *Recommendation Relating to Civil Code Sections 4800.1 and 4800.2*, 18 Cal. L. Revision Comm'n Reports 383 (1986); 18 Cal. L. Revision Comm'n Reports 1741 (1986).

Interim Comment. Section 2581 is amended to delete the limitations to property acquired on or after January 1, 1984, and on or after January 1, 1987. The section is intended to apply to property regardless of the date of acquisition. Section 2580 (legislative finding and declaration); Marriage of Hilke [citation].

Fam. Code § 2640 (amended). Separate property contributions to property acquisition

SEC. _____. Section 2640 of the Family Code is amended to read:

2640. (a) “Contributions to the acquisition of the property,” as used in this section, include downpayments, payments for improvements, and payments that reduce the principal of a loan used to finance the purchase or improvement of the property but do not include payments of interest on the loan or payments made for maintenance, insurance, or taxation of the property.

(b) ~~In the~~ For the purpose of division upon dissolution of marriage or legal separation of the parties of property in the community estate ~~property acquired on or after January 1, 1984,~~ by the parties during marriage, unless a party has made a written waiver of the right to reimbursement or has signed a writing that has the effect of a waiver, the party shall be reimbursed for the party’s contributions to the acquisition of the property to the extent the party traces the contributions to a separate property source. The amount reimbursed shall be without interest or adjustment for change in monetary values and shall not exceed the net value of the property at the time of the division.

Comment. Section 2640 continues former Civil Code Section 4800.2 without substantive change. Section 2640 is intended to apply to all community estate property regardless of the date of acquisition. See Section 2580 (legislative findings and declarations).

In subdivision (b), “community estate” has been substituted for “community property” to codify case law holding that the section applies to quasi-community property as well as to community property. See *In re Marriage of Craig*, 219 Cal. App. 3d 683, 268 Cal. Rptr 396 (1990). See also Sections 2501 (“community estate” defined), 2502 (“separate property” defined). A reference to division of property upon “dissolution of marriage or legal separation of the parties” has been substituted for the former reference to division “under this part,” meaning under the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code). See also Section 2551 (division of property in nullity proceeding).

When enacted in 1983 (as former Civil Code Section 4800.2), Section 2640 reversed the rule of *In re Marriage of Lucas*, 27 Cal. 3d 808, 614 P.2d 285, 166 Cal. Rptr. 853 (1980), and cases following it, which precluded recognition of the separate property contribution of one of the parties to the acquisition of community property, unless the party could show an agreement between the spouses to the effect that the contribution was not intended to be a gift. Under Section 2640, in case of dissolution of the marriage, a party making a separate property contribution to the acquisition of the property is not presumed to have made a gift, unless it is shown that the parties agreed in writing that it was a gift, but is entitled to reimbursement for the separate property contribution at dissolution of marriage. The separate property contribution is measured by the value of the contribution at the time the contribution is made. Under this rule, if the property has since appreciated in value, the community is entitled to the appreciation. If the property has since depreciated in value, reimbursement may not exceed the value of the property; if both parties are entitled to reimbursement and the property has insufficient value to permit full reimbursement of both, reimbursement should be on a proportionate basis.

For background on former Civil Code Section 4800.2, see *Recommendation Relating to Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage*, 16 Cal. L. Revision Comm’n Reports 2165 (1982); 17 Cal. L. Revision Comm’n Reports 863 (1984); *Recommendation Relating to Civil Code Sections 4800.1 and 4800.2*, 18 Cal. L. Revision Comm’n Reports 383 (1986); 18 Cal. L. Revision Comm’n Reports 1741 (1986).

Interim Comment. Section 2640 is amended to delete the limitation to property acquired on or after January 1, 1984. The section is intended to apply to property regardless of the date of acquisition. Section 2580 (legislative finding and declaration). In subdivision (b), “property in the community estate” is substituted for “community estate property.” This is a nonsubstantive change, and is for clarity.

#F-1170

1/20/93

EXHIBIT 30**SB 1148 (Adoption)**

Staff Note. The draft legislation in this exhibit would repeal sections that were repealed by AB 2650 (1992 Cal. Stat. ch. 162, § 2), but chaptered-out in part by SB 1148 (1992 Cal. Stat. ch. 1353), and make conforming changes in the Family Code, and correct other references to repealed sections.

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Fam. Code § 8801 (technical amendment). Selection of prospective adoptive parents

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Fam. Code § 8802 (technical amendment). Adoption petition and order

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Fam. Code § 8815 (added). Consent irrevocable

Bus. & Prof. Code § 4996.21 (technical amendment). Certification of adoption service provider

Bus. & Prof. Code § 4996.21 (technical amendment). Certification of adoption service provider

SEC. _____. Section 4996.21 of the Business and Professions Code is amended to read:

4996.21. The board shall certify as an adoption service provider any licensed clinical social worker seeking certification whom it determines to be qualified as an adoption service provider, as defined in Section ~~220.20 of the Civil~~ 8502 of the Family Code. The board shall charge a fee for that certification that recovers all costs of the certification process and that fee shall be deposited by the board into the State Treasury to the credit of the Behavioral Science Examiners Fund.

Comment. Section 4996.21 [as added by 1992 Cal. Stat. ch. 1353, § 1, operative Jan. 1, 1994] is amended to substitute a reference to the Family Code provision that replaced the relevant part of former Civil Code Section 220.20.

Civ. Code § 220.15 (repealed). Purpose of adoption

SEC. _____. Section 220.15 of the Civil Code is repealed.

~~220.15. The Legislature finds and declares that the purpose of adoption is to promote the interests of children who can benefit from a family that can give them the nurturing, protection and opportunities essential for their healthy personal growth and development.~~

Comment. Former Section 220.15 [as added by 1992 Cal. Stat. ch. 1353, § 1.5, operative Jan. 1, 1994] is continued without change in Family Code Section 8620.

Civ. Code § 220.20 (repealed). Definitions

SEC. _____. Section 220.20 of the Civil Code is repealed.

~~220.20. As used in this chapter, the following terms have the following meanings:~~

~~(a) “Adoption service provider” means (1) a licensed private adoption agency or (2) a licensed clinical social worker with a minimum of five years experience doing adoptions with a licensed California adoption agency or the department, who gives the birth parents the advisement of rights, witnesses the signing of adoption placement agreement, and interviews the birth parents placing the child within 10 days after the placement of the child.~~

~~(b) “Adoptive parent” means a person who has petitioned the court for, and obtained, an order or final decree for the adoption of a particular child or children.~~

~~(c) “Agency adoption” means the adoption of a child, other than an intercountry adoption, in which the department or an agency licensed by the department is a party to, or joins in, the petition for adoption.~~

(d) “Applicant” means a person who has submitted a written application to adopt a child from the department or licensed adoption agency and who is being considered by the department or agency for the adoptive placement of a child.

(e) “Birth parent” means the biological parent or, in the case of a child previously adopted, the adoptive parent.

(f) “Child” and “children” mean minor child and minor children, respectively.

(g) “Delegated county adoption agency” means a licensed county adoption agency that has agreed to provide those services described in Article 3 (commencing with Section 224.10).

(h) “Department” means the State Department of Social Services.

(i) “Full-service adoption agency” means any licensed entity engaged in the business of providing adoption services, which does all of the following:

(1) Assumes care, custody, and control of a child through relinquishment of the child to the agency or involuntary termination of parental rights to the child.

(2) Assesses the birth parents, prospective adoptive parents, or child.

(3) Places children for adoption.

(4) Supervises adoptive placements.

Private Full-service adoption agencies shall be organized and operated on a nonprofit basis. Full-service adoption agencies may provide services to birth parents or prospective adoptive parents pursuant to Section 224.50 until January 1, 1994.

(j) “Independent adoption” means the adoption of a child in which neither the department nor an agency licensed by the department is a party to, or joins in, the petition for adoption.

(k) “Intercountry adoption” means the adoption of a foreign-born child for whom federal law makes a special immigration visa available. Intercountry adoption includes completion of the adoption in the child’s native country or completion of the adoption in California.

(l) “Licensed adoption agency” means an agency licensed by the department to provide adoption services, including a licensed county adoption agency and a licensed private adoption agency.

(m) “Noncustodial adoption agency” means any licensed entity engaged in the business of providing adoption services, which does all of the following:

(1) Assesses the prospective adoptive parents.

(2) Cooperatively matches children freed for adoption, who are under the care, custody, and control of a licensed adoption agency, for adoption, with assessed and approved prospective adoptive applicants.

(3) Cooperatively supervises adoptive placements with a full-service adoption agency, but does not disrupt a placement or remove a child from a placement.

Private noncustodial adoption agencies shall be organized and operated on a nonprofit basis. Noncustodial adoption agencies may provide services to birth parents or prospective adoptive parents pursuant to Section 224.50 until January 1, 1994.

~~(n) “Personal knowledge” includes, but is not limited to, substantially correct knowledge of all of the following regarding the prospective adoptive parents: their full legal name, age, religion, race or ethnicity, length of current marriage and number of previous marriages, employment, whether other children or adults reside in their home, whether there are other children who do not reside in their home and the child support obligation for these children and any failure to meet these obligations, any health conditions curtailing their normal daily activities or reducing their normal life expectancy, any convictions for crimes other than minor traffic violations, any removals of children from their care due to child abuse or neglect, and their general area of residence or, upon request, their address.~~

~~(o) “Petitioner” means a prospective adoptive parent who has filed an adoption petition with the superior court pursuant to the provisions of this chapter in the county within which he or she resides.~~

~~(p) “Place for adoption” means, in the case of an independent adoption, the selection of a prospective adoptive parent or parents for a child by the birth parent or parents and the completion of an adoptive placement agreement on a form prescribed by the department by the birth parents placing the child with prospective adoptive parents.~~

~~(q) “Prospective adoptive parent” means a person who has filed or intends to file a petition to adopt a child who has been or who is to be placed in his or her physical care.~~

~~(r) “Special needs child” means a child whose adoption without financial assistance would be unlikely because of adverse parental background, ethnic background, race, color, language, membership in a sibling group which should remain intact, mental, physical, medical, or emotional handicaps or age of three years or more.~~

~~(s) “Stepparent adoption” means the adoption of child by a stepparent when one birth parent retains his or her custody and control of the child.~~

Comment. Except as otherwise noted, the definitions in former Section 220.20 [as amended by 1992 Cal. Stat. ch. 1353, § 2, operative Jan. 1, 1994] are continued without substantive change in Family Code Sections 8500-8548. The substance of subdivision (a) of the former provision pertaining to the duties of the adoption service provider is omitted as surplus. This is not a substantive change. See Family Code Sections 8801.5 (duties of adoption service provider) and 8801.7 (duties of adoption service provider). The definition of “personal knowledge” in subdivision (n) of former law is continued in Family Code Section 8801 (b) without substantive change.

Civ. Code § 221.05 (repealed). Regulations

SEC. _____. Section 221.05 of the Civil Code is repealed.

~~221.05. The department shall adopt regulations regarding the provision of adoption services by the department and licensed adoption agencies and shall monitor the provision of those services by licensed adoption agencies.~~

Comment. Former Section 221.05 [as added by 1992 Cal. Stat. ch. 1353, § 3, operative Jan. 1, 1994] is continued without change in Family Code Section 8621.

Civ. Code § 221.07 (repealed). Notice of service limitations

SEC. _____. Section 221.07 of the Civil Code is repealed.

~~221.07. Any licensed private adoption agency whose services are limited to a particular target population shall inform all birth parents and prospective adoptive parents of their service limitations prior to commencing any services, signing any documents or agreements, or accepting any fees.~~

Comment. Former Section 221.07 [as added by 1992 Cal. Stat. ch. 1353, § 4, operative Jan. 1, 1994] is continued without substantive change in Family Code Section 8622.

Civ. Code § 224.21 (repealed). Conditions for placement for adoption

SEC. _____. Section 224.21 of the Civil Code, to read:

~~224.21. A child shall not be considered to have been placed for adoption unless each of the following is true:~~

~~(a) Each birth parent placing the child for adoption has been advised of their rights, and if desired been counseled pursuant to Section 224.24.~~

~~(b) The adoption services provider, each prospective adoptive parent, and each birth parent placing the child have signed an adoption placement agreement on a form prescribed by the department. The agreement shall be signed as follows:~~

~~(1) The birth parents shall have been advised of their rights at least 10 days prior to signing the agreement.~~

~~(2) The agreement may not be signed by either the birth parents or the prospective adoptive parents until the time of discharge of the birth mother from the hospital; however, should the birth mother remain hospitalized for a period longer than the hospitalization of the child, the birth mother's competency to sign shall be verified by her attending physician and surgeon prior to the birth mother signing the agreement.~~

~~(3) The birth parents and prospective adoptive parents shall sign the agreement in the presence of an adoption services provider.~~

~~(4) The adoption services provider witnessing the signatures shall keep the original of the adoption placement agreement and immediately forward it to the department or delegated county adoption agency.~~

~~(5) The child shall not be released to the prospective adoptive parents until the adoption placement agreement has been signed and witnessed.~~

~~(6) If the birth parent is neither a resident of California, nor physically present in California, the adoption placement agreement shall be signed in the manner in which consents are taken in the state in which the birth parent resides or is present for a purpose unrelated to an adoption.~~

~~(c) The adoption placement agreement form shall include all of the following:~~

~~(1) A statement that the birth parent received the advisement of rights and the date upon which it was received.~~

~~(2) A statement that the birth parent understands that the placement is for the purpose of adoption and that if the birth parent takes no further action, upon the~~

~~121st day after signing the adoption placement agreement, the agreement shall become a permanent and irrevocable consent to the adoption.~~

~~(3) A statement that the birth parent signs the agreement having personal knowledge of certain facts regarding the prospective adoptive parents as provided for in Sections 220.20 and 224.20.~~

~~(4) A statement that the adoptive parents have been informed of the basic health and social history of the birth parents.~~

~~(5) A consent to the adoption that may be revoked as provided by Section 224.63.~~

~~(d) The adoption placement agreement shall also meet the requirements of Section 265.~~

Comment. Former Section 224.21 [as added by 1992 Cal. Stat. ch. 1353, § 5, operative Jan. 1, 1994] is continued in Family Code Section 8801.3 without substantive change.

Civ. Code § 224.24 (repealed). Duties of adoption service provider

SEC. _____. Section 224.24 of the Civil Code is repealed.

~~224.24. (a) Each birth parent placing a child for adoption shall be advised of their rights by an adoption services provider, or in the case of a birth parent who is neither a resident of, nor physically present in the state of California, by a representative of an agency licensed or authorized to accept consents to adoption in the state in which the birth parent resides or is physically present for a purpose unrelated to an adoption.~~

~~(b) The birth parent shall be advised of his or her rights in a face-to-face meeting in which the birth parent may ask and have questions answered, as soon as possible and in no case later than 10 days prior to the signing of the adoption placement agreement as provided by Section 224.21.~~

~~(c) The department shall prescribe the format and process for the advising of birth parents of their rights, the content of which shall include, but not be limited to, the following:~~

~~(1) The alternatives to adoption.~~

~~(2) The alternative types of adoption, including a description of the full procedures and time frames involved in each type.~~

~~(3) The full rights and responsibilities of the birth parent with respect to adoption, including the need to keep the department informed of his or her current address in case of a medical emergency requiring contact and of providing a full health history.~~

~~(4) The right to separate legal counsel paid for by the prospective adoptive parents upon the request of the birth parent, as provided for by Section 224.10.~~

~~(5) The right to a minimum of three separate counseling sessions, each to be held on different days, to be paid for by the prospective adoptive parents upon the request of the birth parents, as provided for by subdivision (d).~~

~~(d) Each person advised pursuant to this section shall be offered at least three separate counseling sessions, to be held on different days. Each counseling~~

~~session shall be not less than 50 minutes in duration. The counseling may be provided by an adoption services provider or by a licensed psychotherapist, as defined by Section 1010 of the Evidence Code, as elected by the person.~~

~~(e) The individual counseling owes a duty of care to the birth parent being counseled, similar to the duty of care established by a psychotherapist-patient relationship, regardless of who pays the fees of the counselor. No counselor shall have a contractual relationship with the adoptive parents, an attorney for the adoptive parents, or any other individual or an organization performing any type of services for the adoptive parents and for which the adoptive parents are paying a fee, except as relates to payment of the birth parents' fee.~~

~~(f) The adoption service provider's and counseling costs shall be paid by the prospective adoptive parents at the request of the birth.~~

Comment. Former Section 224.24 [as added by 1992 Cal. Stat. ch. 1353, § 6, operative Jan. 1, 1994] is continued in Family Code Section 8801.5 without substantive change.

Civ. Code § 224.26 (repealed). Duties of adoption service provider

SEC. _____. Section 224.26 of the Civil Code is repealed.

~~224.26. (a) The adoption service provider giving the advisement of rights shall also witness the signature of the adoption placement agreement and interview the birth parent within 10 working days after the placement of the child with prospective adoptive parents. The interview shall include a consideration of any concerns or problems the birth parent has with the placement, a readvisement of the rights of the birth parent and the taking of the health and social history of the birth parent, if not taken previously.~~

~~(b) The adoption service provider shall immediately contact the department or delegated county adoption agency if there are any concerns regarding the placement and if the birth parent wishes to revoke the consent, shall assist the birth parent in obtaining the return of the child.~~

~~(c) The adoption service provider owes a very high duty of care to the birth parent being advised, regardless of who pays the provider's fees. No adoption services provider shall have a contractual relationship with prospective adoptive parents, an attorney or representative for prospective adoptive parents, or any individual or organization providing services of any type to prospective adoptive parents for which the adoptive parents are paying a fee, except as relates to the payment of the fees of the birth parents.~~

Comment. Former Section 224.26 [as added by 1992 Cal. Stat. ch. 1353, § 7, operative Jan. 1, 1994] is continued in Family Code Section 8801.7 without substantive change.

Civ. Code § 224.30 (repealed). Adoption petition

SEC. _____. Section 224.30 of the Civil Code is repealed.

~~224.30. (a) Any grandparent, aunt, uncle, sibling, legal guardian who has been the child's legal guardian for more than three years, person named in the will of a deceased parent as an intended adoptive parent when the child has no other~~

parent, or person with whom a child has been placed for adoption, desiring to adopt a child may for that purpose petition the superior court of the county in which the petitioner resides, and the clerk of the court shall immediately notify the department at Sacramento in writing of the pendency of the action and of any subsequent action taken. If the child has been placed for adoption, a copy of the adoptive placement agreement shall be attached to the petition. The petition shall contain an allegation that the petitioners will file promptly with the department or the delegated county adoption agency information required by the department in the investigation of the proposed adoption. The omission of the allegation from a petition so filed shall not, however, affect the jurisdiction of the court to proceed, nor shall it have affected the jurisdiction of any court to have proceeded prior to January 1, 1991, upon the petition omitting the allegation, in any manner provided in this article or otherwise, nor shall the omission have affected or affect the validity of any decree of adoption or other order made by any court before or on or after January 1, 1991, with respect to a petition omitting the allegation.

(b) The caption of the petition for adoption of a child shall contain the name or names of the petitioners but shall not contain the name of the child. The petition shall contain the sex and date of birth of the child. The name that the child had prior to adoption shall appear in the petition.

(c) If the child is the subject of a guardianship petition, the petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The court shall be notified by the petitioners of any petition for guardianship or temporary guardianship filed subsequent to the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(d) The order of adoption shall contain the adopted name of the child but shall not contain the name that the child had prior to adoption.

Comment. Former Section 224.30 [as amended by 1992 Cal. Stat. ch. 1353, § 8, operative Jan. 1, 1994] is continued without substantive change in Family Code Section 8802.

Civ. Code § 224.36 (repealed). Withdrawal of adoption petition

SEC. _____. Section 224.36 of the Civil Code is repealed.

224.36. Whenever the petitioners move to withdraw the petition for the adoption or to dismiss the proceeding, the clerk of the court in which the proceeding is pending shall immediately notify the department at Sacramento of that action. The department or the delegated county adoption agency shall file a full report with the court recommending a suitable plan for the child in every case in which the petitioners move to withdraw the petition for the adoption or where the department or the delegated county adoption agency recommends that the petition for adoption be denied and shall appear before the court for the purpose of representing the child.

Comment. Former Section 224.36 [as amended by 1992 Cal. Stat. ch. 1353, § 9, operative Jan. 1, 1994] is continued without substantive change in Family Code Section 8804.

Civ. Code § 224.44 (repealed). Interview of petitioner

SEC. _____. Section 224.44 of the Civil Code is repealed.

~~224.44. The investigating adoption agency shall interview the petitioners and all persons from whom consent is required and whose addresses are known as soon as possible and, in the case of residents of California, within 10 working days, excluding legal holidays, after the filing of the adoption petition. The interview with the placing parent or parents shall include consideration of any concerns or problems that the parent has with the placement and shall give the parent an opportunity to sign either a statement revoking the consent, or a waiver of the right to revoke consent, as provided in Section 225.63. In order to facilitate these interviews, at the same time the petition is filed with the court, the petitioners shall file with the investigating adoption agency a copy of the petition together with the names, addresses, and telephone numbers of all parties to be interviewed, if known.~~

Comment. Former Section 224.44 [as added by 1992 Cal. Stat. ch. 1353, § 10, operative Jan. 1, 1994] is continued without substantive change in Family Code Section 8808.

Civ. Code § 224.62 (repealed). Consent of birth parents

SEC. _____. Section 224.62 of the Civil Code is repealed.

~~224.62. (a) The consent of the birth parent or parents shall be signed as provided for in Section 224.21. The consent shall be filed with the clerk of the appropriate superior court.~~

~~(b) The consent described in subdivision (a), when reciting that the person giving it is entitled to the sole custody of the child, and when duly acknowledged before that agent, shall be prima facie evidence of the right of the person making it to the sole custody of the child and that person's sole right to consent.~~

~~(c) If the birth parent of a child to be adopted resides outside the State of California or is outside the State of California for an extended period of time unrelated to the adoption at the time of signing consent, his or her consent may be signed before a representative of an agency licensed or authorized to take the consent of a birth parent in the state in which the birth parent resides or is present for the extended period of time.~~

~~(d) A birth parent who is a minor shall have the right to sign a consent for the adoption of his or her child and that consent shall not be subject to revocation by reason of that minority.~~

Comment. Former Section 224.62 [as added by 1992 Cal. Stat. ch. 1353, § 11, operative Jan. 1, 1994] is continued without substantive change in Family Code Section 8814.

Civ. Code § 224.63 (repealed). Revocation and waiver

SEC. _____. Section 224.63 of the Civil Code is repealed.

~~224.63. (a) After a consent to the adoption is signed by the birth parent or parents pursuant to Sections 224.21 and 224.62, the birth parent or parents signing the consent shall have 120 days to take one of the following actions:~~

~~(1) Sign and deliver to the investigating adoption agency a written statement revoking the consent and requesting the child be returned to the birth parent or parents.~~

~~(2) Sign a waiver of the right to revoke consent on a form prescribed by the department in the presence of a representative of the department or delegated county adoption agency, or if the parent neither resides in California nor is physically present in California, then in the presence of a representative of a agency licensed or authorized to take consents in the state in which the birth parent resides, or is present for a purpose unrelated to an adoption. The waiver of the right to revoke consent may not be signed until an interview has been completed by the State Department of Social Services.~~

~~(3) Allow the consent to become a permanent consent on the 121st day after signing.~~

~~(b) The consent may not be revoked after a waiver of the right to revoke consent has been signed or after 120 days beginning on the date the consent was signed, whichever occurs first.~~

Comment. Former Section 224.63 [as added by 1992 Cal. Stat. ch. 1353, § 12, operative Jan. 1, 1994] is continued without substantive change in Family Code Section 8814.5.

Civ. Code § 224.64 (repealed). Consent irrevocable; rights in interim

SEC. _____. Section 224.64 of the Civil Code is repealed.

~~224.64. (a) Once the revocable consent to adoption has become permanent as provided in Section 224.63, the consent to the adoption by the prospective adoptive parents may not be withdrawn.~~

~~(b) Prior to the time at which the revocable consent becomes permanent as provided in Section 224.63, the birth parent or parents may request return of the child. In such a case the child shall immediately be returned to the birth parent or parents so requesting.~~

~~(c) If the person or persons with whom the child has been placed have concerns that the birth parent or parents requesting return of the child are unfit or present a danger of harm to the child, that person's or those persons' only option is to report their concerns to the investigating adoption agency and the appropriate child welfare agency. These concerns shall not be a basis for failure to immediately return the child.~~

Comment. Former Section 224.64 [as added by 1992 Cal. Stat. ch. 1353, § 13, operative Jan. 1, 1994] is continued in Family Code Section 8815 without substantive change.

Fam. Code § 8502 (added). "Adoption service provider"

SEC. _____. Section 8502 is added to the Family Code, to read:

8502. "Adoption service provider" means either of the following:

(a) A licensed private adoption agency.

(b) A licensed clinical social worker with a minimum of five years experience doing adoptions with a licensed California adoption agency or the department.

Comment. Section 8502 continues the first part of former Civil Code Section 220.20(a) [as amended by 1992 Cal. Stat. ch. 1353, § 2, operative Jan. 1, 1994] without substantive change. The language relating to certain duties of an adoption service provider has been omitted as surplus. See Sections 8801.5 (duties of adoption service provider), 8801.7 (duties of adoption service provider).

Fam. Code § 8539 (added). “Place for adoption”

SEC. _____. Section 8539 is added to the Family Code, to read:

8539. “Place for adoption” means, in the case of an independent adoption, the selection of a prospective adoptive parent or parents for a child by the birth parent or parents and the completion of an adoptive placement agreement on a form prescribed by the department by the birth parents placing the child with prospective adoptive parents.

Comment. Section 8539 continues former Civil Code Section 220.20(p) [as amended by 1992 Cal. Stat. ch. 1353, § 2, operative Jan. 1, 1994] without change.

Staff Note. *This provision like its predecessor, is not really a definition. In addition, the term is not used literally. In places where “place a child for adoption” is used, it is not clear what this section adds, if it applies. If the department needs authority to prescribe a form, it should be done directly, and not through this means. This definition also seems superseded by the more extensive and detailed requirements of proposed Section 8801.5 (Civ. Code § 224.21). But see proposed amendments to Section 8802.*

Fam. Code § 8620 (added). Purpose of adoption

SEC. _____. Section 8620 is added to the Family Code, to read:

8620. The Legislature finds and declares that the purpose of adoption is to promote the interests of children who can benefit from a family that can give them the nurturing, protection, and opportunities essential for their healthy personal growth and development.

Comment. Section 8620 continues former Civil Code Section 220.15 [as added by 1992 Cal. Stat. ch. 1353, § 1.5, operative Jan. 1, 1994] without change.

Fam. Code § 8621 (added). Regulations

SEC. _____. Section 8621 is added to the Family Code, to read:

8621. The department shall adopt regulations regarding the provision of adoption services by the department and licensed adoption agencies and shall monitor the provision of those services by licensed adoption agencies.

Comment. Section 8621 continues former Civil Code Section 221.05 [as added by 1992 Cal. Stat. ch. 1353, § 3, operative Jan. 1, 1994] without change.

Fam. Code § 8622 (added). Notice of service limitations

SEC. _____. Section 8622 is added to the Family Code, to read:

8622. A licensed private adoption agency whose services are limited to a particular target population shall inform all birth parents and prospective adoptive

parents of its service limitations before commencing any services, signing any documents or agreements, or accepting any fees.

Comment. Section 8622 continues former Civil Code Section 221.07 [as added by 1992 Cal. Stat. ch. 1353, § 4, operative Jan. 1, 1994] without substantive change.

Fam. Code § 8801 (technical amendment). Selection of prospective adoptive parents; personal knowledge

SEC. _____. Section 8801 of the Family Code is amended to read:

8801. (a) The selection of a prospective adoptive parent or parents shall be personally made by the child’s birth parent or parents and may not be delegated to an agent. The act of selection by the birth parent or parents shall be based upon his, her, or their personal knowledge of the prospective adoptive parent or parents.

(b) “Personal knowledge” as used in this section includes, but is not limited to, substantially correct knowledge of all of the following regarding the prospective adoptive parents: their full legal names, ages, religion, race or ethnicity, length of current marriage and number of previous marriages, employment, whether other children or adults reside in their home, whether there are other children who do not reside in their home and the child support obligation for these children and any failure to meet these obligations, any health conditions curtailing their normal daily activities or reducing their normal life expectancies, any convictions for crimes other than minor traffic violations, any removals of children from their care due to child abuse or neglect, and their general area of residence or, upon request, their address.

Comment. Subdivision (a) of Section 8801 continues former Civil Code Section 224.20 without substantive change. Subdivision (b) continues former Civil Code Section 220.20(n) [as amended by 1992 Cal. Stat. ch. 1353, § 2, operative Jan. 1, 1994] without substantive change. See also Sections 8512 (“birth parent” defined), 8542 (“prospective adoptive parent” defined).

Interim Comment. Subdivision (b) is revised to incorporate changes made in Civil Code Section 220.20(n) by 1992 Cal. Stat. ch. 1353, § 2, operative Jan. 1, 1994. This revision is consistent with the approach of the Family Code as enacted. The definition of “personal knowledge” is a specialized term only relevant to this section and thus is not generalized to cover the whole division on adoption.

Fam. Code § 8801.3 (added). Placement for adoption

SEC. _____. Section 8801.3 is added to the Family Code, to read:

8801.3. A child shall not be considered to have been placed for adoption unless each of the following is true:

(a) Each birth parent placing the child for adoption has been advised of his or her rights, and if desired, has been counseled pursuant to Section 8801.5.

(b) The adoption services provider, each prospective adoptive parent, and each birth parent placing the child have signed an adoption placement agreement on a form prescribed by the department. The signing of the agreement shall satisfy all of the following requirements:

(1) The birth parents shall have been advised of their rights at least 10 days before signing the agreement.

(2) The agreement may not be signed by either the birth parents or the prospective adoptive parents until the time of discharge of the birth mother from the hospital. However, if the birth mother remains hospitalized for a period longer than the hospitalization of the child, the birth mother's competency to sign must be verified by her attending physician and surgeon before the birth mother signs the agreement.

(3) The birth parents and prospective adoptive parents shall sign the agreement in the presence of an adoption services provider.

(4) The adoption services provider who witnesses the signatures shall keep the original of the adoption placement agreement and immediately forward it to the department or delegated county adoption agency.

(5) The child may not be released to the prospective adoptive parents until the adoption placement agreement has been signed and witnessed.

(6) If the birth parent is neither a resident of, nor physically present in this state, the adoption placement agreement shall be signed in the manner in which consents are taken in the state where the birth parent resides or is present for a purpose unrelated to an adoption.

(c) The adoption placement agreement form shall include all of the following:

(1) A statement that the birth parent received the advisement of rights and the date upon which it was received.

(2) A statement that the birth parent understands that the placement is for the purpose of adoption and that if the birth parent takes no further action, on the 121st day after signing the adoption placement agreement, the agreement shall become a permanent and irrevocable consent to the adoption.

(3) A statement that the birth parent signs the agreement having personal knowledge of certain facts regarding the prospective adoptive parents as provided in Section 8801.

(4) A statement that the adoptive parents have been informed of the basic health and social history of the birth parents.

(5) A consent to the adoption that may be revoked as provided by Section 8814.5.

(d) The adoption placement agreement shall also meet the requirements of the Interstate Compact on the Placement of Children in Section 7901.

Comment. Section 8801.3 continues former Civil Code Section 224.21 [as added by 1992 Cal. Stat. ch. 1353, § 5, operative Jan. 1, 1994] without substantive change.

Fam. Code § 8801.5 (added). Duties of adoption service provider

SEC. _____. Section 8801.5 is added to the Family Code, to read:

8801.5. (a) Each birth parent placing a child for adoption shall be advised of his or her rights by an adoption services provider, or in the case of a birth parent who is neither a resident of, nor physically present in this state, by a representative of

an agency licensed or authorized to accept consents to adoption in the state in which the birth parent resides or is physically present for a purpose unrelated to an adoption.

(b) The birth parent shall be advised of his or her rights in a face-to-face meeting in which the birth parent may ask questions and have questions answered, as soon as possible and in no case later than 10 days before the signing of the adoption placement agreement as provided by Section 8801.3.

(c) The department shall prescribe the format and process for advising birth parents of their rights, the content of which shall include, but not be limited to, the following:

(1) The alternatives to adoption.

(2) The alternative types of adoption, including a description of the full procedures and time frames involved in each type.

(3) The full rights and responsibilities of the birth parent with respect to adoption, including the need to keep the department informed of his or her current address in case of a medical emergency requiring contact and of providing a full health history.

(4) The right to separate legal counsel paid for by the prospective adoptive parents upon the request of the birth parent, as provided for by Section 8800.

(5) The right to a minimum of three separate counseling sessions, each to be held on different days, to be paid for by the prospective adoptive parents upon the request of the birth parents, as provided for by subdivision (d).

(d) Each person advised pursuant to this section shall be offered at least three separate counseling sessions, to be held on different days. Each counseling session shall be not less than 50 minutes in duration. The counseling may be provided by an adoption services provider or by a licensed psychotherapist, as defined by Section 1010 of the Evidence Code, as elected by the person.

(e) The individual counseling owes a duty of care to the birth parent being counseled, similar to the duty of care established by a psychotherapist-patient relationship, regardless of who pays the fees of the counselor. No counselor shall have a contractual relationship with the adoptive parents, an attorney for the adoptive parents, or any other individual or an organization performing any type of services for the adoptive parents and for which the adoptive parents are paying a fee, except as relates to payment of the birth parents' fee.

(f) The adoption service provider's and counseling costs shall be paid by the prospective adoptive parents at the request of the birth parent.

Comment. Section 8801.5 continues former Civil Code Section 224.24 [as added by 1992 Cal. Stat. ch. 1353, § 6, operative Jan. 1, 1994] without substantive change. In subdivision (f), the reference to birth "parent" has been added to correct an error.

Fam. Code § 8801.7 (added). Duties of adoption service provider

SEC. _____. Section 8801.7 is added to the Family Code, to read:

8801.7. (a) The adoption service provider giving the advisement of rights shall also witness the signature of the adoption placement agreement and interview the birth parent within 10 working days after the placement of the child with prospective adoptive parents. The interview shall include a consideration of any concerns or problems the birth parent has with the placement, a readvisement of the rights of the birth parent, and the taking of the health and social history of the birth parent, if not taken previously.

(b) The adoption service provider shall immediately contact the department or delegated county adoption agency if there are any concerns regarding the placement and if the birth parent wishes to revoke the consent, shall assist the birth parent in obtaining the return of the child.

(c) The adoption service provider owes a very high duty of care to the birth parent being advised, regardless of who pays the provider's fees. No adoption services provider shall have a contractual relationship with prospective adoptive parents, an attorney or representative for prospective adoptive parents, or any individual or organization providing services of any type to prospective adoptive parents for which the adoptive parents are paying a fee, except as relates to the payment of the fees of the birth parents.

Comment. Section 8801.7 continues former Civil Code Section 224.26 [as added by 1992 Cal. Stat. ch. 1353, § 7, operative Jan. 1, 1994] without substantive change.

Fam. Code § 8802 (technical amendment). Adoption petition and order

SEC. _____. Section 8802 of the Family Code is amended to read:

8802. (a) A person desiring grandparent, aunt, uncle, sibling, legal guardian who has been the child's legal guardian for more than three years, person named in the will of a deceased parent as an intended adoptive parent where the child has no other parent, or person with whom a child has been placed for adoption, who desires to adopt a child, may for that purpose file a petition in the county in which the petitioner resides. If the child has been placed for adoption, a copy of the adoptive placement agreement shall be attached to the petition. The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(b) The petition shall contain an allegation that the petitioners will file promptly with the department or delegated county adoption agency information required by the department in the investigation of the proposed adoption. The omission of the allegation from a petition does not affect the jurisdiction of the court to proceed.

(c) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth and the name the child had before adoption.

(d) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners

shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(e) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

Comment. Section 8802 continues former Civil Code Section 224.30 [as amended by 1992 Cal. Stat. ch. 1353, § 8, operative Jan. 1, 1994] without substantive change. The reference to the "superior" court has been omitted as surplus. See Section 200 (jurisdiction in superior court). In subdivision (a), the reference to an "action" for adoption has been changed to "proceeding" for consistency with other provisions in this chapter. Language in former Civil Code Section 224.30(a), which dealt with retroactive application of the allegation required by what is now subdivision (b), has been omitted as obsolete. See also Section 8518 ("department" defined).

For comparable provisions, see Sections 8714 (petition for agency adoption), 8912 (petition for intercountry adoption), 9000 (petition for stepparent adoption).

Interim Comment. Subdivision (a) is revised to include amendments to Civil Code Section 224.30 by 1992 Cal. Stat. ch. 1353, § 8, operative Jan. 1, 1994. It appears that the last sentence added to subdivision (a) may be intended to pick up the definition of "place for adoption" from Civil Code Section 220.20 (proposed Fam. Code § 8539).

Fam. Code § 8804 (technical amendment). Notice to department of motion to withdraw or dismiss petition

SEC. _____. Section 8804 of the Family Code is amended to read:

8804. (a) If the petitioners move to withdraw the adoption petition or to dismiss the proceeding, the court clerk shall immediately notify the department at Sacramento of the action. The department or delegated county adoption agency shall file a full report with the court recommending a suitable plan for the child in every case where the petitioners move to withdraw the adoption petition or where the department or agency recommends that the adoption petition be denied and shall appear before the court for the purpose of representing the child.

~~(b) Notwithstanding the petitioners' withdrawal or dismissal, the court may retain jurisdiction over the child for the purpose of making any order for the child's custody that the court deems to be in the child's best interest.~~

~~(c) If a birth parent has refused to give the required consent, or the reason or cause for the withdrawal of the petition, or dismissal of the proceeding, is the withdrawal of the consent of the birth parent or parents, at the hearing the court shall order the child restored to the care and custody of the birth parent or parents.~~

Comment. Section 8804 continues former Civil Code Section 224.36 [as amended by 1992 Cal. Stat. ch. 1353, § 9, operative Jan. 1, 1994] without substantive change. The former reference to the "clerk of the court in which the proceeding is pending" has been shortened to the "court clerk" to eliminate surplus language. See also Sections 8512 ("birth parent" defined), 8515 ("delegated county adoption agency" defined), 8518 ("department" defined).

For related provisions, see Sections 8719 (notice of withdrawal or dismissal in agency adoption), 8916 (notice of withdrawal or dismissal in intercountry adoption), 9006 (notice of withdrawal or dismissal in stepparent adoption).

Interim Comment. Subdivisions (b) and (c) are deleted to reflect amendments made to Civil Code Section 224.36 by 1992 Cal. Stat. ch. 1353, § 9.

Fam. Code § 8808 (technical amendment). Interview by department or agency

SEC. _____. Section 8808 of the Family Code is amended to read:

8808. ~~The department or a delegated county~~ investigating adoption agency shall interview the petitioners and all persons whose consent is required and whose addresses are known as soon as possible and, in the case of residents of California this state, within 10 working days, excluding legal holidays, after the filing of the adoption petition. The interview with the placing parent or parents shall include consideration of any concerns or problems that the parent has with the placement and shall give the parent an opportunity to sign either a statement revoking the consent, or a waiver of the right to revoke consent, as provided in Section 8814.5. In order to facilitate these interviews, at the same time the petition is filed with the court, the petitioners shall file with the ~~district office of the department or with the delegated county~~ adoption investigating adoption agency responsible for the investigation of the adoption, a copy of the petition together with the names, addresses, and telephone numbers of all parties to be interviewed, if known.

Comment. Section 8808 continues former Civil Code Section 224.44 [as added by 1992 Cal. Stat. ch. 1353, § 10, operative Jan. 1, 1994] without substantive change. See also Sections 8515 (“delegated county adoption agency” defined), 8518 (“department” defined).

Interim Comment. This section is amended to pick up the language in the new Section 224.44. Thus, it abandons the language of still extant Section 224.44, enacted by 1990 Cal. Stat. ch. 1363, § 3, which was not repealed or amended by 1992 Cal. Stat. ch. 1353, operative Jan. 1, 1994. In addition, “California” is replaced by “this state” for consistency with general style. The reference to Section 8814.5 is to the successor of Civil Code Section 224.63; the reference to Section “225.63” in Civil Code Section 224.44 is in error.

Fam. Code § 8814 (technical amendment). Consent of birth parents to adoption

SEC. _____. Section 8814 of the Family Code is amended to read:

8814. (a) ~~The consent of the birth parent or parents to the adoption by the petitioners shall be signed in the presence of an agent of the department or of a delegated county adoption agency on a form prescribed by the department and shall be filed with the clerk of the superior court in the county of the petitioner’s residence. as provided in Section 8801.3. The consent shall be filed with the clerk of the appropriate superior court.~~

(b) The consent described in subdivision (a), when reciting that the person giving it is entitled to the sole custody of the child and when acknowledged before that agent, is prima facie evidence of the right of the person making it to the sole custody of the child and that person’s sole right to consent.

(c) If the birth parent of a child to be adopted resides outside this state or is outside this state for an extended period of time unrelated to the adoption at the time of signing the consent, the consent may be signed before a ~~notary or other person authorized to perform notarial acts, and in that case the consent of the~~

department or of the delegated county adoption agency is also necessary representative of an agency licensed or authorized to take the consent of a birth parent in the state in which the birth parent resides or is present for the extended period of time.

(d) A birth parent who is a minor has the right to sign a consent for the adoption of the birth parent's child and the consent is not subject to revocation by reason of minority.

Comment. Section 8814 continues former Civil Code Section 224.62 [as added by 1992 Cal. Stat. ch. 1353, § 11, operative Jan. 1, 1994] without substantive change. The word "duly" formerly preceding "acknowledged" has been omitted as surplus. See also Sections 8512 ("birth parent" defined), 8515 ("delegated county adoption agency" defined), 8518 ("department" defined), 8809 (request to sign consent in presence of court).

For related provisions, see Sections 8700 (consent to agency adoption), 9003 (consent to stepparent adoption).

Interim Comment. This section is revised to pick up the language in the new Section 224.62. Thus, it abandons the language of still extant Section 224.62, enacted by 1990 Cal. Stat. ch. 1363, § 3, which was not repealed or amended by 1992 Cal. Stat. ch. 1353, operative Jan. 1, 1994.

Fam. Code § 8814.5 (added). Revocation and waiver

SEC. _____. Section 8814.5 is added to the Family Code, to read:

8814.5. (a) After a consent to the adoption is signed by the birth parent or parents pursuant to Sections 8801.3 and 8814, the birth parent or parents signing the consent have 120 days to take one of the following actions:

(1) Sign and deliver to the investigating adoption agency a written statement revoking the consent and requesting the child to be returned to the birth parent or parents.

(2) Sign a waiver of the right to revoke consent on a form prescribed by the department in the presence of a representative of the department or delegated county adoption agency or, if the parent neither resides in this state nor is physically present in this state, in the presence of a representative of an agency licensed or authorized to take consents in the state in which the birth parent resides or is present for a purpose unrelated to an adoption. The waiver of the right to revoke consent may not be signed until an interview has been completed by the State Department of Social Services.

(3) Allow the consent to become a permanent consent on the 121st day after signing.

(b) The consent may not be revoked after a waiver of the right to revoke consent has been signed or after 120 days beginning on the date the consent was signed, whichever occurs first.

Comment. Section 8814.5 continues former Civil Code Section 224.63 [as added by 1992 Cal. Stat. ch. 1353, § 12, operative Jan. 1, 1994] without substantive change.

Fam. Code § 8815 (repealed). Motion or petition for withdrawal of consent

SEC. _____. Section 8815 of the Family Code is repealed.

~~8815. (a) Consent of a birth parent to the adoption of the child by the prospective adoptive parent or parents may not be withdrawn except with court approval. Request for that approval may be made by motion, or a birth parent seeking to withdraw consent may file with the clerk of the court where the adoption petition is pending, a petition for approval of withdrawal of consent, without the necessity of paying a fee for filing the petition. The motion or petition shall be in writing and shall set forth the reasons for withdrawal of consent, but otherwise may be in any form.~~

~~(b) The court clerk shall set the matter for hearing and shall give notice thereof to the department, to the prospective adoptive parent or parents, and to the birth parent or parents by certified mail, return receipt requested, to the address of each as shown in the proceeding, at least 10 days before the time set for hearing.~~

~~(c) The department or delegated county adoption agency shall, before the hearing of the motion or petition for withdrawal, file a full report with the court and shall appear at the hearing to represent the interests of the child.~~

~~(d) At the hearing, the parties may appear in person or with counsel. The hearing shall be held in chambers, but the court reporter shall report the proceedings and, on court order, the fee therefor shall be paid from the county treasury. If the court finds that withdrawal of the consent to adoption is reasonable in view of all the circumstances and that withdrawal of the consent is in the child's best interest, the court shall approve the withdrawal of the consent. Otherwise the court shall withhold its approval. Consideration of the child's best interest shall include, but is not limited to, an assessment of the child's age, the extent of bonding with the prospective adoptive parent or parents, the extent of bonding or the potential to bond with the birth parent or parents, and the ability of the birth parent or parents to provide adequate and proper care and guidance to the child. If the court approves the withdrawal of consent, the adoption proceeding shall be dismissed.~~

~~(e) A court order granting or withholding approval of a withdrawal of consent to an adoption may be appealed in the same manner as an order of the juvenile court declaring a person to be a ward of the juvenile court.~~

Interim Comment. This section is superseded by another section with the same number enacted by 1992 Cal. Stat. ch. 1353, § 13, operative Jan. 1, 1994. See Fam. Code § 8815 added below.

Fam. Code § 8815 (added). Consent irrevocable; rights in interim

SEC. _____. Section 8815 is added to the Family Code, to read:

8815. (a) Once the revocable consent to adoption has become permanent as provided in Section 8814.5, the consent to the adoption by the prospective adoptive parents may not be withdrawn.

(b) Before the time when the revocable consent becomes permanent as provided in Section 8814.5, the birth parent or parents may request return of the

child. In such a case the child shall immediately be returned to the birth parent or parents so requesting.

(c) If the person or persons with whom the child has been placed have concerns that the birth parent or parents requesting return of the child are unfit or present a danger of harm to the child, that person's or those persons' only option is to report their concerns to the investigating adoption agency and the appropriate child welfare agency. These concerns shall not be a basis for failure to immediately return the child.

Comment. Section 8815 continues former Civil Code Section 224.64 [as added by 1992 Cal. Stat. ch. 1353, § 13, operative Jan. 1, 1994] is continued in Family Code Section 8815 without substantive change.

See also Sections 8512 ("birth parent" defined), 8542 ("prospective adoptive parent" defined).

Interim Comment. This section adds the language in the new Civil Code Section 224.64. Thus, it abandons the language of still extant Section 224.64, enacted by 1990 Cal. Stat. ch. 1363, § 3, which was not repealed or amended by 1992 Cal. Stat. ch. 1353, operative Jan. 1, 1994.

Appendix

Revised Comments

Staff Note. The following Comments need to be revised in connection with SB 1148 changes. Revisions are shown in the same form as amendments.

§ 8503. "Adoptive parent"

Comment. Section 8503 supersedes former Civil Code Section 220.20(a)(b) [as amended by 1992 Cal. Stat. ch. 1353, § 2]. The definition has been broadened to apply to adoptions of minors and adults. The reference in the former law to petitioning for an adoption order has been omitted as surplus. The reference to final decrees of adoption has been omitted as surplus. See Section 100 ("order" includes decree, as appropriate). The reference to children is also omitted as surplus. See Section 10 (singular includes plural).

§ 8506. "Agency adoption"

Comment. Section 8506 continues former Civil Code Section 220.20(b)(c) [as amended by 1992 Cal. Stat. ch. 1353, § 2] without substantive change. The defined term "licensed adoption agency" is used instead of the former reference to "an agency licensed by the department." For provisions relating to agency adoptions, see Chapter 2 (commencing with Section 8700) of Part 2.

See also Sections 8518 ("department" defined), 8527 ("intercountry adoption" defined), 8530 ("licensed adoption agency" defined).

§ 8509. “Applicant”

Comment. Section 8509 continues former Civil Code Section 220.20(e)(d) [as amended by 1992 Cal. Stat. ch. 1353, § 2] without change. See also Sections 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

§ 8512. “Birth parent”

Comment. Section 8512 continues former Civil Code Section 220.20(d)(e) [as amended by 1992 Cal. Stat. ch. 1353, § 2] without substantive change. A reference to “person” has been substituted for “child,” since this definition also applies to Part 3 (commencing with Section 9300) concerning adult adoptions. See also Section 8503 (“adoptive parent” defined).

§ 8515. “Delegated county adoption agency”

Comment. Section 8515 continues former Civil Code Section 220.20(f)(g) [as amended by 1992 Cal. Stat. ch. 1353, § 2] without substantive change. See also Section 8530 (“licensed adoption agency” defined).

§ 8518. “Department”

Comment. Section 8518 continues former Civil Code Section 220.20(g)(h) [as amended by 1992 Cal. Stat. ch. 1353, § 2] without change.

§ 8521. “Full-service adoption agency”

Comment. Section 8521 continues former Civil Code Section 220.20(h)(i) [as amended by 1992 Cal. Stat. ch. 1353, § 2] without substantive change. Language in what is now subdivision (b) that was subject to a January 1, 1994, sunset clause has been omitted. See also Sections 8512 (“birth parent” defined), 8542 (“prospective adoptive parent” defined).

§ 8524. “Independent adoption”

Comment. Section 8524 continues former Civil Code Section 220.20(i)(j) [as amended by 1992 Cal. Stat. ch. 1353, § 2] without substantive change. For provisions relating to independent adoptions, see Chapter 3 (commencing with Section 8800) of Part 2.
See also Sections 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

§ 8527. “Intercountry adoption”

Comment. Section 8527 continues former Civil Code Section 220.20(j)(k) [as amended by 1992 Cal. Stat. ch. 1353, § 2] without substantive change. For provisions relating to intercountry adoptions, see Chapter 4 (commencing with Section 8900) of Part 2.

§ 8530. “Licensed adoption agency”

Comment. Section 8530 continues former Civil Code Section 220.20(k)(l) [as amended by 1992 Cal. Stat. ch. 1353, § 2] without change. See also Section 8518 (“department” defined).

§ 8533. “Noncustodial adoption agency”

Comment. Section 8533 continues former Civil Code Section 220.20(t)(m) [as amended by 1992 Cal. Stat. ch. 1353, § 2] without substantive change. In subdivision (a)(2), the reference to “prospective adoptive applicants” has been changed to “prospective adoptive parents.” See Section 8542 (“prospective adoptive parent” defined). Language in

subdivision (b) that was subject to a January 1, 1994, sunset clause has been omitted. See also Sections 8512 (“birth parent” defined), 8521 (“full-service adoption agency” defined), 8530 (“licensed adoption agency” defined).

§ 8542. “Prospective adoptive parent”

Comment. Section 8542 restates without substantive change former Civil Code Section 220.20(~~p~~)(q) [as amended by 1992 Cal. Stat. ch. 1353, § 2] and also applies the definition to adult adoptions.

§ 8545. “Special-needs child”

Comment. Section 8545 continues former Civil Code Section 220.20(~~q~~)(r) [as amended by 1992 Cal. Stat. ch. 1353, § 2] without substantive change.

§ 8548. “Stepparent adoption”

Comment. Section 8548 continues former Civil Code Section 220.20(~~r~~)(s) [as amended by 1992 Cal. Stat. ch. 1353, § 2] without substantive change. For provisions relating to stepparent adoptions, see Chapter 5 (commencing with Section 9000) of Part 2. See also Section 8512 (“birth parent” defined).

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EXHIBIT 31

SB 1959 (Paternity)

Staff Note. The draft legislation in this exhibit would repeal a section that was repealed by AB 2650 (1992 Cal. Stat. ch. 162, § 4), but chaptered-out in part by SB 1959 (1992 Cal. Stat. ch. 849, § 1.5), and make conforming changes in the Family Code.

Civ. Code § 7004 (repealed). Presumption of paternity

SEC. _____. Section 7004 of the Civil Code is repealed.

7004. (a) A man is presumed to be the natural father of a child if he meets the conditions as set forth in Section 621 of the Evidence Code, or in any of the following paragraphs:

(1) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court.

(2) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and, either of the following are true:

(i) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.

(ii) If the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation.

(3) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:

(i) With his consent, he is named as the child's father on the child's birth certificate.

(ii) He is obligated to support the child under a written voluntary promise or by court order.

(4) He receives the child into his home and openly holds out the child as his natural child.

(5) If the child was born and resides in a nation with which the United States engages in an Orderly Departure Program or successor program, he acknowledges that he is the child's father in a declaration under penalty of perjury, as specified in Section 2015.5 of the Code of Civil Procedure.

This paragraph shall remain in effect only until January 1, 1997, and on that date shall become inoperative.

(b) If (a) is not applicable, then, a man shall not be presumed to be the natural father of a child if either of the following is true:

(1) The child was conceived as a result of an act in violation of Section 261 of the Penal Code and the father was convicted of that violation.

(2) The child was conceived as a result of an act in violation of Section 261.5 of the Penal Code, the father was convicted of that violation, and the mother was under the age of 15 years and the father was 21 years of age or older at the time of conception.

(c) Except as provided in Sections 621 and 621.1 of the Evidence Code, a presumption under this section is a rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise under this section which conflict with each other, the presumption which, on the facts, is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

Comment. Former Section 7004 [as amended by 1992 Cal. Stat. ch. 849, § 1.5] is continued in Family Code Sections 7611, 7611.5, and 7612 without substantive change.

Evid. Code § 621.1 (repealed). Pilot project on paternity

SEC. ____ . Section 621.1 of the Evidence Code is repealed.

621.1. (a) The State Department of Social Services shall establish pilot projects in one hospital which agrees to participate, in each of three counties to evaluate the cost-effectiveness of establishing paternity at the hospital, the number of parents who sign paternity declarations, the circumstances under which parents volunteer to establish paternity, and the obstacles to establishing paternity through voluntary declaration.

(b) Although the number of pilot projects is limited to one hospital in each of three counties, any county, and any hospital, clinic, or other place of birth within those counties that is not part of the pilot projects, that wishes to implement voluntary paternity establishment by declaration as provided for in this section, may do so by using the forms and procedures set forth in this section, and by informing the State Department of Social Services of their intention to implement voluntary paternity establishment by declaration no later than March 1, 1993.

(c) The State Department of Social Services shall do all of the following:

(1) Establish the pilot projects in accordance with this section.

(2) Consult with representatives of the Senate and Assembly Judiciary Committees, the State Registrar of Vital Statistics, child support advocacy groups, hospital associations, and district attorneys in developing the form to be used to establish paternity in the pilot projects.

(3) With the assistance of the State Registrar of Vital Statistics, furnish and distribute the forms to local registrars of vital statistics in participating counties.

(4) Consult with representatives of the Senate and Assembly Judiciary Committees, the State Registrar of Vital Statistics, child support advocacy groups, hospital associations, and district attorneys in evaluating the pilot projects.

(d) Because of the compelling interest in providing all children in the State of California with equal rights and access to benefits, including, but not limited to, social security, health insurance, survivors' benefits, military benefits, and inheritance rights, without regard to the marital status of their parents, except as provided in subdivision (g), the child of a woman and a man executing a declaration of paternity under this section, which meets the requirements of subdivision (f), is conclusively presumed to be their child. The presumption under this section has the same force and effect as the presumption under subdivision (a) of Section 621.

(e) "Father," as used in this section, has the meaning given in subdivision (a) of Section 621.

(f) In order for a conclusive presumption of paternity to be established pursuant to this section, the following must appear on the declaration:

(1) The full name, place, and date of birth of the child.

(2) The full name and current address of the attesting father of the child.

(3) The full name and current address of the attesting mother of the child.

(4) A notice captioned "READ THIS BEFORE SIGNING", preceding the declaration and conspicuously placed, stating that:

(A) Executing this declaration is strictly voluntary. If you have any questions that were not answered in the written information provided to you with this form, consult an attorney.

(B) This declaration is a legal document that creates rights and duties under California law and assures that your child is entitled to receive the same rights and benefits as he or she would receive if you were married to the other parent of your child.

(C) The man signing this declaration unequivocally understands that by signing this document he agrees that he is the father of the child and that he is willingly and knowingly waiving his right to a trial on the question of paternity unless he takes action within two years from the date of signing this document to challenge the paternity established by the declaration as prescribed by subdivision (g).

(D) The paternity established by the declaration may be rebutted in court by a blood test, as provided under subdivision (g), within two years from the date of signature by the attesting father, or the attesting mother, whichever signature is later.

(E) If the attesting father does not contest paternity within two years after the date he executes the declaration, or from the date the attesting mother executes the declaration, whichever date is later, he will be deemed to be the father of the child regardless of any evidence to the contrary, including blood or genetic tests, offered at any proceeding that takes place more than two years from the date of signing this declaration.

~~(F) Upon establishing yourself as the father of the child, you are fully and legally responsible for the support of the child, which may include paying child support.~~

~~(G) Upon establishing yourself as the father of the child, you, by signing this declaration, are entitled to all rights with regard to the child that a father would have who is or has been married to the mother of the child.~~

~~(5) The signature of the father attesting under penalty of perjury under the laws of the State of California that the information provided is true and correct, that he has read and fully understands the rights he is waiving and the duties imposed on him as described in paragraph (4), that he is executing this declaration to establish that he is the father of the child and understands that by acknowledging paternity of the child he accepts an obligation to provide child support under the laws of the State of California.~~

~~(6) Execution of this declaration authorizes the state to add the signator's name as the natural father of the child to the child's birth certificate.~~

~~(7) The signature of the natural mother attesting under penalty of perjury under the laws of the State of California that the information provided is true and correct, that the man named is the natural father of the child, that she is executing this declaration to name the natural father of her child, and that she has read and fully understands that by executing this declaration she is establishing the named natural father as the conclusively presumed father with all the rights and responsibilities of a conclusively presumed father under subdivision (a) of Section 621.~~

~~(8) The full name and signature of the party registering the declaration and the date of registration.~~

~~(g) The presumption established by this section may be rebutted, by any person as provided by subdivision (b) of Section 621, within two years from the date of execution of the declaration by the attesting father, or by the attesting mother, whichever signature is later. The two-year statute of limitation used in subdivision (c) of Section 621 is inapplicable for purposes of this section.~~

~~(h) A presumption under this section shall not override a presumption arising under subdivision (a) of Section 621. A presumption under this section shall override all presumptions except a presumption arising under subdivision (a) of Section 621, including presumptions arising under Section 7004 of the Civil Code.~~

~~(i) Prior to the mother leaving the hospital, clinic, or other place of birth, the person responsible for registering live births under Sections 10101 and 10102 of the Health and Safety Code shall provide to the natural mother and attempt to provide, at the place of birth, to the man identified by the natural mother as the natural father, a declaration for completion that meets the requirements of subdivision (c). The person responsible for registering the birth shall file the declaration, if completed, with the birth certificate, and a copy of the declaration shall be made available to each of the attesting parents.~~

~~(j) If the declaration is not registered by the person responsible for registering live births at the hospital, clinic, or place of birth, it may be completed by the attesting parents via notarized signatures and mailed to, or registered personally by either or both parents with, the local registrar of the State Office of Vital Statistics at any time after the child's birth.~~

~~(k) The declaration, whether filed by the person responsible for registering live births, or by the parents at a later date, shall be attached as an addendum to the public, nonconfidential portion of the birth certificate.~~

~~(l) The State Department of Social Services shall report to the Legislature on or before December 31, 1995, on the success of the pilot projects. The evaluation of the effectiveness of the pilot projects shall be based on the following criteria:~~

~~(1) A significant increase in the ease of establishing paternity within participating counties.~~

~~(2) A significant increase in paternity establishment within participating counties.~~

~~(3) An increase in the numbers of children within participating counties, who have greater access to child support and other benefits of paternity due to voluntary establishment of paternity by declaration.~~

~~(4) For those families establishing paternity via voluntary declaration, a significant decrease in the time required to establish paternity due to the removal of the need for a lengthy court process to determine and establish paternity.~~

~~(5) A notable decrease in costs to the courts and district attorneys due to the establishment of paternity by voluntary declaration.~~

Comment. Former Section 621.1 [as added by 1992 Cal. Stat. ch. 849, § 2] is continued in Family Code Sections 20100-20104 (paternity pilot projects) without substantive change.

Fam. Code § 7611 (technical amendment). Presumption of paternity

SEC. _____. Section 7611 of the Family Code is amended to read:

7611. A man is presumed to be the natural father of a child if he meets the conditions ~~as set forth~~ provided in Part Chapter 1 (commencing with Section ~~7500~~ 7540) of Part 2 or in any of the following subdivisions:

(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a judgment of separation is entered by a court.

(b) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:

(1) If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; ~~or.~~

(2) If the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation.

(c) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and either of the following is true:

(1) With his consent, he is named as the child's father on the child's birth certificate; or

(2) He is obligated to support the child under a written voluntary promise or by court order.

(d) He receives the child into his home and openly holds out the child as his natural child.

(e) If the child was born and resides in a nation with which the United States engages in an Orderly Departure Program or successor program, he acknowledges that he is the child's father in a declaration under penalty of perjury, as specified in Section 2015.5 of the Code of Civil Procedure. This subdivision shall remain in effect only until January 1, 1997, and on that date shall become inoperative.

Comment. Section 7611 continues former Civil Code Section 7004(a) [as amended by 1992 Cal. Stat. ch. 849, § 1.5] without substantive change. This section is the same in substance as Section 4(a) of the Uniform Parentage Act (1973). In subdivision (a), "judgment" has been substituted for "decree." This is not a substantive change. See Section 100 ("judgment" includes decree, as appropriate). See also Section 7612 (nature of paternity presumptions).

Interim Comment. Section 7611 is amended to correct cross-references.

Fam. Code § 7611.5 (added). Prohibition on presumption of paternity

SEC. _____. Section 7611.5 is added to the Family Code, to read:

7611.5. Where Section 7611 does not apply, a man shall not be presumed to be the natural father of a child if either of the following is true:

(a) The child was conceived as a result of an act in violation of Section 261 of the Penal Code and the father was convicted of that violation.

(b) The child was conceived as a result of an act in violation of Section 261.5 of the Penal Code, the father was convicted of that violation, and the mother was under the age of 15 years and the father was 21 years of age or older at the time of conception.

Comment. Section 7611.5 continues former Civil Code Section 7004(b) [as amended by 1992 Cal. Stat. ch. 849, § 1.5] without substantive change.

Interim Comment. This section is a new provision needed to include a new subdivision added to Civil Code Section 7004 by 1992 Cal. Stat. ch. 849, § 1.5.

Fam. Code § 7612 (technical amendment). Nature of paternity presumptions

SEC. _____. Section 7612 of the Family Code is amended to read:

7612. (a) Except as provided in Part Chapter 1 (commencing with Section 7500 7540) of Part 2 or in Section 20102, a presumption under Section 7611 is a

rebuttable presumption affecting the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence.

(b) If two or more presumptions arise under Section 7611 which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.

(c) The presumption under Section 7611 is rebutted by a judgment establishing paternity of the child by another man.

Comment. Section 7612 continues former Civil Code Section 7004(b)(c) [as amended by 1992 Cal. Stat. ch. 849, § 1.5] without substantive change. This section is similar to Section 4(b) of the Uniform Parentage Act (1973). In subdivision (c), “judgment” has been substituted for “decree.” This is not a substantive change. See Section 100 (“judgment” includes decree, as appropriate).

Interim Comment. Section 7612 is amended to correct cross-references.

Fam. Code § 20100-20104 (added). Paternity Pilot Projects

SEC. _____. Part 2 (commencing with Section 20100) is added to Division 20 of the Family Code, to read:

PART 2. PATERNITY PILOT PROJECTS

§ 20100. Pilot projects

20100. (a) The State Department of Social Services shall establish pilot projects in one hospital which agrees to participate, in each of three counties to evaluate the cost-effectiveness of establishing paternity at the hospital, the number of parents who sign paternity declarations, the circumstances under which parents volunteer to establish paternity, and the obstacles to establishing paternity through voluntary declaration.

(b) Although the number of pilot projects is limited to one hospital in each of three counties, any county, and any hospital, clinic, or other place of birth within those counties that is not part of the pilot projects, that wishes to implement voluntary paternity establishment by declaration as provided for in this part, may do so by using the forms and procedures set forth in this part, and by informing the State Department of Social Services of their intention to implement voluntary paternity establishment by declaration no later than March 1, 1993.

Comment. Section 20100 continues former Evidence Code Section 621.1(a)-(b) [as added by 1992 Cal. Stat. ch. 849, § 2] without substantive change.

§ 20101. Duties of State Department of Social Services

20101. The State Department of Social Services shall do all of the following:

(a) Establish the pilot projects in accordance with Section 20100.

(b) Consult with representatives of the Senate and Assembly Judiciary Committees, the State Registrar of Vital Statistics, child support advocacy groups, hospital associations, and district attorneys in developing the form to be used to establish paternity in the pilot projects.

(c) With the assistance of the State Registrar of Vital Statistics, furnish and distribute the forms to local registrars of vital statistics in participating counties.

(d) Consult with representatives of the Senate and Assembly Judiciary Committees, the State Registrar of Vital Statistics, child support advocacy groups, hospital associations, and district attorneys in evaluating the pilot projects.

Comment. Section 20101 continues former Evidence Code Section 621.1(c) [as added by 1992 Cal. Stat. ch. 849, § 2] without substantive change.

§ 20102. Presumption of paternity

20102. (a) As used in this section, “father” has the meaning provided by Section 7540.

(b) Because of the compelling interest in providing all children in the State of California with equal rights and access to benefits, including, but not limited to, social security, health insurance, survivors’ benefits, military benefits, and inheritance rights, without regard to the marital status of their parents, except as provided in subdivision (d), the child of a woman and a man executing a declaration of paternity under this section, which meets the requirements of subdivision (c), is conclusively presumed to be their child. The presumption under this section has the same force and effect as the presumption under Section 7540.

(c) In order for a conclusive presumption of paternity to be established pursuant to this section, the following must appear on the declaration:

- (1) The full name, place, and date of birth of the child.
- (2) The full name and current address of the attesting father of the child.
- (3) The full name and current address of the attesting mother of the child.
- (4) A notice captioned “READ THIS BEFORE SIGNING,” preceding the declaration and conspicuously placed, stating all of the following:

(A) Executing this declaration is strictly voluntary. If you have any questions that were not answered in the written information provided to you with this form, consult an attorney.

(B) This declaration is a legal document that creates rights and duties under California law and assures that your child is entitled to receive the same rights and benefits as he or she would receive if you were married to the other parent of your child.

(C) The man signing this declaration unequivocally understands that by signing this document he agrees that he is the father of the child and that he is willingly and knowingly waiving his right to a trial on the question of paternity unless he takes action within two years from the date of signing this document to challenge the paternity established by the declaration as provided by subdivision (d).

(D) The paternity established by the declaration may be rebutted in court by a blood test, as provided by subdivision (d), within two years from the date of signature by the attesting father, or the attesting mother, whichever signature is later.

(E) If the attesting father does not contest paternity within two years after the date he executes the declaration, or from the date the attesting mother executes the declaration, whichever date is later, he will be deemed to be the father of the child regardless of any evidence to the contrary, including blood or genetic tests, offered at any proceeding that takes place more than two years from the date of signing this declaration.

(F) Upon establishing yourself as the father of the child, you are fully and legally responsible for the support of the child, which may include paying child support.

(G) Upon establishing yourself as the father of the child, you, by signing this declaration, are entitled to all rights with regard to the child that a father would have who is or has been married to the mother of the child.

(5) The signature of the father attesting under penalty of perjury under the laws of the State of California that the information provided is true and correct, that he has read and fully understands the rights he is waiving and the duties imposed on him as described in paragraph (4), that he is executing this declaration to establish that he is the father of the child and understands that by acknowledging paternity of the child he accepts an obligation to provide child support under the laws of the State of California.

(6) Execution of this declaration authorizes the state to add the signatory's name as the natural father of the child to the child's birth certificate.

(7) The signature of the natural mother attesting under penalty of perjury under the laws of the State of California that the information provided is true and correct, that the man named is the natural father of the child, that she is executing this declaration to name the natural father of her child, and that she has read and fully understands that by executing this declaration she is establishing the named natural father as the conclusively presumed father with all the rights and responsibilities of a conclusively presumed father under Section 7540.

(8) The full name and signature of the party registering the declaration and the date of registration.

(d) The presumption established by this section may be rebutted, by any person as provided by subdivision (a) of Section 7541, within two years from the date of execution of the declaration by the attesting father, or by the attesting mother, whichever signature is later. The two-year statute of limitation used in subdivision (b) of Section 7541 is inapplicable for purposes of this section.

(e) A presumption under this section does not override a presumption under Section 7540. A presumption under this section overrides all presumptions except a presumption arising under Section 7540, including presumptions under Section 7611.

Comment. Section 20102 continues former Evidence Code Section 621.1(d)-(h) [as added by 1992 Cal. Stat. ch. 849, § 2] without substantive change.

Interim Comment. Section 20102 is amended to correct cross-references.

§ 20103. Delivery and filing of declaration

20103. (a) Before the mother leaves the hospital, clinic, or other place of birth, the person responsible for registering live births under Sections 10101 and 10102 of the Health and Safety Code shall provide to the natural mother and attempt to provide, at the place of birth, to the man identified by the natural mother as the natural father, a declaration for completion that meets the requirements of Section 20102. The person responsible for registering the birth shall file the declaration, if completed, with the birth certificate, and a copy of the declaration shall be made available to each of the attesting parents.

(b) If the declaration is not registered by the person responsible for registering live births at the hospital, clinic, or place of birth, it may be completed by the attesting parents by means of notarized signatures and mailed to, or registered personally by either or both parents with, the local registrar of the State Office of Vital Statistics at any time after the child's birth.

(c) The declaration, whether filed by the person responsible for registering live births, or by the parents at a later date, shall be attached as an addendum to the public, nonconfidential portion of the birth certificate.

Comment. Section 20103 continues former Evidence Code Section 621.1(i)-(k) [as added by 1992 Cal. Stat. ch. 849, § 2] without substantive change. In subdivision (a), the reference to Section 20102 has been substituted to correct an erroneous reference to former Evidence Code Section 621.1(c).

§ 20104. Report by State Department of Social Services

20104. The State Department of Social Services shall report to the Legislature on or before December 31, 1995, on the success of the pilot projects. The evaluation of the effectiveness of the pilot projects shall be based on the following criteria:

(a) A significant increase in the ease of establishing paternity within participating counties.

(b) A significant increase in paternity establishment within participating counties.

(c) An increase in the numbers of children within participating counties, who have greater access to child support and other benefits of paternity due to voluntary establishment of paternity by declaration.

(d) For those families establishing paternity by means of a voluntary declaration, a significant decrease in the time required to establish paternity due to the removal of the need for a lengthy court process to determine and establish paternity.

(e) A notable decrease in costs to the courts and district attorneys due to the establishment of paternity by voluntary declaration.

Comment. Section 20104 continues former Evidence Code Section 621.1(l) [as added by 1992 Cal. Stat. ch. 849, § 2] without substantive change.

#F-1170

1/20/93

EXHIBIT 32

SB 1614 (Child Support Guideline)

Staff Note. The draft legislation in this exhibit would repeal sections that were repealed by AB 2650 (1992 Cal. Stat. ch. 162, § 3), but chaptered-out in part by SB 1614 (1992 Cal. Stat. ch. 848), and make conforming changes in the Family Code, and would restore conforming changes in AB 2641 (1992 Cal. Stat. ch. 163), which were chaptered-out by SB 1614.

Civ. Code § 4357.5 (repealed). Expedited support order

SEC. ____ . Section 4357.5 of the Civil Code is repealed.

~~4357.5. (a) In any action for child support that has been filed and served, the court may, without a hearing, make an order requiring a parent or parents to pay for the support, maintenance, and education of his or her minor child or children during the pendency of that action, pursuant to this section, in an amount as required by Section 4721 or, if the income of the obligated parent or parents is unknown to the applicant, then the minimum amount of support as provided in Section 11452 of the Welfare and Institutions Code.~~

~~An order under this section shall be known as an expedited support order.~~

~~As used in this section, “income and expense declaration” means the form for an income and expense declaration in family law matters adopted by the Judicial Council.~~

~~(b) An expedited support order shall be made by the superior court upon the filing of an application requesting that relief, setting forth the minimum amount the obligated parent or parents are required to pay pursuant to Section 4721 or pursuant to Section 11452 of the Welfare and Institutions Code, an income and expense declaration for both parents completed by the applicant, a worksheet setting forth the basis of the required amount and a proposed expedited support order.~~

~~Except in the event of a hearing concerning the application for an expedited support order, the amount of the expedited support order shall be the minimum amount the obligated parent is required to pay as set forth in the application. An expedited support order shall be effective 30 days after service on the obligated parent of the application, income and expense declarations, worksheet, a notice of consequences of failure to file a response, the proposed order, three blank responses to the application for an expedited support order and notice of hearing forms, and three blank income and expense declaration forms.~~

The expedited support order shall be effective on the obligated parent, without further action by the court, unless there is a response to the application for an expedited support order.

(c) Service on the obligated parent of the application and other required documents as set forth in subdivision (b) shall be by personal service or by any method available under Sections 415.10 to 415.40, inclusive, of the Code of Civil Procedure.

(d) The response to the application for the proposed expedited support order and the obligated parent's income and expense declaration may be filed with the court at any time prior to the effective date of the expedited support order and, on filing, shall be served upon the applicant by any method by which a response to a notice of motion may be served. The response to the application for an expedited support order shall state the objections of the obligated parent to the proposed expedited support order. The simultaneous filing of the response to the application for an expedited support order and the obligated parent's income and expense declaration shall stay the effective date of the expedited support order. No fee shall be charged for, or in connection with, the filing of the response.

(e) The obligated parent shall cause the court clerk to, and the court clerk shall, set a hearing on the application for the expedited support order not less than 20 nor more than 30 days after the filing of the response to the application for the expedited support order and income and expense declaration. The obligated parent shall give notice of the hearing to the other parties or their counsel by first-class mail no less than 15 days before the hearing. If no such notice is given, expedited support order shall become effective as provided in subdivision (b) subject to the relief available to the responding party as provided by Section 473 of the Code of Civil Procedure or any other available relief whether in law or in equity.

(f) An application for the expedited support order shall confer jurisdiction on the court to hear only the issue of support of the minor child or children. Nothing in this section shall prevent either party from bringing before the court at the hearing other separately noticed issues otherwise relevant and proper to the action in which the application for the expedited support order has been filed.

(g) At the hearing to establish a support order, all parties who are parents of the child or children who are the subject of the action shall produce copies of their most recently filed federal and state income tax returns. A tax return so submitted may be reviewed by the other parties and a party also may be examined by the other parties as to the contents of any such return. A party who fails to submit documents to the court as required by this section shall not be granted the relief that he or she has requested. However, the court may grant the requested relief if a party submits a declaration under penalty of perjury that (1) no such documents exist, or (2) in the case of a tax return, it cannot be produced, but a copy has been requested from the Internal Revenue Service or Franchise Tax Board.

~~(h) The court shall order an amount of support in accordance with Chapter 2 (commencing with Section 4720) of Title 5 of this part.~~

~~(i) When there is a hearing, the resulting order shall be called an order after hearing. The order after hearing shall become effective no more than 30 days after the filing of the response to the application for the expedited support order and may be given retroactive effect to the date of the filing of the application.~~

~~(j) An order entered under this section may be modified at any time on the same basis as any other order for child support.~~

~~(k) The Judicial Council shall prepare all forms necessary to give effect to this section.~~

Comment. Former Section 4357.5 [as amended by 1992 Cal. Stat. ch. 848, § 1] is continued without substantive change in Family Code Sections 3620-3634 and related sections.

Civ. Code § 4390 (repealed). Definitions

SEC. _____. Section 4390 of the Civil Code is repealed.

~~4390. Unless the provision or context otherwise requires, the following definitions in this chapter govern the construction of this chapter.~~

~~(a) “Assignment” has the same meaning as “wage assignment” or “earnings assignment.” “Wage assignment” and “earnings assignment” have the same meaning and cover all “earnings” as described in subdivision (c).~~

~~(b) “Due date of support payments” shall be the date specifically stated in the order of support or, if no date is stated in the support order, then it shall be the last day of the month in which the support payment is to be paid.~~

~~(c) “Earnings,” to the extent that these earnings are subject to a wage assignment for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, includes:~~

~~(1) Wages, salary, bonus, money, and benefits described in Sections 704.110, 704.113, and 704.115 of the Code of Civil Procedure.~~

~~(2) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural resource rights.~~

~~(3) Payments of credits due or becoming due as a result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.~~

~~(4) Any payments due for workers’ compensation temporary disability benefits.~~

~~(5) Any other payments or credits due or becoming due as a result of an enforceable obligation.~~

~~(d) “Employer” means a person for whom an individual performs services as an employee, as defined in Section 706.011 of the Code of Civil Procedure, and includes the United States government and any public entity as defined in Section 811.2 of the Government Code and any person or entity paying earnings as defined under subdivision (c).~~

(e) “IV-D Case” means any case being established, modified or enforced by the district attorney pursuant to Section 654 of Title 42 of the United States Code (Section 454 of the Social Security Act).

(f) “Obligee” or “assigned obligee” means either the person to whom support has been ordered to be paid, the district attorney, or other person designated by the court to receive the payment. The district attorney shall be the obligee for all cases as defined under subdivision (e) or in which an application for services has been filed under Part D (commencing with Section 651) and Part E (commencing with Section 670) of Subchapter IV of Chapter 7 of Title 42 of the United States Code (Title IV-D or IV-E of the Social Security Act).

(g) “Obligor” means any person owing a duty of support.

(h) “Support” refers to an obligation owing on behalf of a child, spouse, or family; or an amount owing pursuant to Section 11350 of the Welfare and Institutions Code. It also includes past due support or arrearage when it exists.

(i) “Timely payment” means receipt of support payments by the obligee or assigned obligee within five days of the due date.

Comment. Former Section 4390 [as amended by 1992 Cal. Stat. ch. 848, § 2] is continued without substantive change in Family Code Sections 5200-5220 and related sections.

Civ. Code § 4390.3 (repealed). Wage assignment order

SEC. _____. Section 4390.3 of the Civil Code is repealed.

4390.3. (a) On and after July 1, 1990, whenever the court orders either party to pay any amount of support or orders a modification of the amount of support to be paid, the court shall also order the obligor to assign to an obligee that portion of his or her earnings due or to be due in the future as will be sufficient to pay the amount ordered by the court for support and shall include an amount to be paid toward the liquidation of any arrearage or past due support amount. The court shall include a wage assignment order in any order or judgment establishing or modifying support. Upon the filing and service of a notice of motion or order to show cause with the supporting application, an obligee may request the court to issue a wage assignment to enforce an existing support order or to modify an existing wage assignment order.

(b) All orders for wage assignment entered pursuant to this section shall be effective upon compliance with the procedures set forth in Section 4390.8, unless stayed pursuant to subdivision (c).

(c) The court may order that service of the wage assignment be stayed only if the court makes a finding of good cause to stay service of the wage assignment. Notwithstanding any other provision of law, service of wage assignments issued for foreign orders for support, and service of foreign orders for the assignment of wages registered pursuant to Chapter 3 (commencing with Section 1670) of Title 10a of Part 3 of the Code of Civil Procedure, shall not be stayed pursuant to this subdivision. Good cause is limited to the following:

~~(1) The obligor has a history of uninterrupted, full, and timely payment, other than through a wage assignment or other mandatory process, of previously ordered support during the preceding 12 months; however, an obligor who has not been subject to an order of support for 12 months prior to the issuance of the wage assignment may qualify for good cause subject to this provision if the obligor posts with the clerk of the court a cash bond or cash in an amount equal to three months' support.~~

~~Notwithstanding the above, good cause to stay service of the wage assignment shall not be found if an obligor owes an arrearage for prior support.~~

~~(2) The obligor proves, and the court finds, by clear and convincing evidence that service of the wage assignment would cause extraordinary hardship upon the obligor. Whenever possible, the court shall specify a date that any stay ordered under this paragraph will automatically terminate.~~

~~(3) The parties sign a written agreement which provides for an alternative arrangement to ensure payment of the support obligation as ordered other than through the immediate service of a wage assignment. This written agreement may include an agreement relating to the staying of the service of a wage assignment. Any agreement between the parties which includes the staying of the service of a wage assignment shall include the agreement of the district attorney in any case in which support is ordered to be paid through a county officer designated for that purpose. The signing of an agreement pursuant to this paragraph shall not preclude the party from seeking an assignment in accordance with the procedures set forth in Section 4390.4 upon violation of this agreement.~~

~~(4) The employer or district attorney has been unable to deliver payments under the assignment for a period of six months due to the failure of the obligee to notify the employer or district attorney of a change of address.~~

Comment. Former Section 4390.3.[as amended by 1992 Cal. Stat. ch. 848, § 3] is continued without substantive change in Family Code Sections 5208, 5230-5231, and 5260.

Civ. Code § 4702 (repealed). Payments to county officer

SEC. _____. Section 4702 of the Civil Code is repealed.

~~4702. (a) Notwithstanding the provisions of Section 4701, in any proceeding where a court makes or has made an order requiring the payment of child support to a parent receiving welfare moneys for the maintenance of minor children, the court shall direct that the payments of support shall be made to the county officer designated by the court for that purpose, and shall direct the district attorney to appear on behalf of the welfare recipient in any proceeding to enforce the order.~~

~~(b) In any proceeding where a court makes or has made an order requiring the payment of child support to the person having custody of any minor children of the marriage, the court may direct that the payments shall be made to the county officer designated by the court for that purpose, and may direct the district attorney to appear on behalf of the minor children in any action to enforce the order.~~

~~(c) Notwithstanding any other provision of law, in any proceeding where the custodial parent resides in one county and the parent ordered to pay support resides in another county, the court may direct payment to be made to the county officer designated by the court for those purposes in the county of residence of the custodial parent, and may direct the district attorney of either county to enforce the order. Civil enforcement by the district attorney of the county of residence of the custodial parent, where the order is in the county of the noncustodial parent or any other county, may be brought in accordance with Section 1697 of the Code of Civil Procedure. If the court directs the district attorney of the county of residence of the noncustodial parent to enforce the order, the expenses of the district attorney with respect to the enforcement shall be a charge upon the county of residence of the noncustodial parent.~~

~~(d) Except as provided in subdivision (c), expenses of the county officer designated by the court, and expenses of the district attorney incurred in the enforcement of any order of the type described in subdivision (a) or (b), shall be a charge upon the county where the proceedings are pending. Any fees for service of process in the enforcement of any such order shall be a charge upon the county where the process is served.~~

Comment. Former Section 4702.[as amended by 1992 Cal. Stat. ch. 848, § 4] is continued without substantive change in Family Code Sections 4200-4203.

Civ. Code § 4720 (repealed). Legislative intent; Judicial Council review

SEC. _____. Section 4720 of the Civil Code is repealed.

~~4720. (a) (1) It is the intention of the Legislature to ensure that the State of California remains in compliance with federal regulations for child support guidelines. The Legislature therefore adopts the statewide uniform guideline set forth in Section 4721, to take effect on July 1, 1992.~~

~~(2) It is the intention of the Legislature that the courts shall adhere to the statewide uniform guideline adopted pursuant to Section 4721 and shall depart from this guideline only in the special circumstances set forth in Section 4721.~~

~~(3) In implementing this guideline, the courts shall further adhere to the following principles:~~

~~(A) A parent's first and principal obligation is to support his or her minor children according to the parent's circumstances and station in life.~~

~~(B) Both parents are mutually responsible for the support of their children.~~

~~(C) This guideline takes into account each parent's actual income and level of responsibility for the children.~~

~~(D) Each parent should pay for the support of the children according to his or her ability.~~

~~(E) This guideline seeks to place the interests of children as the state's top priority.~~

(F) Children should share in the standard of living of both parents. Child support may therefore appropriately improve the standard of living of the custodial household to improve the lives of the children.

(G) Child support orders in cases in which both parents have high levels of responsibility for of the children should reflect the increased costs of raising the children in two homes and should minimize significant disparities in the children's living standards in the two homes.

(H) The financial needs of the children should be met through private financial resources as much as possible.

(I) It is presumed that a parent having primary physical responsibility for of the children contributes a significant portion of available resources for the support of the children.

(J) This guideline seeks to encourage fair and efficient settlements of conflicts between parents and seeks to minimize the need for litigation.

(K) This guideline is intended to be presumptively correct in all cases, and only under special circumstances should child support orders fall below the child support mandated by the guideline formula.

(L) Child support orders must ensure that children actually receive fair, timely, and sufficient support reflecting the state's high standard of living and high costs of raising children compared to other states.

(b) The Judicial Council shall periodically review the guideline established in Section 4721 to recommend to the Legislature appropriate revisions. The review shall include economic data on the cost of raising children and analysis of case data, gathered through sampling or other methods, on the actual application of the guideline after the guideline's operative date. The review shall also include analysis of guidelines and studies from other states, and other research and studies available to or undertaken by the Judicial Council. Any recommendations for revisions to the guideline established in Section 4721 shall be made to ensure that the guideline results in appropriate child support orders to limit deviations from the guideline, or otherwise to help ensure that the guideline is in compliance with federal law. The Judicial Council may also review and report on other matters, including, but not limited to, the treatment of the income of a subsequent spouse or nonmarital partner; the treatment of children from prior or subsequent relationships; the application of the guideline in a case where a payor parent has extraordinarily low or extraordinarily high income, or where each parent has primary physical custody of one or more of the children of the marriage; the benefits and limitations of a uniform statewide spousal support guideline and the interrelationship of that guideline with the state child support guideline; whether the use of gross or net income in the guideline is preferable; whether the guideline affects child custody litigation or the efficiency of the judicial process; and whether the various assumptions used in computer software used by some courts to calculate child support comport with state law and should be made available to parties and counsel. The initial review by the Judicial Council shall be submitted

to the Legislature and to the State Department of Social Services on or before December 31, 1993, and subsequent reviews shall occur at least every four years thereafter unless federal law requires a different interval.

(c) In developing its recommendations, the Judicial Council shall consult with a broad cross-section of groups involved in child support issues, including, but not limited to, the following: custodial and noncustodial parents; representatives of established women's rights and fathers' rights groups; representatives of established organizations that advocate for the economic well-being of children; members of the judiciary, district attorney's offices, the Attorney General's office, and the State Department of Social Services; certified family law specialists; academicians specializing in family law; persons representing low-income parents; and persons representing recipients of assistance under the Aid to Families with Dependent Children (AFDC) program seeking child support services.

(d) In developing its recommendations, the Judicial Council shall seek public comment and shall be guided by the legislative intent that children share in the standard of living of both of their parents.

Comment. Former Section 4720.[as amended by 1992 Cal. Stat. ch. 848, § 5] is continued without substantive change in Family Code Sections 4050-4054.

Civ. Code § 4721 (repealed). Child support guideline

SEC. _____. Section 4721 of the Civil Code is repealed.

4721. (a) The statewide uniform guideline for determining child support orders is as follows:

$$CS = K [HN - (H\%) (TN)].$$

(b) (1) The components of the formula are as follows:

(A) CS = child support amount.

(B) K = amount of income to be allocated for child support as set forth in paragraph (3)

(C) HN = high earner's net monthly disposable income.

(D) H% = approximate percentage of time that high earner has or will have primary physical responsibility for the children compared to the other parent. In cases in which parents have different time-sharing arrangements for different children, H% shall equal the average of the approximate percentages of time the high earner parent spends with each child.

(E) TN = total net monthly disposable income of both parties.

(2) To compute net disposable income, see subdivision (g).

(3) K (amount of income allocated for child support) equals one plus H% (if H% is less than or equal to 50 percent) or two minus H% (if H% is greater than 50 percent) times the following fraction:

$$\frac{\text{Total Net Disposable Income Per Month}}{\$0-800 \text{ --- } .20 + TN/16,000 \\ \$801-7,000 \text{ --- } .25} \text{---} K$$

~~\$7,001-10,000 — .20 + 350/TN~~

~~\$10,001-20,000 — .16 + 400/TN~~

~~Over \$20,000 — .12 + 800/TN~~

~~For example, if H% equals 20% and the total monthly net disposable income of the parents is \$1,000, $K = (1 + .20) \times .25$, or .30. If H% equals 80% and the total monthly net disposable income of the parents is \$1,000, $K = (2 - .80) \times .25$, or .30.~~

~~(4) For more than one child, multiply CS by:~~

~~2 children — 1.6~~

~~3 children — 2~~

~~4 children — 2.3~~

~~5 children — 2.5~~

~~6 children — 2.625~~

~~7 children — 2.75~~

~~8 children — 2.813~~

~~9 children — 2.844~~

~~10 children — 2.86~~

~~(5) If the amount calculated under the formula results in a positive number, the higher earner shall pay that amount to the lower earner. If the amount calculated under the formula results in a negative number, the lower earner shall pay the absolute value of that amount to the higher earner.~~

~~(6) If the children who are the subject of the child support order are receiving assistance under the Aid to Families with Dependent Children program, H% shall be set at zero in the formula.~~

~~(7) In any default proceeding where proof is by affidavit pursuant to Section 4511, or in any proceeding for child support in which a party fails to appear after being duly noticed, H% shall be set at zero in the formula if the noncustodial parent is the higher earner or at 100 if the custodial parent is the higher earner, where there is no evidence presented demonstrating the percentage of time that the noncustodial parent has primary physical responsibility for the children.~~

~~(8) Unless the court orders otherwise, the order for child support shall allocate the support amount so that the amount of support for the youngest child is the amount of support for one child, and the amount for the next youngest child is the difference between that amount and the amount for two children, with similar allocations for additional children. However, this paragraph shall not apply to cases where there are different time-sharing arrangements for different children or where the court determines that the allocation would be inappropriate in the particular case.~~

~~(c) At the request of any party, the court shall state in writing or on the record the following information used in determining the guideline amount under this chapter:~~

~~(1) The net monthly disposable income of each parent.~~

~~(2) The actual federal income tax filing status of each parent (for example, single, married, married filing separate, or head of household and number of exemptions).~~

~~(3) Deductions from gross income for each parent.~~

~~(4) The approximate percentage of time pursuant to paragraph (1) of subdivision (b) that each parent has primary physical responsibility for the children compared to the other parent.~~

~~(5) The amount of support that would be received under the formula.~~

~~(6) any rebuttal factors found under subdivision (e).~~

~~(7) A finding that the revised amount is in the best interests of the children.~~

~~(8) Any other findings required by federal law.~~

~~(d) There shall be a rebuttable presumption affecting the burden of proof that the amount of child support established by the formula set forth in subdivision (a) is the correct amount of child support to be ordered.~~

~~(e) The presumption of subdivision (d) may be rebutted by admissible evidence showing that application of the formula would be unjust or inappropriate in the particular case, consistent with the principles set forth in Section 4720, because one or more of the following factors is found to be applicable by a preponderance of the evidence, and the court finds in writing or on the record that application of the formula would be unjust or inappropriate in the particular case and that the revised amount is in the best interests of the children:~~

~~(1) The parties have stipulated to a different amount of child support under subdivision (m).~~

~~(2) The sale of the family residence is deferred pursuant to Section 4700.10 and the rental value of the family residence in which the children reside exceeds the mortgage payments, homeowner's insurance, and property taxes. The amount of any adjustment pursuant to this paragraph shall not be greater than the excess amount.~~

~~(3) A parent's subsequent spouse or nonmarital partner has income that helps meet that parent's basic living expenses, thus increasing the parent's disposable income available to spend on the children.~~

~~(4) The parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children.~~

~~(5) A party is not contributing to the needs of the children at a level commensurate with that party's custodial time.~~

~~(6) Application of the formula would be unjust or inappropriate due to special circumstances in the particular case. These special circumstances include, but are not limited to, the following: cases in which the parents have different time-sharing arrangements for different children; cases in which both parents have substantially equal time-sharing of the children and one parent has a much lower or higher percentage of income used for housing than the other parent; and cases~~

in which the children have special medical or other needs that could require child support that would be greater than the formula amount.

(f) (1) The annual gross income of each parent means income from whatever source derived, except as specified in paragraph (3) and includes, but is not limited to, all of the following:

(A) Income such as commissions, salaries, royalties, wages, bonuses, rents, dividends, pensions, interest, trust income, annuities, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, social security benefits, and spousal support actually received from a person not a party to this order.

(B) Income from the proprietorship of a business, such as gross receipts from the business reduced by expenditures required for the operation of the business.

(C) In the discretion of the court, employee benefits or self-employment benefits, taking into consideration the benefit to the employee, any corresponding reduction in living expenses, and other relevant facts.

(2) The court may, in its discretion, consider the earning capacity of a parent in lieu of that parent's income, consistent with the best interests of the children.

(3) Annual gross income shall not include any income derived from child support payments actually received, and income derived from any public assistance program, eligibility for which is based on a determination of need. Child support received by a party for children from another relationship shall not be included as part of that party's gross or net income.

(g) The annual net disposable income of each parent shall be computed by deducting from his or her annual gross income the actual amounts attributable to the following items or other items permitted under this chapter:

(1) The state and federal income tax liability resulting from the parties' taxable income. Federal and state income tax deductions shall bear an accurate relationship to the tax status of the parties (that is, single, married, married filing separately, or head of household) and number of dependents. State and federal income taxes shall be those actually payable (not necessarily current withholding) after considering appropriate filing status, all available exclusions, deductions, and credits. Unless the parties stipulate otherwise, the tax effects of spousal support shall not be considered in determining the net disposable income of the parties for determining child support but shall be considered in determining spousal support consistent with Section 4801.

(2) Deductions attributed to the employee's contribution or the self-employed worker's contribution pursuant to the Federal Insurance Contributions Act (FICA), or an amount not to exceed that allowed under FICA for persons not subject to FICA, provided that the deducted amount is used to secure retirement or disability benefits for the parent.

(3) Deductions for mandatory union dues and retirement benefits, provided that they are required as a condition of employment.

(4) Deductions for health insurance or health plan premiums for the parent and for any children the parent has an obligation to support and deductions for state disability insurance premiums.

(5) Any child or spousal support actually being paid by the parent pursuant to a court order, to or for the benefit of any person who is not a subject of the order to be established by the court. In the absence of a court order, any child support actually being paid, not to exceed the amount established by this guideline, for natural or adopted children of the parent not residing in that parent's home, who are not the subject of the order to be established by the court, and of whom the parent has a duty of support. No deduction shall be allowed under this subdivision unless the parent proves payment of the support.

(6) Job-related expenses, if allowed by the court after consideration of whether the expenses are necessary, the benefit to the employee, and any other relevant facts.

(7) A deduction for hardship, as defined by Section 4722 and applicable published appellate court decisions. The amount of the hardship shall not be deducted from the amount of child support but shall be deducted from the income of the party to whom it applies. In applying any hardship under subdivision (b) of Section 4722, the court shall seek to provide equity between competing child support orders.

(h) The annual net disposable income shall be divided by 12 to reflect the monthly net disposable income. If the monthly net disposable income figure does not accurately reflect the actual or prospective earnings of the parties at the time the determination of support is made, the court may adjust the amount appropriately.

(i) The amounts in subdivision (j), if ordered to be paid, shall be considered additional support for the children and shall be computed in accordance with the following:

(1) If there needs to be an apportionment of expenses pursuant to subdivision (j), the expenses shall be divided one-half to each parent, unless either parent requests a different apportionment pursuant to paragraph (2) and presents documentation which demonstrates that a different apportionment would be more appropriate.

(2) If requested by either parent, and the court determines it is appropriate to apportion expenses under subdivision (j) other than one-half to each parent, the apportionment shall be as follows:

(A) The basic child support obligation shall first be computed using the formula set forth in subdivision (a), as adjusted for any appropriate rebuttal factors in subdivision (e).

(B) Any additional child support required for expenses pursuant to subdivision (j) shall thereafter be ordered to be paid by the parents in proportion to their net disposable incomes as adjusted pursuant to paragraphs (3) and (4).

~~(3) In cases where spousal support is or has been ordered to be paid by one parent to the other, for purposes of allocating additional expenses pursuant to subdivision (j), the gross income of the parent paying spousal support shall be decreased by the amount of the spousal support paid and the gross income of the parent receiving the spousal support shall be increased by the amount of the spousal support received for so long as the spousal support order is in effect and is paid.~~

~~(4) For purposes of computing the adjusted net disposable income of the parent paying child support for allocating any additional expenses pursuant to subdivision (j), the net disposable income of the parent paying child support shall be reduced by the amount of any basic child support ordered to be paid under subdivision (a). However, the net disposable income of the parent receiving child support shall not be increased by any amount of child support received.~~

~~(j) (1) The court shall order as additional child support:~~

~~(A) Child care costs related to employment or to reasonably necessary education or training for employment skills.~~

~~(B) The reasonable uninsured health care costs for the children. There is a rebuttable presumption that the costs actually paid for the uninsured health care needs of the children are reasonable.~~

~~(2) The court may order as additional child support:~~

~~(A) Costs related to the educational or other special needs of the children.~~

~~(B) Travel expenses for visitation.~~

~~(k) Unless there is an assignment of rights pursuant to Section 11477 of the Welfare and Institutions Code, any payment ordered pursuant to subdivision (j) may be ordered paid directly to a provider of services.~~

~~(l) The court may adjust the child support order as appropriate to accommodate seasonal or fluctuating income of either parent.~~

~~(m) Unless prohibited by applicable federal law, the parties may stipulate to a child support amount subject to approval of the court. However, the court shall not approve a stipulated agreement unless the parties declare all of the following:~~

~~(1) They are fully informed of their rights concerning child support.~~

~~(2) The order is being agreed to without coercion or duress.~~

~~(3) The agreement is in the best interests of the children involved.~~

~~(4) The needs of the children will be adequately met by the stipulated amount.~~

~~(n) A stipulated agreement of child support is not valid unless either of the following occurs:~~

~~(1) The parties declare the right to support has not been assigned to the county pursuant to Section 11477 of the Welfare and Institutions Code and no public assistance application is pending.~~

~~(2) The district attorney has joined in the stipulation by signing it. The district attorney shall not stipulate to a child support order below the guideline amount if the children are receiving assistance under the Aid to Families with Dependent~~

Children (AFDC) program, if an application for public assistance is pending, or if the parent receiving support has not consented to the order.

(o) If the parties to a stipulated agreement stipulate to a child support order below the amount established by this section, no change of circumstances need be demonstrated to obtain a modification of the child support order to the applicable guideline level or above.

(p) Orders and stipulations otherwise in compliance with this guideline may designate as “family support” an unallocated total sum for support of the spouse and any children without specifically labeling all or any portion as “child support” so long as the amount is adjusted to reflect the effect of additional deductibility. The amount of the order shall be adjusted to maximize the tax benefits for both parents.

(q) It is the intent of the Legislature that the uniform guideline provided by this chapter shall be reviewed by the Legislature at least every four years and shall be revised by the Legislature as appropriate to ensure that its application results in the determination of appropriate child support amounts. The review shall include consideration of changes required by applicable federal laws and regulations or recommended from time to time by the Judicial Council pursuant to subdivision (b) of Section 4720.

(r) The Judicial Council may develop model worksheets to assist parties in determining the approximate amount of child support due under the formula set forth in subdivision (a) and the approximate percentage of time each parent has primary physical responsibility for the children, and a form to assist the courts in making the findings and orders required by this chapter.

(s) The establishment of this guideline constitutes a change of circumstances for the purpose of any modification of child support order entered prior to this guideline’s operative date.

Comment. Former Section 4721.[as amended by 1992 Cal. Stat. ch. 848, § 6] is continued without substantive change in Family Code Sections 4055-4069.

Civ. Code § 4722 (repealed). Hardship exemptions

SEC. _____. Section 4722 of the Civil Code is repealed.

4722. If a parent is experiencing extreme financial hardship due to justifiable expenses resulting from the circumstances enumerated in this section, upon the request of a party, the court may allow such income deductions under Section 4721 as may be necessary to accommodate those circumstances.

(a) Circumstances evidencing hardship include the extraordinary health expenses for which the parent is financially responsible, and uninsured catastrophic losses.

(b) Circumstances evidencing hardship also include the minimum basic living expenses of either parent’s natural or adopted children for whom the parent has the obligation to support from other marriages or relationships who reside with the parent. The court, upon its own motion or upon the request of a party, may

~~allow such income deductions as necessary to accommodate these expenses after making the deductions allowable under subdivision (a). The maximum hardship deduction for each child who resides with the parent may be equal to, but shall not exceed, the support awarded each child subject to the order. For purposes of calculating this deduction, the amount of support per child established by this guideline shall be the total amount ordered divided by the number of children and not the amount established under paragraph (8) of subdivision (b) of Section 4721.~~

~~The Judicial Council may develop tables in accordance with this section to reflect the maximum hardship deduction taking into consideration the parent's net disposable income before the hardship deduction, the number of children for whom the deduction is being given, and the number of children for whom the support award is being made.~~

~~(c) If deductions for hardship expenses are allowed, the court shall state in writing or on the record the reasons supporting the deductions, document the underlying facts and circumstances and the amount of deductions allowed. Whenever possible, the court shall specify the duration that any deduction shall be in effect.~~

~~(d) Upon considering whether to allow a deduction under this section, and in determining the amount of any such deduction, the court shall be guided by the goals set forth in the expression of legislative intent set forth in Section 4720.~~

~~**Comment.** Former Section 4720.[as amended by 1992 Cal. Stat. ch. 848, § 7] is continued without substantive change in Family Code Sections 4070-4074.~~

Code Civ. Proc. § 704.160 (technical amendment). Worker's compensation

SEC. _____. Section 704.160 of the Code of Civil Procedure is amended to read:

704.160. (a) Except as provided by Chapter 1 (commencing with Section 4900) of Part 3 of Division 4 of the Labor Code, before payment, a claim for workers' compensation or workers' compensation awarded or adjudged is exempt without making a claim. Except as specified in subdivision (b), after payment, the award is exempt.

(b) Notwithstanding any other provision of law, during the payment of workers' compensation temporary disability benefits described in subdivision (a) to a support judgment debtor, the support judgment creditor may, through the appropriate district attorney, seek to apply the workers' compensation temporary disability benefit payment to satisfy the support judgment as provided by Section 11350.1 of the Welfare and Institutions Code.

(c) Notwithstanding any other provision of law, during the payment of workers' compensation temporary disability benefits described in subdivision (a) to a support judgment debtor under a support judgment, including a judgment for reimbursement of public assistance, the judgment creditor may, directly or through the appropriate district attorney, seek to apply the temporary disability benefit payments to satisfy the support judgment by an assignment of earnings

assignment order for support, as defined in Section 4390 5208 of the Civil Family Code, or any other applicable enforcement procedure. The amount to be withheld pursuant to the assignment of earnings assignment order for support or other enforcement procedure shall be 25 percent of the amount of each periodic payment or any lower amount specified in writing by the judgment creditor or court order, rounded down to the nearest dollar. Otherwise, the amount to be withheld shall be the amount the court determines under subdivision (c) of Section 703.070. The paying entity may deduct from each payment made pursuant to an order assigning earnings under this subdivision an amount reflecting the actual cost of administration of this assignment, up to two dollars (\$2) for each payment.

(d) Unless the provision or context otherwise requires, the following definitions govern the construction of this section.

(1) “Judgment debtor” or “support judgment debtor” means a person who is owing a duty of support.

(2) “Judgment creditor” or “support judgment creditor” means the person to whom support has been ordered to be paid.

(3) “Support” refers to an obligation owing on behalf of a child, spouse, or family; or an amount owing pursuant to Section 11350 of the Welfare and Institutions Code. It also includes past due support or arrearage when it exists.

Comment. Section 704.160 [as amended by 1992 Cal. Stat. ch. 848, § 10] is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 4390 and to make conforming changes in references to assignment orders.

Code Civ. Proc. § 1699 (repealed). Worker’s compensation

SEC. _____. Section 1699 of the Code of Civil Procedure is repealed.

~~1699. (a) Except as specified in this section, upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner. Except as specified in this section, upon registration, a foreign order for the assignment of wages for support shall be treated for all purposes in the same manner as an order for assignment of earnings entered pursuant to Chapter 5 (commencing with Section 4390) of Title 1.5 of Part 5 of Division 4 of the Civil Code.~~

~~(b) The obligor has 20 days after the mailing or other service of notice of the registration of a foreign order of support or assignment of wages in which to file a noticed motion requesting the court to vacate the registration or for other relief. In an action under this section there shall be no joinder of actions, coordination of actions, or cross-complaints and the claims or defenses shall be limited strictly to the identity of the obligor, the validity of the underlying foreign support order or foreign order for the assignment of wages, or the accuracy of the obligee’s~~

~~statement of the amount of support remaining unpaid unless the amount has been previously established by a judgment or order. The obligor shall serve a copy of the motion, personally or by first-class mail, on the office of the district attorney, private attorney representing the obligee, or obligee representing himself or herself who filed the request for registration of the order, not less than 15 days prior to the date on which the motion is to be heard. If service is by mail, Section 1013 applies. If the obligor does not file the motion within 20 days, the registered foreign support order or foreign order for the assignment of wages and all other documents filed pursuant to subdivision (a) of Section 1698.3 are confirmed.~~

~~(c) At the hearing on the motion to vacate registration of the order, the obligor may present only matters that would be available to the obligor as defenses in an action to enforce a support judgment. If the obligor shows and the court finds that an appeal from the order is pending or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If the obligor shows and the court finds any ground upon which enforcement of a support order of this state may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.~~

~~(d) Registration of an out-of-state order for the sole purpose of interstate wage withholding shall not confer jurisdiction on the court for any purpose other than income withholding.~~

Comment. Former Section 1699.[as amended by 1992 Cal. Stat. ch. 848, § 11] is continued in Family Code Section 4853 without substantive change.

Fam. Code § 4853 (technical amendment). Effect of registration of foreign support or assignment order; enforcement of registered order

SEC. _____. Section 4853 of the Family Code is amended to read:

4853. (a) Except as specified in this section, upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner. Except as specified in this section, upon registration, a foreign order for the assignment of wages for support shall be treated for all purposes in the same manner as an earnings assignment order for support entered pursuant to Chapter 8 (commencing with Section 5200).

(b) The obligor has 20 days after the mailing or other service of notice of the registration of a foreign order of support or assignment of wages in which to petition file a noticed motion requesting the court to vacate the registration or for other relief. In an action under this section, there shall be no joinder of actions,

coordination of actions, or cross-complaints, and the claims or defenses shall be limited strictly to the identity of the obligor, the validity of the underlying foreign support order or foreign order for the assignment of wages, or the accuracy of the obligee's statement of the amount of support remaining unpaid unless the amount has been previously established by a judgment or order. The obligor shall serve a copy of the motion, personally or by first-class mail, on the office of the district attorney, private attorney representing the obligee, or obligee representing himself or herself who filed the request for registration of the order, not less than 15 days prior to the date on which the motion is to be heard. If service is by mail, Section 1013 of the Code of Civil Procedure applies. If the obligor does not so ~~petition the court~~ file the motion within 20 days, the registered foreign support order or foreign order for the assignment of wages and all other documents filed pursuant to subdivision (a) of Section 4852 are confirmed.

(c) ~~At the hearing to enforce~~ on the motion to vacate the registration of the registered order, the obligor may present only matters that would be available to the obligor as defenses in an action to enforce a support judgment. If the obligor shows and the court finds that an appeal from the order is pending or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If the obligor shows and the court finds any ground upon which enforcement of a support order of this state may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

(d) Registration of an out-of-state order for the sole purpose of interstate wage withholding does not confer jurisdiction on the court for any purpose other than income withholding.

Comment. Section 4853 continues former Code of Civil Procedure Section 1699 [as amended by 1992 Cal. Stat. ch. 848, § 11] without substantive change.

Interim Comment. Section 4853 is amended to conform to amendments to Code of Civil Procedure Section 1699 by 1992 Cal. Stat. ch. 848, § 11.

Fam. Code § 5206 (technical amendment). “Earnings”

SEC. _____. Section 5206 of the Family Code is amended to read:

5206. “Earnings,” to the extent that these earnings are subject to an earnings assignment order for support under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, includes:

(a) Wages, salary, bonus, money, and benefits described in Sections 704.110, 704.113, and 704.115 of the Code of Civil Procedure.

(b) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural resource rights.

(c) Payments or credits due or becoming due as a result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(d) Payments due for workers' compensation temporary disability benefits.

(e) Any other payments or credits due or becoming due as a result of an enforceable obligation.

Comment. Section 5206 continues former Civil Code Section 4390(c) [as amended by 1992 Cal. Stat. ch. 848, § 2] without substantive change. In subdivision (c), the reference to payments “or” credits was substituted for consistency with subdivision (e). In subdivision (d), the reference to “[a]ny” payments is omitted as surplus. This is not a substantive change.

Interim Comment. Section 5206 is amended to conform to amendments to Civil Code Section 4390(c) by 1992 Cal. Stat. ch. 848, § 2. In subdivision (d) the reference to “[a]ny” payment is omitted as surplus.

Fam. Code § 5260 (technical amendment). Finding of good cause required to stay order

SEC. _____. Section 5260 of the Family Code is amended to read:

5260. (a) The court may order that service of the assignment order be stayed only if the court makes a finding of good cause to stay service of the order. Notwithstanding any other provision of law, service of wage assignments issued for foreign orders for support, and service of foreign orders for the assignment of wages registered pursuant to Article 3 (commencing with Section 4820) of Chapter 6, shall not be stayed pursuant to this subdivision.

(b) Good cause to stay service of the assignment order is limited to any of the following:

(1) The obligor has a history of uninterrupted, full, and timely payment, other than through an assignment order or other mandatory process, of previously ordered support during the preceding 12 months. If the obligor has not been subject to an order of support for 12 months before the issuance of the assignment order, the obligor may qualify for good cause under this paragraph if the obligor posts with the clerk of the court a cash bond or cash in an amount equal to three months' support. The court may not find good cause to stay service of the assignment order under this paragraph if the obligor owes an arrearage for prior support.

(2) The obligor proves and the court finds, by clear and convincing evidence, that service of the assignment order would cause extraordinary hardship upon the obligor. Whenever possible, the court shall specify a date that the stay ordered under this paragraph will automatically terminate.

(3) The parties sign a written agreement which provides for an alternative arrangement to ensure payment of the support obligation as ordered other than through the immediate service of an assignment order. The written agreement may include an agreement relating to the staying of the service of an assignment order. In a case where support is ordered to be paid through a county officer designated for that purpose, an agreement between the parties which includes the staying of the service of an assignment order shall include the agreement of the district

attorney. The signing of an agreement pursuant to this paragraph does not preclude the party from seeking an assignment order in accordance with the procedures set forth in Section 5261 upon violation of the agreement.

(4) The employer or district attorney has been unable to deliver payments under the assignment order for a period of six months due to the failure of the obligee to notify the employer or district attorney of a change of address.

Comment. Section 5260 continues former Civil Code Section 4390.3(c) [as amended by 1992 Cal. Stat. ch. 848 § 3] without substantive change.

Interim Comment. Section 5260 is amended to conform to amendments to Civil Code Section 4390.3(c) by 1992 Cal. Stat. ch. 848, § 3.

Gov't Code § 6159 (technical amendment). Acceptance of credit cards by public agencies

SEC. _____. Section 6159 of the Government Code is amended to read:

6159. (a) As used in this section:

(1) "Credit card" means any card, plate, coupon book, or other credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit.

(2) "Card issuer" means any person who issues a credit card and purchases credit card drafts or the agent of such person for such purposes with respect to such card.

(3) "Cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(4) "Draft purchaser" means any person who purchases credit card drafts.

(b) Subject to the provisions of subdivision (c), a court, city, county, city and county, or other public agency may authorize the acceptance of a credit card for any of the following:

(1) The payment for the deposit of bail or for any fine for any offense not declared to be a felony.

(2) The payment of a filing fee or other court fee.

(3) The payment of any towage or storage costs for a vehicle which has been removed from a highway, or from public or private property, as a result of parking violations.

(4) The payment of child, family, or spousal support, including reimbursement of public assistance, related fees, costs, or penalties, with the authorization of the cardholder.

(5) The payment for services rendered by any city, county, or city and county.

(c) A court desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of its county board of supervisors. A city desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of its city council. Any other public agency desiring to authorize the use of a credit card pursuant to subdivision (b) shall obtain the approval of the governing body which has fiscal responsibility for such agency. After approval is

obtained, a contract may be executed with one or more credit card issuers or draft purchasers. The contract shall provide for:

(1) The respective rights and duties of the court, city, county, city and county, or other public agency and card issuer or draft purchaser regarding the presentment, acceptability and payment of credit card drafts.

(2) The establishment of a reasonable means by which to facilitate payment settlements.

(3) The payment to the card issuer or draft purchaser of a reasonable fee or discount.

(4) Such other matters appropriately included in contracts with respect to the purchase of credit card drafts as may be agreed upon by the parties to the contract.

(d) The honoring of a credit card pursuant to subdivision (b) hereof constitutes payment of the amount owing to the court, city, county, city and county, or other public agency as of the date the credit card is honored provided the credit card draft is paid following its due presentment to a card issuer or draft purchaser.

(e) If any credit card draft is not paid following due presentment to a card issuer or draft purchaser or is charged back to the court, city, county, city and county, or other public agency for any reason, any record of payment made by the court, city, or other public agency honoring the credit card shall be void. Any receipt issued in acknowledgment of payment shall also be void. The obligation of the cardholder shall continue as an outstanding obligation as though no payment had been attempted.

(f) Fees or discounts provided for under paragraph (3) of subdivision (c) shall be deducted or accounted for prior to any statutory or other distribution of funds received from the card issuer or draft purchaser.

Comment. Subdivision (b)(4) of Section 6159 [as amended by 1992 Cal. Stat. ch. 848, § 12] is amended to refer to family support for consistency with the Family Code. See, e.g., Fam. Code § 4501 (enforcement of family support order).

#F-1170

1/20/93

EXHIBIT 33**AB 3399 (Attorney's Fees, Property Disclosure, Relief from Judgment)**

Staff Note. The draft legislation in this exhibit would repeal sections that were repealed by AB 2650 (1992 Cal. Stat. ch. 162, § 3), but chaptered-out by AB 3399 (1992 Cal. Stat. ch. 356), and make conforming changes in the Family Code.

Civ. Code § 4370.5 (repealed). Attorney's fees

SEC. ____ . Section 4370.5 of the Civil Code is repealed.

~~4370.5. (a) The court may make an award of attorneys' fees and costs under this chapter where the making of the award, and the amount of the award, is just and reasonable under the relative circumstances of the respective parties.~~

~~(b) In determining what is just and reasonable under the relative circumstances the court shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to adequately present his or her case, taking into consideration to the extent relevant the circumstances of the respective parties described in subdivision (a) of Section 4801. The fact that the party requesting an award of attorneys' fees and costs has the resources from which he or she could pay his or her own attorneys' fees and costs is not itself a bar to an order that the other party pay part, or all of the fees and costs requested. Financial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances.~~

~~(c) The court may order payment of an award from any type of property, whether community or separate, principal or income.~~

~~(d) Either party may, at any time prior to the hearing of the cause on the merits, upon noticed motion, request the court to make a finding that the case involves complex or substantial issues of fact or law related to property rights, visitation, custody, or support. Upon that finding, the court may in its discretion direct the implementation of a case management plan for the purpose of allocating attorney's fees, court costs, expert fees, and consultant fees equitably between the parties. The case management plan shall focus on specific, designated issues. The plan may provide for the allocation of separate or community assets, security against these assets, and for payments from income or anticipated income of either party for the purpose described in this subdivision and for the benefit of one or both parties. Payments shall be authorized only upon agreement of the parties or, in the absence thereof, by court order. The court may order that a~~

~~referee be appointed pursuant to Section 639 of the Code of Civil Procedure to oversee the case management plan.~~

Comment. Former Section 4370.5 [as amended by 1992 Cal. Stat. ch. 356, § 1] is continued in Family Code Section 272 without substantive change.

Civ. Code § 4372 (repealed). Encumbrance to pay family law attorney’s fees

SEC. _____. Section 4372 of the Civil Code is repealed.

~~4372. (a) Either party may encumber his or her interest in community real property to pay reasonable attorney’s fees in order to retain or maintain legal counsel in an action under this part. This encumbrance shall be known as a “family law attorney’s real property lien” and shall attach only to the encumbering party’s interest in the community real property.~~

~~(b) Notice of a family law attorney’s real property lien shall be served either personally or upon the other party’s attorney of record at least 15 days before the encumbrance is recorded. This notice shall contain a declaration signed under penalty of perjury containing the following:~~

~~(1) A full description of the real property.~~

~~(2) The party’s belief as to the fair market value of the property and documentation supporting that belief.~~

~~(3) Encumbrances on the property as of the date of the declaration.~~

~~(4) A list of community assets and liabilities and their estimated values as of the date of the declaration.~~

~~(5) The amount of the family law attorney’s real property lien.~~

~~(c) The nonencumbering party may file an ex parte objection to the family law attorney’s real property lien. The objection shall include a request to stay the recordation until further notice of the court and shall contain a copy of the notice received. It shall also include a declaration signed under penalty of perjury as to the following:~~

~~(1) Specific objections to the family law attorney’s real property lien and to the specific items in the notice.~~

~~(2) The objector’s belief as to the appropriate items or value and any documentation supporting that belief.~~

~~(3) A declaration specifically stating why recordation of the encumbrance at this time would likely result in an unequal division of property or would otherwise be unjust under the circumstances of the case.~~

~~(d) Except as otherwise provided by this section, existing procedural rules regarding ex parte motions shall apply.~~

~~(e) An attorney for whom a family law attorney’s real property lien is obtained shall comply with Rule 3-300 of the Rules of Professional Conduct of the State Bar of California.~~

Comment. Former Section 4372 [as added by 1992 Cal. Stat. ch. 356, § 2] is continued in Family Code Section 276 without substantive change.

Civ. Code § 4373 (repealed). Objection to real property attorney's fee lien

SEC. _____. Section 4373 of the Civil Code is repealed.

~~4373. (a) Upon application of either party, the court may deny the family law attorney's real property lien described in Section 4372 based upon a finding that the encumbrance would likely result in an unequal division of property because it would impair the encumbering party's ability to meet his or her fair share of the community obligations or would otherwise be unjust under the circumstances of the case. The court may also for good cause limit the amount of the family law attorney's real property lien. A limitation by the court is not to be construed as a determination of reasonable attorney's fees.~~

~~(b) Upon receiving an objection to the establishment of a family law attorney's real property lien, the court may on its own motion determine whether the case involves complex or substantial issues of fact or law related to property rights, visitation, custody, or support. If the court finds that the case involves one or more of these complex or substantial issues, the court may direct the implementation of a case management plan as provided in subdivision (d) of Section 4370.5.~~

~~(c) The court has jurisdiction to resolve any dispute arising from the existence of a family law attorney's real property lien.~~

Comment. Former Section 4373 [as added by 1992 Cal. Stat. ch. 356, § 3] is continued in Family Code Section 277 without substantive change.

Civ. Code § 4800.10 (amended). Disclosure of assets and liabilities

SEC. _____. Section 4800.10 of the Civil Code is repealed.

~~4800.10. (a) The Legislature finds and declares as follows:~~

~~It is the policy of the State of California (1) to marshal, preserve, and protect community and quasi-community assets and liabilities that exist at the date of separation so as to avoid dissipation of the community estate prior to distribution, (2) to ensure fair and sufficient child and spousal support awards, and (3) to achieve a division of community and quasi-community assets and liabilities upon the dissolution of marriage as provided for under California law.~~

~~Sound public policy further favors the reduction of the adversarial nature of marital dissolution and the attendant costs by fostering full disclosure and cooperative discovery.~~

~~In order to promote this public policy, a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest must be made in the early stages of the dissolution of marriage action, regardless of the characterization as community or separate, together with a disclosure of all income and expenses of the parties. Moreover, each party has a continuing duty to update and augment that disclosure so that at the time the parties enter into an agreement for the resolution of any of these issues, or at the time of trial on these issues, each party will have as full and complete knowledge of the relevant underlying facts as is reasonably possible under the circumstances of the case.~~

~~(b) From the date of separation to the date of the distribution of the community asset or liability in question, each party shall be subject to the standards set forth in Section 5103, as to all activities that affect the property rights of the other party, including, but not limited to, the following activities:~~

~~(1) The accurate and complete disclosure of all assets and liabilities in which the party has or may have an interest or obligation and all current earnings, accumulations, and expenses.~~

~~(2) The accurate and complete written disclosure of any investment opportunity that presents itself after the date of separation, but which results directly from any activity, involvement, or investment of either spouse from the date of marriage to the date of separation, inclusive. The written disclosure shall be made in sufficient time for the other spouse to make an informed decision as to whether he or she desires to participate in the investment opportunity.~~

~~In the event of nondisclosure of such an investment opportunity, the division of any gain resulting from that investment opportunity shall be governed by the standard set forth in Section 4353.~~

~~(3) The operation or management of a business or an interest in a business in which the community may have an interest.~~

~~(c) In order to provide full and accurate disclosure of all assets and liabilities in which one or both parties may have an interest, each party to the dissolution action shall serve upon the other a preliminary declaration of disclosure and a final declaration of disclosure.~~

~~(1) (A) Except by court order upon good cause or by stipulation of the parties, within 60 days of service of the petition for dissolution of marriage, each party shall serve upon the other a preliminary declaration of disclosure, executed under penalty of perjury upon a form prescribed by the Judicial Council. The commission of perjury on the preliminary declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Section 4800.11, in addition to any and all other remedies, civil or criminal, that otherwise are available under existing law for the commission of perjury. The preliminary declaration of disclosure shall not be filed with the court, except upon court. The parties may agree in writing to accelerate or delay the time in which to exchange the preliminary declaration of disclosure.~~

~~(B) The preliminary declaration of disclosure shall set forth with sufficient particularity which a person of reasonable and ordinary intelligence can ascertain, the identity of all assets in which the declarant has or may have an interest and all liabilities for which the declarant is or may be liable, regardless of the characterization of the asset or liability as community, quasi-community, or separate. The declarant shall set forth his or her percentage of ownership in each asset and percentage of obligation for each liability where property is not solely owned by one or both of the parties to the dissolution action and may set forth his or her characterization of each asset or liability. Along with the preliminary~~

declaration of disclosure, each party shall provide the other with a completed income and expense declaration unless an income and expense declaration has already been provided and is current and valid. A party shall be permitted to amend his or her preliminary declaration of disclosure without leave of the court.

(2) Prior to the time the parties enter into an agreement for the resolution of property or support issues other than pendente lite support, or, in the event the case goes to trial, no later than 30 days before the first trial date is assigned, each party shall file and serve upon the other a final declaration of disclosure and a current income and expense declaration, executed under penalty of perjury upon a form prescribed by the Judicial Council. The commission of perjury on the final declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Section 4800.11, in addition to any and all other remedies, civil or criminal, that otherwise are available under existing law for the commission of perjury. Unless it has already been filed pursuant to the foregoing, the final declaration of disclosure shall be filed with the court at the time of the filing of the judgment. All of the following information shall be included in the final declaration of disclosure:

(A) All material facts and information regarding the characterization of all assets and liabilities.

(B) All material facts and information regarding the valuation of all assets which are contended to be community or in which it is contended the community has an interest.

(C) All material facts and information regarding the amounts of all obligations which are contended to be community obligations or in which it is contended the community has liability.

(D) All material facts and information regarding the earnings, accumulations, and expenses of each party which have been set forth in the income and expense declaration. An updated income and expense declaration shall be served and filed at this time unless a current income and expense declaration is on file.

(d) No agreement shall be enforceable, and no judgment shall be entered, with respect to the parties' property rights without each party having executed and filed with the court a copy of the final declaration of disclosure, unless the court finds that denial of entry of judgment would unfairly prejudice a party who has complied with the disclosure requirements of this section and who has requested entry of judgment, or the court otherwise finds that the interests of justice would not be served if judgment were not entered.

(e) In the event that one party fails to exchange and serve upon the other party either a preliminary or a final declaration of disclosure pursuant to this section, or fails to provide the information in the respective declaration of disclosure with sufficient particularity, and if the other party has served the respective declaration of disclosure on the noncomplying party, the complying party shall, within a reasonable time, request preparation of the appropriate declaration of disclosure

or further particularity. In the event the noncomplying party fails to comply, the complying party may do either or both of the following:

(1) File a motion to compel a further response.

(2) File a motion for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

(f) In the event of a party's failure to comply with any provision of this section the court shall, in addition to any other remedy provided by law, order the noncomplying party to pay to the complying party any and all reasonable attorney's fees, expert fees, and any other costs incurred as a result of the failure to comply with any provision of this section.

(g) At any time during the proceedings, the court has the authority, upon application of a party and upon good cause, to order the liquidation of community or quasi-community assets so as to avoid unreasonable market or investment risks, given the relative nature, scope, and extent of the community estate. However, in no event shall the court grant the application unless, as provided in this section, the appropriate declaration of disclosure has been served by the moving party.

(h) Unless the context otherwise requires, the following definitions apply to this section:

(1) "Asset" includes, but is not limited to, any real or personal property of any nature, whether tangible or intangible.

(2) "Liability" includes, but is not limited to, any debt or obligation, whether currently existing or contingent.

(3) "Earnings and accumulations" includes, but is not limited to, wages, salary, net rents, issues, profits, and business perquisites.

(4) "Expenses" includes, but is not limited to, all personal living expenses, but shall not include business related expenses.

(i) This section shall be applicable to any proceeding commenced on or after January 1, 1993.

Comment. Former Section 4800.10 [as amended by 1992 Cal. Stat. ch. 356, § 4] is continued in Family Code Sections 2100-2109 without substantive change.

Civ. Code § 4800.11 (repealed). Relief from judgment

SEC. _____. Section 4800.11 of the Civil Code is repealed.

4800.11. (a) The Legislature finds and declares as follows:

(1) The State of California has a strong policy of ensuring the division of community and quasi-community property in the dissolution of a marriage as set forth in Section 4800, and of providing for fair and sufficient child and spousal support awards. These policy goals can only be implemented with full disclosure of community, quasi-community, and separate assets, liabilities, income and expenses, as provided for in Section 4800.10, and decisions freely and knowingly made.

~~(2) It occasionally happens that the division of property or the award of support, whether made as a result of agreement or trial, are inequitable when made due to the nondisclosure or other misconduct of one of the parties.~~

~~(3) The public policy of assuring finality of judgments must be balanced against the public interest in ensuring proper division of marital property, in ensuring sufficient support awards, and in deterring misconduct.~~

~~(4) The law governing the circumstances under which a judgment can be set aside, after the time for relief under Section 473 of the Code of Civil Procedure has passed, has been the subject of considerable confusion which has led to increased litigation and unpredictable and inconsistent decisions at the trial and appellate levels.~~

~~(b) In actions under the Family Law Act, the court may, upon such terms as may be just, relieve a spouse from a judgment, or any part or parts thereof, adjudicating support or division of property, after the six-month time limit of Section 473 of the Code of Civil Procedure has run, based upon the grounds, and within the time limits, set forth in this section.~~

~~(c) In all proceedings under this section, before granting relief, the court shall find that the facts alleged as the grounds for relief materially affected the original outcome and that the moving party would materially benefit from the granting of the relief.~~

~~(d) The grounds and time limits for a motion to set aside a judgment, or any part or parts thereof, shall be governed by this section and shall be one of the following:~~

~~(1) Actual fraud where the defrauded party was kept in ignorance or in some other manner, other than his or her own lack of care or attention, was fraudulently prevented from fully participating in the proceeding. Motions based upon fraud shall be brought within one year of the date on which the complaining party either did discover, or should have discovered, the fraud.~~

~~(2) Perjury in the declaration of disclosures required under Section 4800.10. Motions based upon perjury shall be brought within one year of the date on which the complaining party either did discover, or should have discovered, the perjury.~~

~~(3) Duress. Motions based upon duress shall be brought within two years from the date of entry of judgment.~~

~~(4) Mental incapacity. Motions based upon mental incapacity shall be brought within two years from the date of entry of judgment.~~

~~(5) As to stipulated or uncontested judgments or that part of a judgment stipulated to by the parties, mistake, either mutual or unilateral, whether mistake of law or mistake of fact. Motions based upon mistake shall be brought within one year of the date of entry of judgment.~~

~~(e) Notwithstanding any other provision of this section, or any other law, a judgment may not be set aside simply because the court finds that it was~~

inequitable when made, nor simply because subsequent circumstances caused the division of assets or liabilities to become inequitable, or the support to become inadequate.

(f) The negligence of an attorney shall not be imputed to a client to bar an order setting aside a judgment, unless the court finds that the client knew or should have known, of the attorney's negligence and unreasonably failed to protect himself or herself.

(g) When ruling on a motion to set aside a judgment, the court shall set aside only those provisions materially affected by the circumstances leading to the court's decision to grant relief. However, the court shall have the discretion to set aside the entire judgment, if necessary, for equitable considerations.

(h) As to assets or liabilities for which a judgment or part of a judgment is set aside, the date of valuation shall be subject to equitable considerations. The court shall equally divide the asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division.

(i) As to motions filed under this section, if a timely request is made, the court shall render a statement of decision where the court has resolved controverted factual evidence.

(j) Nothing in this section prohibits a party from seeking relief under Section 4353.

(k) Nothing in this section changes existing law with respect to contract remedies where the contract has not been merged or incorporated into a judgment.

(l) Nothing in this section is intended to restrict a family law court from acting as a court of equity.

(m) Nothing in this section is intended to limit existing law with respect to the modification or enforcement of support orders.

(n) Nothing in this section shall affect the rights of a bona fide lessee, purchaser, or encumbrancer for value of real property.

(o) This section shall be applicable to judgments entered on or after January 1, 1993.

Comment. Former Section 4800.11 [as amended by 1992 Cal. Stat. ch. 356, § 5] is continued in Family Code Sections 2120-2129 without substantive change.

Civ. Code § 5127 (repealed). Management and control of community real property

SEC. _____. Section 5127 of the Civil Code is repealed.

5127. Except as provided in Sections 5110.150 and 5128, either spouse has the management and control of the community real property, whether acquired prior to or on or after January 1, 1975, but both spouses either personally or by duly authorized agent, must join in executing any instrument by which such community real property or any interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered; provided, however, that nothing herein contained shall be construed to apply to a lease, mortgage, conveyance, or

~~transfer of real property or of any interest in real property between husband and wife; provided, also, however, that the sole lease, contract, mortgage or deed of the husband, holding the record title to community real property, to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, shall be presumed to be valid if executed prior to January 1, 1975, and that the sole lease, contract, mortgage, or deed of either spouse, holding the record title to community real property to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, shall be presumed to be valid if executed on or after January 1, 1975. No action to avoid any instrument mentioned in this section, affecting any property standing of record in the name of either spouse alone, executed by the spouse alone, shall be commenced after the expiration of one year from the filing for record of that instrument in the recorder's office in the county in which the land is situate, and no action to avoid any instrument mentioned in this section, affecting any property standing of record in the name of the husband alone, which was executed by the husband alone and filed for record prior to the time this act takes effect, in the recorder's office in the county in which the land is situate, shall be commenced after the expiration of one year from the date on which this act takes effect.~~

~~Nothing in this section shall preclude either spouse from encumbering his or her interest in community real property as provided in Section 4372, to pay reasonable attorney's fees in order to retain or maintain legal counsel in an action under this part.~~

Comment. Former Section 5127 [as amended by 1992 Cal. Stat. ch. 356, § 6] is continued in Family Code Section 1102 without substantive change.

Fam. Code § 272 (technical amendment). Award of attorney's fees and costs to be just and reasonable under relative circumstances of parties

SEC. _____. Section 272 of the Family Code is amended to read:

272. (a) The court may make an award of attorney's fees and costs under Section 270 or 271 where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties.

(b) In determining what is just and reasonable under the relative circumstances, the court shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately, taking into consideration, to the extent relevant, the circumstances of the respective parties described in Section 4320. The fact that the party requesting an award of attorney's fees and costs has resources from which the party could pay the party's own attorney's fees and costs is not itself a bar to an order that the other party pay part or all of the fees and costs requested. Financial resources are only one factor for the court to consider in determining how to apportion the overall cost of the litigation equitably between the parties under their relative circumstances.

(c) The court may order payment of an award from any type of property, whether community or separate, principal or income.

(d) Either party may, at any time before the hearing of the cause on the merits, on noticed motion, request the court to make a finding that the case involves complex or substantial issues of fact or law related to property rights, visitation, custody, or support. Upon that finding, the court may in its discretion direct the implementation of a case management plan for the purpose of allocating attorney’s fees, court costs, expert fees, and consultant fees equitably between the parties. The case management plan shall focus on specific, designated issues. The plan may provide for the allocation of separate or community assets, security against these assets, and for payments from income or anticipated income of either party for the purpose described in this subdivision and for the benefit of one or both parties. Payments shall be authorized only upon agreement of the parties or, in the absence thereof, by court order. The court may order that a referee be appointed pursuant to Section 639 of the Code of Civil Procedure to oversee the case management plan.

Comment. Section 272 continues former Civil Code Section 4370.5 [as amended by 1992 Cal. Stat. ch. 356, § 1] without substantive change. In subdivision (b), a reference to Section 4320 has been substituted for the broader reference to former Civil Code Section 4801(a). Section 4320 continues the relevant part of former Civil Code Section 4801(a). See also Sections 65 (“community property” defined in Section 760 *et seq.*), 125 (“quasi-community property” defined), 130 (“separate property” defined in Section 760 *et seq.*).

Subdivision (a) of Section 272 states the general standard for an award of costs and attorney’s fees in family law proceedings.

Subdivision (b) lists two important factors the court should consider in making such an award. The factors listed in subdivision (b) are not exclusive, and the court may consider any other proper factors, including the likelihood of collection, tax considerations, and other factors announced in the cases. See, e.g., *In re Marriage of Lopez*, 38 Cal. App. 3d 93, 113 Cal. Rptr. 58 (1974).

Subdivision (c) expressly authorizes the court to order payment from any source that appears proper, including the community and separate estates of the parties. When enacted in 1985 (as former Civil Code Section 4370.5), this provision overruled language in the cases holding, for example, that the court could not require a wife to impair the capital of her separate estate in order to defray her litigation expenses. See, e.g., *In re Marriage of Jafeman*, 29 Cal. App. 3d 244, 105 Cal. Rptr. 483 (1972); *In re Marriage of Hopkins*, 74 Cal. App. 3d 591, 141 Cal. Rptr. 597 (1977).

For background on former Civil Code Section 4370.5, see *Recommendation Relating to Litigation Expenses in Family Law Proceedings*, 18 Cal. L. Revision Comm’n Reports 351 (1986).

Interim Comment. Subdivision (d) is added in incorporate Civil Code Section 4370.5(d) as added by 1992 Cal. Stat. ch. 356, § 1.

Fam. Code § 276 (added). Encumbrance to pay family law attorney’s fees

SEC. _____. Section 276 is added to the Family Code, to read:

276. (a) Either party may encumber his or her interest in community real property to pay reasonable attorney’s fees in order to retain or maintain legal counsel in a proceeding for dissolution of marriage, nullity of marriage, or legal

separation of the parties. This encumbrance shall be known as a “family law attorney’s real property lien” and attaches only to the encumbering party’s interest in the community real property.

(b) Notice of a family law attorney’s real property lien shall be served either personally or on the other party’s attorney of record at least 15 days before the encumbrance is recorded. This notice shall contain a declaration signed under penalty of perjury containing the following:

(1) A full description of the real property.

(2) The party’s belief as to the fair market value of the property and documentation supporting that belief.

(3) Encumbrances on the property as of the date of the declaration.

(4) A list of community assets and liabilities and their estimated values as of the date of the declaration.

(5) The amount of the family law attorney’s real property lien.

(c) The nonencumbering party may file an ex parte objection to the family law attorney’s real property lien. The objection shall include a request to stay the recordation until further notice of the court and shall contain a copy of the notice received. It shall also include a declaration signed under penalty of perjury as to the following:

(1) Specific objections to the family law attorney’s real property lien and to the specific items in the notice.

(2) The objector’s belief as to the appropriate items or value and any documentation supporting that belief.

(3) A declaration specifically stating why recordation of the encumbrance at this time would likely result in an unequal division of property or would otherwise be unjust under the circumstances of the case.

(d) Except as otherwise provided by this section, existing procedural rules regarding ex parte motions apply.

(e) An attorney for whom a family law attorney’s real property lien is obtained shall comply with Rule 3-300 of the Rules of Professional Conduct of the State Bar of California.

Comment. Section 276 continues former Civil Code Section 4372 [as added by 1992 Cal. Stat. ch. 356, § 2] without substantive change. In subdivision (a), a reference to “a proceeding for dissolution of marriage, nullity or marriage, or legal separation of the parties” has been substituted for the former reference to an “action under this part,” meaning under the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code).

Fam. Code § 277 (added). Objection to family law attorney’s real property lien

SEC. _____. Section 277 is added to the Family Code, to read:

277. (a) On application of either party, the court may deny the family law attorney’s real property lien described in Section 276 based upon a finding that the encumbrance would likely result in an unequal division of property because it

would impair the encumbering party's ability to meet his or her fair share of the community obligations or would otherwise be unjust under the circumstances of the case. The court may also for good cause limit the amount of the family law attorney's real property lien. A limitation by the court is not to be construed as a determination of reasonable attorney's fees.

(b) On receiving an objection to the establishment of a family law attorney's real property lien, the court may on its own motion determine whether the case involves complex or substantial issues of fact or law related to property rights, visitation, custody, or support. If the court finds that the case involves one or more of these complex or substantial issues, the court may direct the implementation of a case management plan as provided in subdivision (d) of Section 272.

(c) The court has jurisdiction to resolve any dispute arising from the existence of a family law attorney's real property lien.

Comment. Section 277 continues former Civil Code Section 4373 [as added by 1992 Cal. Stat. ch. 356, § 3] without substantive change.

Fam. Code § 1102 (technical amendment). Management and control of community real property

SEC. _____. Section 1102 of the Family Code is amended to read:

1102. (a) Except as provided in Sections 761 and 1103, either spouse has the management and control of the community real property, whether acquired prior to or on or after January 1, 1975, but both spouses, either personally or by a duly authorized agent, must join in executing any instrument by which that community real property or any interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered.

(b) Nothing in this section shall be construed to apply to a lease, mortgage, conveyance, or transfer of real property or of any interest in real property between husband and wife.

(c) Notwithstanding subdivision (b):

(1) The sole lease, contract, mortgage, or deed of the husband, holding the record title to community real property, to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, shall be presumed to be valid if executed prior to January 1, 1975.

(2) The sole lease, contract, mortgage, or deed of either spouse, holding the record title to community real property to a lessee, purchaser, or encumbrancer, in good faith without knowledge of the marriage relation, shall be presumed to be valid if executed on or after January 1, 1975.

(d) No action to avoid any instrument mentioned in this section, affecting any property standing of record in the name of either spouse alone, executed by the spouse alone, shall be commenced after the expiration of one year from the filing for record of that instrument in the recorder's office in the county in which the land is situated.

(e) Nothing in this section precludes either spouse from encumbering his or her interest in community real property as provided in Section 276, to pay reasonable attorney's fees in order to retain or maintain legal counsel in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties.

Comment. Section 1102 continues former Civil Code Section 5127 [as amended by 1992 Cal. Stat. ch. 356, § 6] without substantive change. The section has been divided into subdivisions and some minor, nonsubstantive wording changes have been made, such as changing “situate” to “situated” in subdivision (d). In subdivision (e), the phrase “proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties” has been substituted for “action under this part,” which referred to the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code).

Fam. Code §§ 2100-2109 (added). Disclosure of assets and liabilities

SEC. _____. Chapter 9 (commencing with Section 2100) is added to Part 1 of Division 6 of the Family Code, to read:

CHAPTER 9. DISCLOSURE OF ASSETS AND LIABILITIES

§ 2100. Legislative intent

2100. The Legislature finds and declares the following:

(a) It is the policy of the State of California (1) to marshal, preserve, and protect community and quasi-community assets and liabilities that exist at the date of separation so as to avoid dissipation of the community estate before distribution, (2) to ensure fair and sufficient child and spousal support awards, and (3) to achieve a division of community and quasi-community assets and liabilities on the dissolution of marriage or legal separation of the parties as provided under California law.

(b) Sound public policy further favors the reduction of the adversarial nature of marital dissolution and the attendant costs by fostering full disclosure and cooperative discovery.

(c) In order to promote this public policy, a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest must be made in the early stages of a proceeding for dissolution of marriage or legal separation of the parties, regardless of the characterization as community or separate, together with a disclosure of all income and expenses of the parties. Moreover, each party has a continuing duty to update and augment that disclosure so that at the time the parties enter into an agreement for the resolution of any of these issues, or at the time of trial on these issues, each party will have as full and complete knowledge of the relevant underlying facts as is reasonably possible under the circumstances of the case.

Comment. Section 2100 continues former Civil Code Section 4800.10(a) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change. References to legal separation have

been added in subdivisions (a) and (b) for consistency with the rules governing division of property. See, e.g., Section 2550 (equal division of community estate).

§ 2101. Definitions

2101. Unless the provision or context otherwise requires, the following definitions apply to this chapter:

(a) “Asset” includes, but is not limited to, any real or personal property of any nature, whether tangible or intangible.

(b) “Earnings and accumulations” includes, but is not limited to, wages, salary, net rents, issues, profits, and business perquisites.

(c) “Expenses” includes, but is not limited to, all personal living expenses, but does not include business related expenses.

(d) “Liability” includes, but is not limited to, any debt or obligation, whether currently existing or contingent.

Comment. Section 2101 continues former Civil Code Section 4800.10(h) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change.

§ 2102. Fiduciary duties

2102. From the date of separation to the date of the distribution of the community asset or liability in question, each party is subject to the standards provided in Section 721, as to all activities that affect the property rights of the other party, including, but not limited to, the following activities:

(a) The accurate and complete disclosure of all assets and liabilities in which the party has or may have an interest or obligation and all current earnings, accumulations, and expenses.

(b) The accurate and complete written disclosure of any investment opportunity that presents itself after the date of separation, but that results directly from any activity, involvement, or investment of either spouse from the date of marriage to the date of separation, inclusive. The written disclosure shall be made in sufficient time for the other spouse to make an informed decision as to whether he or she desires to participate in the investment opportunity. In the event of nondisclosure of such an investment opportunity, the division of any gain resulting from that investment opportunity is governed by the standard provided in Section 2556.

(c) The operation or management of a business or an interest in a business in which the community may have an interest.

Comment. Section 2102 continues former Civil Code Section 4800.10(b) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change.

§ 2103. Disclosure declarations required

2103. In order to provide full and accurate disclosure of all assets and liabilities in which one or both parties may have an interest, each party to a proceeding for dissolution of the marriage or legal separation of the parties shall serve on the

other party a preliminary declaration of disclosure under Section 2104 and a final declaration of disclosure under Section 2105.

Comment. Section 2103 continues the first paragraph of former Civil Code Section 4800.10(c) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change. A reference to legal separation has been added for consistency with the rules governing division of property. See, e.g., Section 2550 (equal division of community estate). Cross-references have been added for clarity. These are not substantive changes.

§ 2104. Preliminary disclosure declaration; income and expense declaration

2104. (a) Except by court order on good cause or by stipulation of the parties, within 60 days of service of the petition for dissolution of marriage or legal separation of the parties, each party shall serve on the other party a preliminary declaration of disclosure, executed under penalty of perjury on a form prescribed by the Judicial Council. The commission of perjury on the preliminary declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are available under law for the commission of perjury. The parties may agree in writing to accelerate or delay the time within which to exchange preliminary declarations of disclosure.

(b) The preliminary declaration of disclosure shall not be filed with the court, except on court order.

(c) The preliminary declaration of disclosure shall set forth with sufficient particularity, which a person of reasonable and ordinary intelligence can ascertain, all of the following:

(1) The identity of all assets in which the declarant has or may have an interest and all liabilities for which the declarant is or may be liable, regardless of the characterization of the asset or liability as community, quasi-community, or separate.

(2) The declarant's percentage of ownership in each asset and percentage of obligation for each liability where property is not solely owned by one or both of the parties and may set forth his or her characterization of each asset or liability.

(d) A declarant may amend his or her preliminary declaration of disclosure without leave of the court.

(e) Along with the preliminary declaration of disclosure, each party shall provide the other party with a completed income and expense declaration unless an income and expense declaration has already been provided and is current and valid.

Comment. Section 2104 continues former Civil Code Section 4800.10(c)(1) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change. A reference to legal separation has been added in subdivision (a) for consistency with the rules governing division of property. See, e.g., Section 2550 (equal division of community estate). In subdivision (a), the reference to penalties for perjury has been revised to eliminate the reference to "existing" law. This is not intended as a substantive change.

§ 2105. Final disclosure declaration; income and expense declaration

2105. (a) Before the time the parties enter into an agreement for the resolution of property or support issues other than pendente lite support, or, in the event the case goes to trial, no later than 30 days before the first trial date is assigned, each party shall file and serve on the other party a final declaration of disclosure and a current income and expense declaration, executed under penalty of perjury on a form prescribed by the Judicial Council. The commission of perjury on the final declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are available under law for the commission of perjury.

(b) Unless it has already been filed, the final declaration of disclosure shall be filed with the court at the time of the filing of the judgment.

(c) The final declaration of disclosure shall include all of the following information:

(1) All material facts and information regarding the characterization of all assets and liabilities.

(2) All material facts and information regarding the valuation of all assets that are contended to be community or in which it is contended the community has an interest.

(3) All material facts and information regarding the amounts of all obligations that are contended to be community obligations or for which it is contended the community has liability.

(4) All material facts and information regarding the earnings, accumulations, and expenses of each party that have been set forth in the income and expense declaration.

(d) Along with the preliminary declaration of disclosure, each party shall serve and file an updated income and expense declaration unless a current income and expense declaration is on file.

Comment. Section 2105 continues former Civil Code Section 4800.10(c)(2) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change. In subdivision (a), the reference to penalties for perjury has been revised to eliminate the reference to “existing” law. This is not intended as a substantive change. The provision concerning the filing of an income and expense declaration in subdivision (d) has been revised for consistency with the income and expense declaration provided with the preliminary declaration of disclosure.

§ 2106. Declaration as prerequisite to judgment

2106. No agreement is enforceable, and no judgment shall be entered, with respect to the parties’ property rights without each party having executed and filed with the court a copy of the final declaration of disclosure, unless the court finds that denial of entry of judgment would unfairly prejudice a party who has complied with the disclosure requirements of this chapter and who has requested

entry of judgment, or the court otherwise finds that the interests of justice would not be served if judgment were not entered.

Comment. Section 2106 continues former Civil Code Section 4800.10(d) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change.

§ 2107. Remedies for noncompliance

2107. (a) If one party fails to serve on the other party a preliminary declaration of disclosure under Section 2104 or a final declaration of disclosure under Section 2105, or fails to provide the information required in the respective declarations with sufficient particularity, and if the other party has served the respective declaration of disclosure on the noncomplying party, the complying party may, within a reasonable time, request preparation of the appropriate declaration of disclosure or further particularity.

(b) If the noncomplying party fails to comply with a request under subdivision (a), the complying party may do either or both of the following:

(1) File a motion to compel a further response.

(2) File a motion for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure.

(c) If a party fails to comply with any provision of this chapter, the court shall, in addition to any other remedy provided by law, order the noncomplying party to pay to the complying party any and all reasonable attorney's fees, expert fees, and any other costs incurred as a result of the failure to comply with any provision of this chapter.

Comment. Section 2107 continues former Civil Code Section 4800.10(e)-(f) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change. In subdivision (a), the word "exchange" has been omitted as surplus and the cross-references added for clarity. These are not a substantive changes. Subdivision (a) has also been revised to make clear that the complying party "may" (rather than "shall") request the declaration or particularity, since the complying party is not compelled to seek compliance by the other party. However, as subdivision (b) makes clear, the request is a prerequisite to seeking a court order compelling a response from the noncomplying party.

§ 2108. Court authority to liquidate assets

2108. At any time during the proceeding, the court has the authority, on application of a party and for good cause, to order the liquidation of community or quasi-community assets so as to avoid unreasonable market or investment risks, given the relative nature, scope, and extent of the community estate. However, in no event shall the court grant the application unless, as provided in this chapter, the appropriate declaration of disclosure has been served by the moving party.

Comment. Section 2108 continues former Civil Code Section 4800.10(g) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change.

§ 2109. Application of chapter

2109. This chapter applies to any proceeding commenced on or after January 1, 1993.

Comment. Section 2109 continues former Civil Code Section 4800.10(i) [as amended by 1992 Cal. Stat. ch. 356, § 4] without substantive change.

Fam. Code §§ 2120-2129 (added). Relief from judgment

SEC. _____. Chapter 10 (commencing with Section 2120) is added to Part 1 of Division 6 of the Family Code, to read:

CHAPTER 10. RELIEF FROM JUDGMENT

§ 2120. Legislative intent

2120. The Legislature finds and declares the following:

(a) The State of California has a strong policy of ensuring the division of community and quasi-community property in the dissolution of a marriage as set forth in Division 7 (commencing with Section 2500), and of providing for fair and sufficient child and spousal support awards. These policy goals can only be implemented with full disclosure of community, quasi-community, and separate assets, liabilities, income, and expenses, as provided in Chapter 9 (commencing with Section 2100), and decisions freely and knowingly made.

(b) It occasionally happens that the division of property or the award of support, whether made as a result of agreement or trial, are inequitable when made due to the nondisclosure or other misconduct of one of the parties.

(c) The public policy of assuring finality of judgments must be balanced against the public interest in ensuring proper division of marital property, in ensuring sufficient support awards, and in deterring misconduct.

(d) The law governing the circumstances under which a judgment can be set aside, after the time for relief under Section 473 of the Code of Civil Procedure has passed, has been the subject of considerable confusion which has led to increased litigation and unpredictable and inconsistent decisions at the trial and appellate levels.

Comment. Section 2120 continues former Civil Code Section 4800.11(a) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change. In subdivision (a), a reference to Division 7 (commencing with Section 2500) has been substituted for the narrower reference to former Civil Code Section 4800. This is not intended as a substantive change.

§ 2121. Relief from adjudication of support or property division

2121. (a) In proceedings for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court may, on such terms as may be just, relieve a spouse from a judgment, or any part or parts thereof, adjudicating support or division of property, after the six-month time limit of Section 473 of the Code of Civil Procedure has run, based on the grounds, and within the time limits, provided in this chapter.

(b) In all proceedings under this chapter, before granting relief, the court shall find that the facts alleged as the grounds for relief materially affected the original outcome and that the moving party would materially benefit from the granting of the relief.

Comment. Section 2121 continues former Civil Code Section 4800.11(b)-(c) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change. In subdivision (a), the phrase “proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties” has been substituted for the reference to the former Family Law Act (former Part 5 (commencing with former Section 4000) of Division 4 of the Civil Code). This is not a substantive change.

§ 2122. Grounds for relief from adjudication of support or division

2122. The grounds and time limits for a motion to set aside a judgment, or any part or parts thereof, are governed by this section and shall be one of the following:

(a) Actual fraud where the defrauded party was kept in ignorance or in some other manner, other than his or her own lack of care or attention, was fraudulently prevented from fully participating in the proceeding. Motions based on fraud shall be brought within one year after the date on which the complaining party either did discover, or should have discovered, the fraud.

(b) Perjury in the declaration of disclosures required under Chapter 9 (commencing with Section 2100). Motions based on perjury shall be brought within one year after the date on which the complaining party either did discover, or should have discovered, the perjury.

(c) Duress. Motions based upon duress shall be brought within two years after the date of entry of judgment.

(d) Mental incapacity. Motions based on mental incapacity shall be brought within two years after the date of entry of judgment.

(e) As to stipulated or uncontested judgments or that part of a judgment stipulated to by the parties, mistake, either mutual or unilateral, whether mistake of law or mistake of fact. Motions based on mistake shall be brought within one year after the date of entry of judgment.

Comment. Section 2122 continues former Civil Code Section 4800.11(d) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change.

§ 2123. Grounds for relief from adjudication of support or division

2123. Notwithstanding any other provision of this chapter, or any other law, a judgment may not be set aside simply because the court finds that it was inequitable when made, nor simply because subsequent circumstances caused the division of assets or liabilities to become inequitable, or the support to become inadequate.

Comment. Section 2123 continues former Civil Code Section 4800.11(e) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change.

§ 2124. Negligence of attorney

2124. The negligence of an attorney shall not be imputed to a client to bar an order setting aside a judgment, unless the court finds that the client knew or should have known, of the attorney's negligence and unreasonably failed to protect himself or herself.

Comment. Section 2124 continues former Civil Code Section 4800.11(f) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change.

§ 2125. Scope of relief

2125. When ruling on a motion to set aside a judgment, the court shall set aside only those provisions materially affected by the circumstances leading to the court's decision to grant relief. However, the court has discretion to set aside the entire judgment, if necessary, for equitable considerations.

Comment. Section 2125 continues former Civil Code Section 4800.11(g) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change.

§ 2126. Date of valuation

2126. As to assets or liabilities for which a judgment or part of a judgment is set aside, the date of valuation shall be subject to equitable considerations. The court shall equally divide the asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division.

Comment. Section 2126 continues former Civil Code Section 4800.11(h) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change.

§ 2127. Statement of decision

2127. As to motions filed under this chapter, if a timely request is made, the court shall render a statement of decision where the court has resolved controverted factual evidence.

Comment. Section 2127 continues former Civil Code Section 4800.11(i) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change.

§ 2128. Effect on other law

2128. (a) Nothing in this chapter prohibits a party from seeking relief under Section 2556.

(b) Nothing in this chapter changes existing law with respect to contract remedies where the contract has not been merged or incorporated into a judgment.

(c) Nothing in this chapter is intended to restrict a family law court from acting as a court of equity.

(d) Nothing in this chapter is intended to limit existing law with respect to the modification or enforcement of support orders.

(e) Nothing in this chapter affects the rights of a bona fide lessee, purchaser, or encumbrancer for value of real property.

Comment. Section 2128 continues former Civil Code Section 4800.11(j)-(n) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change.

§ 2129. Application of chapter

2129. This chapter applies to judgments entered on or after January 1, 1993.

Comment. Section 2129 continues former Civil Code Section 4800.11(o) [as amended by 1992 Cal. Stat. ch. 356, § 5] without substantive change.

#F-1170
Memo 93-6

1/20/93

EXHIBIT 34

Miscellaneous Revisions to Implement 1992 Legislation Affecting the Family Code and Conforming Revisions

Outline

Civ. Code § 226.23 (repealed). Intercountry adoptions finalized in foreign country
Civ. Code § 226.69 (repealed). Readoption
Civ. Code § 4602 (repealed). Custody investigation
Civ. Code § 4801 (repealed). Spousal support
Code Civ. Proc. § 2032 (technical amendment). Physical or mental examinations
Fam. Code § 8904 (technical amendment). Agency services for adoptions finalized in
foreign country
Fam. Code § 8919 (added). Readoption
Gov't Code § 21215 (technical amendment). Dissolutions or legal separations
Gov't Code § 26840.3 (amended). Fee increase to support family conciliation court and
mediation services
Gov't Code § 77003 (technical amendment). "Court operations"
Penal Code § 11105.3 (technical amendment). Record of conviction for sex crimes, drug
crimes, or crimes of violence
Welf. & Inst. Code § 366.2 (technical amendment). Status review hearings
Welf. & Inst. Code § 12300 (technical amendment). Remuneration of persons under duty to
provide services
Welf. & Inst. Code § 16120 (technical amendment). Payment of benefits

Civ. Code § 226.23 (repealed). Intercountry adoptions finalized in foreign country

SEC. _____. Section 226.23 of the Civil Code is repealed.

~~226.23. For those adoptions that will be finalized in a foreign country, the licensed adoption agency shall provide all of the following services:~~

~~(a) Assessment of the suitability of the applicant's home.~~

~~(b) Certification to the Immigration and Naturalization Service that California's adoptive requirements have been met.~~

~~(c) Readoption services as required by the Immigration and Naturalization Service.~~

Comment. Former Section 226.23 [as amended by 1992 Cal. Stat. ch. 435, § 1] is continued in Family Code Section 8904 without substantive change.

Civ. Code § 226.69 (repealed). Readoption

SEC. _____. Section 226.69 of the Civil Code is repealed.

~~226.69. (a) Each state resident who adopts a child through an intercountry adoption which is finalized in a foreign country shall readopt the child in this~~

~~state if it is required by the Immigration and Naturalization Service. The readoption shall include, but not be limited to, at least one postplacement in-home visit, the filing of the adoption petition pursuant to Section 226.52, the intercountry adoption court report, accounting reports, and the final adoption decree. No readoption decree shall be granted unless the court receives a report from an adoption agency authorized to provide intercountry adoption services pursuant to Section 226.10.~~

~~(b) Each state resident who adopts a child through an intercountry adoption which is finalized in a foreign country may readopt the child in this state. The readoption shall meet the standards described in subdivision (a).~~

~~**Comment.** Former Section 226.69 [as added by 1992 Cal. Stat. ch. 435, § 2] is continued in Family Code Section 8919 without substantive change.~~

Civ. Code § 4602 (repealed). Custody investigation

~~SEC. ____.~~ Section 4602 of the Civil Code is repealed.

~~4602. In any proceeding under this part, when so directed by the court, the probation officer, domestic relations investigator, or court appointed evaluator shall conduct a custody investigation and file a written confidential report on it. The report may be considered by the court and shall be made available only to the parties or their attorneys at least 10 days before any hearing regarding the custody of a child. The report may be received in evidence upon stipulation of all interested parties.~~

~~Where there has been a history of domestic violence between the parties, as domestic violence is defined in subdivision (b) of Section 542 of the Code of Civil Procedure, or where an order is in effect pursuant to paragraph (2) or (3) of subdivision (a) of Section 4359, Section 4516, or paragraph (1) or (2) of subdivision (a) of Section 7020 of this code, or Section 546 of the Code of Civil Procedure, at the request of a party alleging domestic violence in a written declaration under penalty of perjury or at the request of a party who is protected by the order, the parties shall meet with the probation officer, domestic relations investigator, or court appointed evaluator separately at separate times.~~

~~When the probation officer, or domestic relations investigator, or court appointed evaluator is directed by the court to conduct a custody investigation or to undertake visitation work, including necessary evaluation, supervision, and reporting, the court shall make inquiry into the financial condition of the parent, guardian, or such other person charged with the support and maintenance of the minor, and if the court finds the parent, guardian, or other person able, in whole or in part, to pay the expense of the investigation, report, and recommendation, the court may make an order requiring that parent, guardian, or other person to repay to the county that part, or all, of the expense of investigation, report, and recommendation as, in the opinion of the court, is proper. The repayment shall be made to the county officer designated by the board of supervisors, who shall~~

~~keep suitable accounts of these expenses and repayments and shall deposit these collections in the county treasury.~~

~~Nothing in this section shall prohibit the probation officer, domestic relations investigator, or court appointed evaluator from recommending to the court that counsel be appointed pursuant to Section 4606 to represent the minor child or children. In making any recommendation, the probation officer, domestic relations investigator, or court appointed evaluator shall inform the court of the reasons why it would be in the best interests of the minor child or children to have counsel appointed.~~

Comment. Former Section 4602 [as amended by 1992 Cal. Stat. ch. 427, § 14] is continued without substantive change in Family Code Sections [3110-3113].

Civ. Code § 4801 (repealed). Spousal support

SEC. _____. Section 4801 of the Civil Code is repealed.

~~4801. (a) In any judgment decreeing the dissolution of a marriage or a legal separation of the parties, the court may order a party to pay for the support of the other party any amount, and for any period of time, as the court may deem just and reasonable, based on the standard of living established during the marriage. In making the award, the court shall consider all of the following circumstances of the respective parties:~~

~~(1) The extent to which the earning capacity of each spouse is sufficient to maintain the standard of living established during the marriage, taking into account all of the following:~~

~~(A) The marketable skills of the supported spouse; the job market for those skills; the time and expenses required for the supported spouse to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment.~~

~~(B) The extent to which the supported spouse's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported spouse to devote time to domestic duties.~~

~~(2) The extent to which the supported spouse contributed to the attainment of an education, training, a career position, or a license by the other spouse.~~

~~(3) The ability to pay of the supporting spouse, taking into account the supporting spouse's earning capacity, earned and unearned income, assets, and standard of living.~~

~~(4) The needs of each party based on the standard of living established during the marriage.~~

~~(5) The obligations and assets, including the separate property, of each.~~

~~(6) The duration of the marriage.~~

~~(7) The ability of the supported spouse to engage in gainful employment without interfering with the interests of dependent children in the custody of the spouse.~~

(8) The age and health of the parties.

(9) The immediate and specific tax consequences to each party.

(10) Any other factors which it deems just and equitable.

The court shall make specific factual findings with respect to the standard of living during the marriage, and, at the request of either party, the court shall make appropriate factual determinations with respect to any other circumstances. The court may order the party required to make the payment of support to give reasonable security therefor. Any order for support of the other party may be modified or revoked as the court may deem necessary, except as to any amount that may have accrued prior to the date of the filing of the notice of motion or order to show cause to modify or revoke. Any order for spousal support may be made retroactive to the date of filing of the notice of motion or order to show cause therefor, or to any subsequent date. At the request of either party, the order of modification or revocation shall include a statement of decision and may be made retroactive to the date of filing of the notice of motion or order to show cause therefor, or to any subsequent date.

(b) Except as otherwise agreed by the parties in writing, the obligation of any party under any order or judgment for the support and maintenance of the other party shall terminate upon the death of either party or the remarriage of the other party.

(c) When a court orders a person to make specified payments for support of the other party for a contingent period of time, the liability of the person terminates upon the happening of the contingency. If the party to whom payments are to be made fails to notify the person ordered to make the payments, or the attorney of record of the person so ordered, of the happening of the contingency and continues to accept support payments, the supported party shall refund any moneys received which accrued after the happening of the contingency, except that the overpayments shall first be applied to any support payments which are then in default. The court may, in the original order for support, order the party to whom payments are to be made to notify the person ordered to make the payments, or his or her attorney of record, of the happening of the contingency.

(d) An order for payment of an allowance for the support of one of the parties shall terminate at the end of the period specified in the order and shall not be extended unless the court in its original order retains jurisdiction. Except upon written agreement of the parties to the contrary or a court order terminating spousal support, the court retains jurisdiction indefinitely where the marriage has been of long duration.

For purposes of retaining jurisdiction, there is a presumption affecting the burden of providing evidence, that a marriage of 10 years or more, from the date of marriage to the date of separation, is a marriage of long duration. However, the court may consider periods of separation during the marriage in determining whether the marriage is in fact of long duration. Nothing in this section precludes

a court from determining that a marriage of less than 10 years is a marriage of long duration. Nothing in this section limits the court's discretion to terminate spousal support in subsequent proceedings upon a showing of changed circumstances.

The amendments made to this subdivision by Chapter 1086 of the Statutes of 1987 apply in those proceedings pending on January 1, 1988, in which the court has not entered a permanent spousal support order or in which the court order is subject to modification and to any case filed on or after January 1, 1988.

(e) In any proceeding under this section the court may order either party to submit to an examination by a vocational training counselor. The examination shall include an assessment of the party's ability to obtain employment based upon the party's age, health, education, marketable skills, employment history, and the current availability of employment opportunities. The focus of the examination shall be on an assessment of the party's ability to obtain employment that would allow the party to maintain herself or himself at the marital standard of living. The order may be made only on motion, for good cause shown, and upon notice to the party to be examined and to all parties, and shall specify the time, place, manner, conditions, scope of the examination, and the person or persons by whom it is to be made. The party refusing to comply with such an order shall be subject to the same consequences provided for failure to comply with an examination ordered pursuant to Section 2032 of the Code of Civil Procedure.

(f) For the purposes of this section, "vocational training counselor" means an individual with sufficient knowledge, skill, experience, training, or education in interviewing, administering, and interpreting tests for analysis of marketable skills, formulating career goals, planning courses of training and study, and assessing the job market, to qualify as an expert in vocational training under Section 720 of the Evidence Code.

A vocational training counselor shall have at least the following qualifications:

- (1) A masters degree in the behavioral sciences.
- (2) Be qualified to administer and interpret inventories for assessing career potential.
- (3) Demonstrated ability in interviewing clients and assessing marketable skills with understanding of age constraints, physical and mental health, previous education and experience, and time and geographic mobility constraints.
- (4) Knowledge of current employment conditions, job market, and wages in the indicated geographic area.
- (5) Knowledge of education and training programs in the area with costs and time plans for these programs.

(g) The court may order the supporting spouse to pay in addition to spousal support, the necessary expenses and costs of the counseling, retraining, or education.

Comment. Former Section 4801 [as amended by 1992 Cal. Stat. ch. 427, § 15] is continued without substantive change in Family Code Sections 4330-4339 and related provisions.

Code Civ. Proc. § 2032 (technical amendment). Physical or mental examinations

SEC. _____. Section 2032 of the Code of Civil Procedure is amended to read:

2032. (a) Any party may obtain discovery, subject to the restrictions set forth in Section 2019, by means of a physical or mental examination of (1) a party to the action, (2) an agent of any party, or (3) a natural person in the custody or under the legal control of a party, in any action in which the mental or physical condition (including the blood group) of that party or other person is in controversy in the action.

(b) A physical examination conducted under this section shall be performed only by a licensed physician and surgeon or other appropriate licensed health care practitioner. A mental examination conducted under this section shall be performed only by a licensed physician and surgeon or by a licensed clinical psychologist who holds a doctoral degree in psychology and has had at least five years of postgraduate experience in the diagnosis of emotional and mental disorders. Nothing in this section affects tests under the Uniform Act on Blood Tests to Determine Paternity (~~Chapter 2 (commencing with Section 890) of Division 7 of the Evidence (Chapter 2 (commencing with Section 7550) of Part 2 of Division 12 of the Family Code).~~

(c) (1) As used in this subdivision, plaintiff includes a cross-complainant, and defendant includes a cross-defendant.

(2) In any case in which a plaintiff is seeking recovery for personal injuries, any defendant may demand one physical examination of the plaintiff, provided the examination does not include any diagnostic test or procedure that is painful, protracted, or intrusive, and is conducted at a location within 75 miles of the residence of the examinee. A defendant may make this demand without leave of court after that defendant has been served or has appeared in the action, whichever occurs first. This demand shall specify the time, place, manner, conditions, scope, and nature of the examination, as well as the identity and the specialty, if any, of the physician who will perform the examination.

(3) A physical examination demanded under this subdivision shall be scheduled for a date that is at least 30 days after service of the demand for it unless on motion of the party demanding the examination the court has shortened this time.

(4) The defendant shall serve a copy of the demand for this physical examination on the plaintiff and on all other parties who have appeared in the action.

(5) The plaintiff to whom this demand for a physical examination has been directed shall respond to the demand by a written statement that the examinee will comply with the demand as stated, will comply with the demand as specifically modified by the plaintiff, or will refuse, for reasons specified in the

response, to submit to the demanded physical examination. Within 20 days after service of the demand the plaintiff to whom the demand is directed shall serve the original of the response to it on the defendant making the demand, and a copy of the response on all other parties who have appeared in the action, unless on motion of the defendant making the demand the court has shortened the time for response, or unless on motion of the plaintiff to whom the demand has been directed, the court has extended the time for response.

(6) If a plaintiff to whom this demand for a physical examination has been directed fails to serve a timely response to it, that plaintiff waives any objection to the demand. However, the court, on motion, may relieve that plaintiff from this waiver on its determination that (A) the plaintiff has subsequently served a response that is in substantial compliance with paragraph (5), and (B) the plaintiff's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

The defendant may move for an order compelling response and compliance with a demand for a physical examination. The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel response and compliance with a demand for a physical examination, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a plaintiff then fails to obey the order compelling response and compliance, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to that sanction the court may impose a monetary sanction under Section 2023.

(7) If a defendant who has demanded a physical examination under this subdivision, on receipt of the plaintiff's response to that demand, deems that any modification of the demand, or any refusal to submit to the physical examination is unwarranted, that defendant may move for an order compelling compliance with the demand. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel compliance with a demand for a physical examination, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(8) The demand for a physical examination and the response to it shall not be filed with the court. The defendant shall retain both the original of the demand, with the original proof of service affixed to it, and the original response until six months after final disposition of the action. At that time, the original may be

destroyed, unless the court, on motion of any party and for good cause shown, orders that the originals be preserved for a longer period.

(d) If any party desires to obtain discovery by a physical examination other than that described in subdivision (c), or by a mental examination, the party shall obtain leave of court. The motion for the examination shall specify the time, place, manner, conditions, scope, and nature of the examination, as well as the identity and the specialty, if any, of the person or persons who will perform the examination. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt to arrange for the examination by an agreement under subdivision (e). Notice of the motion shall be served on the person to be examined and on all parties who have appeared in the action.

The court shall grant a motion for a physical or mental examination only for good cause shown. If a party stipulates that (1) no claim is being made for mental and emotional distress over and above that usually associated with the physical injuries claimed, and (2) no expert testimony regarding this usual mental and emotional distress will be presented at trial in support of the claim for damages, a mental examination of a person for whose personal injuries a recovery is being sought shall not be ordered except on a showing of exceptional circumstances. The order granting a physical or mental examination shall specify the person or persons who may perform the examination, and the time, place, manner, diagnostic tests and procedures, conditions, scope, and nature of the examination. If the place of the examination is more than 75 miles from the residence of the person to be examined, the order to submit to it shall be (1) made only on the court's determination that there is good cause for the travel involved, and (2) conditioned on the advancement by the moving party of the reasonable expenses and costs to the examinee for travel to the place of examination.

(e) In lieu of the procedures and restrictions specified in subdivisions (c) and (d), any physical or mental examination may be arranged by, and carried out under, a written agreement of the parties.

(f) If a party required by subdivision (c), (d), or (e) to submit to a physical or mental examination fails to do so, the court, on motion of the party entitled to the examination, may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to that sanction, the court may, on motion of the party, impose a monetary sanction under Section 2023.

If a party required by subdivision (c), (d), or (e) to produce another for a physical or mental examination fails to do so, the court, on motion of the party entitled to the examination, may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023, unless the party failing to comply demonstrates an inability to produce that person for examination. In lieu of or in addition to that sanction, the court may impose a monetary sanction under Section 2023.

(g)(1) The attorney for the examinee or for a party producing the examinee, or that attorney's representative, shall be permitted to attend and observe any physical examination conducted for discovery purposes, and to record stenographically or by audiotape any words spoken to or by the examinee during any phase of the examination. This observer may monitor the examination, but shall not participate in or disrupt it. If an attorney's representative is to serve as the observer, the representative shall be authorized to so act by a writing subscribed by the attorney which identifies the representative.

If in the judgment of the observer the examiner becomes abusive to the examinee or undertakes to engage in unauthorized diagnostic tests and procedures, the observer may suspend it to enable the party being examined or producing the examinee to make a motion for a protective order. If the observer begins to participate in or disrupt the examination, the person conducting the physical examination may suspend the examination to enable the party at whose instance it is being conducted to move for a protective order.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If the examinee submits or authorizes access to X-rays of any area of his or her body for inspection by the examining physician and surgeon, no additional X-rays of that area may be taken by the examining physician and surgeon except with consent of the examinee or on order of the court for good cause shown.

(2) The examiner and examinee shall have the right to record a mental examination on audio tape. However, nothing in this article shall be construed to alter, amend, or affect existing case law with respect to the presence of the attorney for the examinee or other persons during the examination by agreement or court order.

(h) If a party submits to, or produces another for, a physical or mental examination in compliance with a demand under subdivision (c), an order of court under subdivision (d), or an agreement under subdivision (e), that party has the option of making a written demand that the party at whose instance the examination was made deliver to the demanding party (1) a copy of a detailed written report setting out the history, examinations, findings, including the results of all tests made, diagnoses, prognoses, and conclusions of the examiner, and (2) a copy of reports of all earlier examinations of the same condition of the examinee made by that or any other examiner. If this option is exercised, a copy of these reports shall be delivered within 30 days after service of the demand, or within 15 days of trial, whichever is earlier. The protection for work product under Section 2018 is waived, both for the examiner's writings and reports and to the taking of the examiner's testimony.

If the party at whose instance the examination was made fails to make a timely delivery of the reports demanded, the demanding party may move for an order compelling their delivery. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel delivery of medical reports, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a party then fails to obey an order compelling delivery of demanded medical reports, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to those sanctions, the court may impose a monetary sanction under Section 2023. The court shall exclude at trial the testimony of any examiner whose report has not been provided by a party.

(i) By demanding and obtaining a report of a physical or mental examination under ~~the provisions of~~ subdivision (h), or by taking the deposition of the examiner, other than under subdivision (i) of Section 2034, the party who submitted to, or produced another for, a physical or mental examination waives in the pending action, and in any other action involving the same controversy, any privilege, as well as any protection for work product under Section 2018, that the party or other examinee may have regarding reports and writings as well as the testimony of every other physician and surgeon, psychologist, or licensed health care practitioner who has examined or may thereafter examine the party or other examinee in respect of the same physical or mental condition.

(j) A party receiving a demand for a report under subdivision (h) is entitled at the time of compliance to receive in exchange a copy of any existing written report of any examination of the same condition by any other physician and surgeon, psychologist, or licensed health care practitioner. In addition, that party is entitled to receive promptly any later report of any previous or subsequent examination of the same condition, by any physician and surgeon, psychologist, or licensed health care practitioner.

If a party who has demanded and received delivery of medical reports under subdivision (h) fails to deliver existing or later reports of previous or subsequent examinations, a party who has complied with subdivision (h) may move for an order compelling delivery of medical reports. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel delivery of medical reports, unless it finds that the one subject to the

sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a party then fails to obey an order compelling delivery of medical reports, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to the sanction, the court may impose a monetary sanction under Section 2023 against that party. The court shall exclude at trial the testimony of any health care practitioner whose report has not been provided by a party ordered to do so by the court.

(k) Nothing in this section shall require the disclosure of the identity of an expert consulted by an attorney in order to make the certification required in an action for professional negligence under Sections 411.30 and 411.35.

Comment. Subdivision (b) of Section 2032 [as amended by 1992 Cal. Stat. ch. 615, § 6] is amended to substitute the new reference to the Uniform Act on Blood Tests to Determine Paternity in the Family Code.

Interim Comment. Section 2032 is amended to restore conforming revisions in AB 2641 (1992 Cal. Stat. ch. 163, § 65) that were chaptered-out by SB 1804 (1992 Cal. Stat. ch. 615, § 6).

Fam. Code § 8904 (technical amendment). Agency services for adoptions finalized in foreign country

SEC. _____. Section 8904 of the Family Code is amended to read:

8904. For an intercountry adoption that will be finalized in a foreign country, the licensed adoption agency shall provide ~~both~~ all of the following services:

(a) Assessment of the suitability of the applicant's home.

(b) Certification to the Immigration and Naturalization Service that this state's intercountry adoption requirements have been met.

(c) Readoption services as required by the Immigration and Naturalization Service.

Comment. Section 8904 continues former Civil Code Section 226.23 [as amended by 1992 Cal. Stat. ch. 435, § 1] without substantive change. See also Sections 8527 ("intercountry adoption" defined), 8530 ("licensed adoption agency" defined).

Fam. Code § 8919 (added). Readoption

SEC. _____. Section 8919 is added to the Family Code, to read:

8919. (a) Each state resident who adopts a child through an intercountry adoption that is finalized in a foreign country shall readopt the child in this state if it is required by the Immigration and Naturalization Service. The readoption shall include, but is not limited to, at least one postplacement in-home visit, the filing of the adoption petition pursuant to Section 8912, the intercountry adoption court report, accounting reports, and the final adoption order. No readoption order shall be granted unless the court receives a report from an adoption agency authorized to provide intercountry adoption services pursuant to Section 8900.

(b) Each state resident who adopts a child through an intercountry adoption that is finalized in a foreign country may readopt the child in this state. The readoption shall meet the standards described in subdivision (a).

Comment. Section 8919 continues former Civil Code Section 226.23 [as added by 1992 Cal. Stat. ch. 435, § 2] without substantive change. The references to a “decree” in the former section have been replaced by “order” for consistency with other sections. See, e.g., Section 8912 (adoption order).

Gov’t Code § 21215 (technical amendment). Dissolutions or legal separations; accounts for accumulated contributions and service credits

SEC. _____. Section 21215 of the Government Code is amended to read:

21215. (a) Upon the legal separation or dissolution of marriage of a member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) If the community property is divided in accordance with subdivision (c) of Section ~~4800.8 of the Civil~~ 2610 of the Family Code, the court shall order that the accumulated contributions and service credit attributable to periods of service during the marriage be divided into two separate and distinct accounts in the name of the member and the nonmember, respectively. Any service credit or accumulated contributions which are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member.

(c) The court shall address the rights of the nonmember to the following:

(1) The right to a retirement allowance, and the consequent right to elect an optional settlement and designate a beneficiary.

(2) The right to a refund of accumulated contributions.

(3) The right to redeposit accumulated contributions which are eligible for redeposit by the member under Sections 20654 and 20654.3.

(4) The right to purchase service credit which is eligible for purchase by the member under Article 4 (commencing with Section 20890) and Article 5 (commencing with Section 20930) of Chapter 7 ~~of this part~~.

(5) The right to designate a beneficiary to receive his or her accumulated contributions payable where death occurs prior to retirement.

(6) The right to designate a beneficiary for any unpaid allowance payable at the time of the nonmember’s death.

(7) The right to elect coverage in the second tier for that member service which is subject to the second tier, provided that the election is made within one year of the establishment of the nonmember account or prior to the nonmember’s retirement, whichever occurs first. Immediately upon establishment of a nonmember account, the board shall provide, by certified mail, the necessary form and information so that the election may be made.

(d) In the capacity of nonmember, he or she shall not be entitled to any disability or industrial disability retirement allowance, any basic death benefit, any special death benefit, any monthly allowance for survivors of a member or retired

person, any insurance benefit, or retired member lump sum death benefit. No survivor continuance allowance shall be payable to a survivor of a nonmember.

Comment. Subdivision (b) of Section 21215 [as amended by 1992 Cal. Stat. ch. 751, § 9] is amended to substitute a reference to the Family Code provision that replaced former Civil Code Section 4800.8.

Gov't Code § 26840.3 (amended). Fee increase to support family conciliation court and mediation services

SEC. _____. Section 26840.3 of the Government Code is amended to read:

26840.3. (a) The superior court in any county may, for the support of the family conciliation court or for conciliation and mediation services provided pursuant to ~~Section 4607 of the Civil Code, or for mediation services provided pursuant to Section 4351.5 of the Civil Chapter 11 (commencing with Section 3155) of Part 2 of Division 8 of the Family Code,~~ upon action of the board of supervisors to provide all space costs and indirect overhead costs from other sources, increase:

(1) The fee for issuing a marriage license, by an amount not to exceed five dollars (\$5).

(2) The fee for issuing a marriage certificate pursuant to ~~Section 4213 of the Civil Part 4 (commencing with Section 500) of Division 3 of the Family Code,~~ by an amount not to exceed five dollars (\$5).

(b) The funds shall be paid to the county treasury and an amount equal thereto shall be used exclusively to pay the costs of maintaining the family conciliation court or conciliation and mediation services provided pursuant to ~~Section 4607 or 4351.5 of the Civil Chapter 11 (commencing with Section 3155) of Part 2 of Division 8 of the Family Code.~~

Comment. Section 26840.3 [as amended by 1992 Cal. Stat. ch. 696, § 19] is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

Gov't Code § 77003 (technical amendment). "Court operations"

SEC. _____. Section 77003 of the Government Code is amended to read:

77003. As used in this chapter, "court operations" means the county share of superior and municipal court judges' salaries, benefits, and public agency retirement contributions, and the salary, benefits, and public agency retirement contributions for justice court judges, subordinate judicial officers, other court staff including all municipal court staff positions specifically prescribed by statute, those deputy marshals, constables, and sheriffs as the court deems necessary for court operations, court-appointed counsel in juvenile court dependency proceedings, counsel appointed by the court to represent a minor pursuant to ~~Section 4606 of the Civil Chapter 10 (commencing with Section 3150) of Part 2 of Division 8 of the Family Code,~~ costs arising from the establishment and operation of a small claims division for auto injury cases within the municipal court, services and supplies relating to court operations, collective bargaining

under the Meyers-Milias-Brown Act with respect to court employees specified in Section 3501.5, and actual indirect costs, not to exceed 18 percent of the block grant, for county general services attributable to court operations, but specifically excluding, but not limited to, law library operations conducted by a trust pursuant to statute; courthouse construction; district attorney services; probation services; indigent criminal defense; grand jury expenses and operations; and pretrial release services. However, in a county with a population of 350,000 or less as determined by the Department of Finance, to the extent that the block grant for a given fiscal year exceeds the 1987-88 funding level for the trial courts in that county, as adjusted by the current consumer price index, “court operations” includes probation services, indigent criminal defense, and pretrial release services. The salaries, benefits, and public agency retirement contributions to be used in computing “court operations” are those salaries, benefits, and public agency contributions in existence on June 30, 1991, and any reclassification made thereafter primarily for the purposes of granting a salary increase shall not be applicable for purposes of this section.

Comment. Section 77003 [as amended by 1992 Cal. Stat. ch. 696, § 85] is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 4606.

Penal Code § 11105.3 (technical amendment). Record of conviction for sex crimes, drug crimes, or crimes of violence

SEC. _____. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other provision of law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (g) of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant’s fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) Nothing in this section ~~shall supersede~~ supersedes any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision ~~shall apply~~ applies to, but is not be limited

to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and ~~Section 226.55 of the Civil~~ Sections 8712, 8811, and 8908 of the Family Code.

(d) The department may adopt regulations to implement the provisions of this section as necessary.

(e) As used in this section, “employer” means any nonprofit corporation or other organizations specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(f) As used in this section, “human resource agency” means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is (1) applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired, or (2) applying to adopt a child or to be a foster parent.

(g) Records of the following offenses shall be furnished as provided in subdivision (a):

(1) Violations or attempted violations of Section 220, 261, 261.5, 262, 266, 266j, 267, 272, 273a, 273d, 273.5, Sections 285 to 289, inclusive, Section 311.4, 311.10, 311.11, 314, 647.6, former Section 647a, or subdivision (a) or (d) of Section 647, or commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(2) Any crime described in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), provided that, except as otherwise provided in subdivision (c), no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(3) Any felony or misdemeanor conviction within 10 years of the date of the employer’s request under subdivision (a), for a violation or attempted violation of Chapter 3 (commencing with Section 207), Section 211, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery, Section 217.1, Chapter 8 (commencing with Section 236), Chapter 9

(commencing with Section 240), and for a violation of any of the offenses specified in subdivision (c) of Section 667.5, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor or felony convictions defined in this section within the immediately preceding 10-year period.

(4) A conviction for a violation or attempted violation of an offense committed outside the State of California shall be furnished if the offense would have been a crime as defined in this section if committed in California.

(h) Any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

Comment. Subdivision (c) of Section 11105.3 [as amended by 1992 Cal. Stat. ch. 1227, § 1] is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 226.55. The fingerprinting and criminal record provisions in former Civil Code Section 226.55 were replaced by former Civil Code Sections 222.40, 224.49, and 226.30. See 1990 Cal. Stat. ch. 1363, § 2.

Welf. & Inst. Code § 366.2 (technical amendment). Status review hearings

SEC. _____. Section 366.2 of the Welfare and Institutions Code is amended to read:

366.2. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing, of their right to be present and represented by counsel.

(b) Except as provided in Section 366.3, notice of the hearing shall be mailed by the probation officer to the same persons as in the original proceeding, to the minor's parent or guardian, to the foster parents, community care facility, or foster family agency having physical custody of the minor in the case of a minor removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

(c) At least 10 calendar days prior to the hearing the probation officer shall file a supplemental report with the court regarding the services offered to the family, the progress made, and, where relevant, the prognosis for return of the minor to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. The probation officer shall provide the parent or parents with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a minor

removed from the physical custody of his or her parent or guardian, the probation officer shall provide a summary of his or her recommendation for disposition to the counsel for the minor, any court appointed child advocate, foster parents, community care facility, or foster family agency having the physical custody of the minor at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a minor in the physical custody of a community care facility or foster family agency that may result in the return of the minor to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to any such hearing involving a minor in the physical custody of a foster parent, the foster parent may file with the court a report containing its recommendation for disposition. The court shall consider any such report and recommendation prior to determining any disposition.

(e) The court shall proceed as follows at the review hearing: The court shall order the return of the minor to the physical custody of his or her parents or guardians unless, by a preponderance of the evidence, it finds that the return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that return would be detrimental. In making its determination, the court shall review the probation officer's report and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself of services provided; shall make appropriate findings; and where relevant, shall order any additional services reasonably believed to facilitate the return of the minor to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a proceeding pursuant to Section 232 of the Civil Part 4 (commencing with Section 7800) of Division 12 of the Family Code may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

(f) This section shall apply only to minors made dependents of the court pursuant to subdivision (c) of Section 360 prior to January 1, 1989.

Comment. Subdivision (e) of Section 366.2 [as amended by 1992 Cal. Stat. ch. 288, § 2] is amended to substitute a reference to the Family Code provisions that replaced former Civil Code Section 232.

Welf. & Inst. Code § 12300 (technical amendment). Remuneration of persons under duty to provide services; respite care

SEC. _____. Section 12300 of the Welfare and Institutions Code is amended to read:

12300. (a) The purpose of this article is to provide in every county in a manner consistent with this chapter and the annual Budget Act those supportive services identified in this section to aged, blind, or disabled persons, as defined under this chapter, who are unable to perform the services themselves and who cannot safely remain in their homes or abodes of their own choosing unless these services are provided.

(b) Supportive services shall include domestic services and services related to domestic services, heavy cleaning, personal care services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services which make it possible for the recipient to establish and maintain an independent living arrangement.

(c) Personal care services shall mean all of the following;

- (1) Assistance with ambulation.
- (2) Bathing, oral hygiene, and grooming.
- (3) Dressing.
- (4) Care and assistance with prosthetic devices.
- (5) Bowel, bladder, and menstrual care.
- (6) Repositioning, skin care, range of motion exercises, and transfers.
- (7) Feeding and assurance of adequate fluid intake.
- (8) Respiration.
- (9) Assistance with self-administration of medications.

(d) Where supportive services are provided by a person having the legal duty pursuant to the Civil Family Code to provide for the care of his or her child who is the recipient, the provider of supportive services shall receive remuneration for the services only when the provider leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care. These providers shall be paid only for the following:

- (1) Services related to domestic services.
- (2) Personal care services.
- (3) Accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites.
- (4) Protective supervision only as needed because of the functional limitations of the child.
- (5) Paramedical services.

(e) To encourage maximum voluntary services, so as to reduce governmental costs, respite care shall also be provided. Respite care is temporary or periodic service for eligible recipients to relieve persons who are providing care without compensation.

Comment. Section 12300 [as amended by 1992 Cal. Stat. ch. 939, § 1] is amended to substitute a reference to the Family Code for the former reference to the Civil Code. The provisions of the Civil Code relating to support have been replaced by provisions of the Family Code. See, e.g., Fam. Code §§ 3900-4414.

Welf. & Inst. Code § 16120 (technical amendment). Payment of benefits

SEC. _____. Section 16120 of the Welfare and Institutions Code is amended to read:

16120. Adoption Assistance Program benefits shall be provided only on behalf of special needs children for whom all of the following conditions are met:

(a) The department or the county responsible for determining the child's Adoption Assistance program eligibility status and for providing financial aid and the prospective adoptive parent have signed an adoption assistance agreement which stipulates the need for and the amount of Adoption Assistance Program benefits. The adoption assistance agreement shall, at a minimum, specify the duration of assistance, the responsibility of the adopting family for reporting changes in circumstances, and the periodic recertification required for reevaluating the continuing needs of the family.

(b) The child is under 18 years of age, or under 21 years of age and has a mental or physical handicap which warrants the continuation of assistance.

(c) The adoptive family is responsible for the child pursuant to the terms of an adoptive placement agreement or a final decree of adoption and have signed an adoption assistance agreement.

(d) The adoptive family is legally responsible for the support of the child and the child is receiving support from the adoptive parent.

(e) The child has been either relinquished for adoption to a California agency or freed for adoption through termination of parental rights by a California court, or committed to the department pursuant to ~~Section 224.37 or 226.66 of the Civil Code~~ 8805 or 8918 of the Family Code.

Comment. Subdivision (e) of Section 16120 [as amended by 1992 Cal. Stat. ch. 722, § 132] is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

