

Memorandum 92-74

Subject: Study F-1180 - Family Code (Minor Substantive and Technical Revisions)

Attached to this memorandum are several needed technical corrections that have come to the staff's attention during its review of the Family Code and some reorganizing amendments. If these revisions are approved, we will include them in the 1993 legislation. We would not send this material out as a tentative recommendation.

Provisions Concerning Parental Rights

Exhibit 1 moves Field Code provisions concerning a parent's right to the services and earnings of a minor out of Division 8 of the Family Code which pertains to custody. Division 8 is generally concerned with custody disputes and is drawn from the more modern custody statutes in the Family Law Act. The Field Code sections concerning parental rights, now located in the first part of the Civil Code, are associated with the right to custody, but are not relevant to a determination of the right to custody.

The Executive Committee of the State Bar Family Law Section (FLEXCOM) expressed the opinion that many of these Field Code sections were inappropriately located in Division 8. (See memorandum from Jennifer Gordon to Larry Doyle, attached as Exhibit 2, pp. 8-9.) These sections should be the subject of a study since they seem somewhat obsolete, even if they do not directly conflict with other provisions. This issue has been noted and will be revisited for possible Commission consideration at a future time.

FLEXCOM Comments

The memorandum from FLEXCOM was previously reproduced and distributed to the Commission, but, as you may recall, was a faxed copy that was somewhat garbled. Jennifer Gordon supplied us with a clean copy which is reproduced in Exhibit 2. (See exhibit pp. 7-11.) The

staff has reviewed this memorandum and, except as otherwise noted in this memorandum, would not make any additional changes in the Family Code on the basis of the arguments presented. The suggestions are either of a substantive nature or will be dealt with in connection with the draft statute concerning child custody attached to Memorandum 92-60.

Joint Custody Preference. FLEXCOM seems to suggest that, by splitting up Civil Code Section 4600.5, the Family Code may encourage attorneys who in the past "have tried to trick the Court and other attorneys . . . to allege that there is a preference for joint custody, that the conciliation court may be consulted even where the parties are not seeking joint custody, etc." (See Exhibit 2, p. 10.) The staff does not agree that the Family Code has created any new confusion or exacerbated any existing confusion. If the concern is with the preference for joint custody stated in Family Code Section 3080, the concern seems unfounded, as this section applies only where the "parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of a minor child of the marriage." If some tricky attorneys are able to hoodwink uninformed judges and opposition counsel that the first part of the section can be shorn from its qualifiers, the staff does not see what would be accomplished by adding language to other sections, as suggested by FLEXCOM. Perhaps FLEXCOM can clarify its concern so that we can deal with it if the problem exists in the Family Code.

Uniform Child Custody Jurisdiction Act. FLEXCOM suggests that the Uniform Child Custody Jurisdiction Act (UCCJA) remain "absolutely intact" and believes that a major omission has occurred. (See Exhibit 2, p. 11.) The numbering changes made in the UCCJA are a result of Legislative Counsel style changes that occurred when Assembly Bill 2650 was prepared. The staff agrees with these changes, and did not dispute the matter. Changing numbered subdivisions to lettered subdivisions makes the UCCJA consistent with the remainder of the Family Code and has no substantive consequence. California is certainly not the only state that makes technical or stylistic changes in uniform acts. As for the alleged omission, the uniformity provision of Civil Code Section 5150(1)(i) has been generalized in Family Code Section 3 -- about as close to the "head of the class" as it could be.

Miscellaneous Revisions

Exhibit 3 contains a number of other technical changes recommended by the staff. These issues are discussed in the notes and comments following the sections. As noted in Memorandum 92-66, if the December Commission meeting is cancelled, the staff would like to be able to include additional technical changes in the bill draft, subject to excision or revision on further Commission review.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary

#F-1180
Memo 92-74

su
10/22/92

EXHIBIT 1

Relocation of Parental Rights Provisions

(Fam. Code §§ 3010-3018)

***Staff Note.** The draft legislation in this exhibit would relocate Family Code Sections 3010 (in part), 3011-3016, and 3018 to a more appropriate location in the Family Code. (See also Memorandum 92-60 concerning revision of the child custody division.) These provisions are general Field Code rules dealing with the rights between parents and children. While custody is an aspect of some of these rules, it is not the primary consideration. Since their scope is broader than the usual custody issues addressed by Division 8, the staff proposes to relocate these sections to Division 12 (Parent and Child Relationship). This restructuring comports more closely with the structure of existing law, since the parent and child sections are in the front part of the Civil Code. E.g., Civ. Code §§ 196, 202, 212, 213. Neither organizational scheme is ideal, but these sections seem out of place in the midst of the more modern custody rules drawn from the Family Law Act. This point has also been noted by the State Bar Family Law Section Executive Committee.*

Fam. Code §§ 3010-3018 (repealed). General child custody provisions

SEC. _____. Chapter 2 (commencing with Section 3010) of Division 8 of the Family Code is repealed.

CHAPTER 2. GENERAL PROVISIONS

Interim Comment. This chapter is repealed, with the custody rules reenacted in a new Chapter 2 in Division 8, and the other rules concerning the residence, earnings, and services of minors moved to Division 12 concerning the parent and child relationship. See proposed Sections 7500 *et seq.*

SEC. _____. The heading of Part 1 (commencing with Section 7500) of Division 12 of the Family Code is amended to read:

PART 1. ~~CHILD OF WIFE COHABITING WITH HER~~ HUSBAND RIGHTS OF PARENTS

Fam. Code § 7500 (added). Right of parent to services and earnings of unemancipated minor child

7500. (a) The mother of an unemancipated minor child, and the father, if presumed to be the father under Section 7611, are equally entitled to the services and earnings of the child.

(c) If one parent is dead, is unable or refuses to take custody, or has abandoned the child, the other parent is entitled to the services, and earnings of the child.

Comment. Section 7500 restates without substantive change the part of former Civil Code Section 197 relating to services and earnings of a minor. The rule in this section is parallel to the general rule on the right to custody provided in Section 3010. The word “unemancipated” has been substituted for “unmarried.” This is not a substantive change. See Section 7002 (conditions of emancipation). See also Sections 7503 (payment of earnings to minor), 7504 (parent may relinquish right of controlling child and receiving child’s earnings).

Interim Comment. This section continues the part of existing Section 3010 relating to services and earnings. The basic custody rule is retained in Division 8. See proposed Section 3010 in the draft attached to Memorandum 92-60.

Fam. Code § 7501 (added). Right of parent to determine residence of child

7501. A parent entitled to the custody of a child has a right to change the residence of the child, subject to the power of the court to restrain a removal that would prejudice the rights or welfare of the child.

Comment. Section 7501 continues former Civil Code Section 213 without substantive change. The word “court” is substituted for “proper Court.” This is not a substantive change, since “proper” is surplus. See also Section 3063 (order restraining removal of child from state); Prob. Code § 2352 (guardian may fix residence of minor ward).

Interim Comment. Section 7501 is the same as existing Section 3011.

Fam. Code § 7502 (added). Parent cannot control property of child

7502. The parent, as such, has no control over the property of the child.

Comment. Section 7502 continues former Civil Code Section 202 without change. See also Section 3902 (court allowance to parent for support of child from child’s property).

Interim Comment. Section 7502 is the same as existing Section 3012.

Fam. Code § 7503 (added). Payment of earnings to minor

7503. The employer of a minor shall pay the earnings of the minor to the minor until the parent or guardian entitled to the earnings gives the employer notice that the parent or guardian claims the earnings.

Comment. Section 7503 restates former Civil Code Section 212 without substantive change. The word “shall” has been substituted for “may.” This is consistent with Probate Code Section 2601(a)(2) (earnings shall be paid to ward unless otherwise ordered by court). The word “earnings” has been substituted for “wages” to conform with terminology in other sections of this code and to provide consistent treatment of different forms of income. See, e.g., Section 5206 (“earnings” defined). The phrase “employed in service” has been omitted as obsolete. See also Section 7504 (relinquishment by parent of right to receive earnings of child).

Interim Comment. Section 7503 is the same as existing Section 3013.

Fam. Code § 7504 (added). Parent may relinquish control and earnings of child

7504. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling the child and receiving the child’s earnings. Abandonment by the parent is presumptive evidence of that relinquishment.

Comment. Section 7504 continues former Civil Code Section 211 without substantive change.

Interim Comment. Section 7504 is the same as existing Section 3014.

Fam. Code § 7505 (added). When parental authority ceases

7505. The authority of a parent ceases on any of the following:

- (a) The appointment, by a court, of a guardian of the person of the child.
- (b) The marriage of the child.
- (c) The child attaining the age of majority.

Comment. Section 7505 continues former Civil Code Section 204 without substantive change. See also Sections 7050-7052 (effect of emancipation under Emancipation of Minors Law).

Interim Comment. Section 7505 is the same as existing Section 3015.

Staff Note. At some point, this section should be considered for elimination as obsolete, or amendment to include a comprehensive list of events that cause parental authority to cease. One omission from this list would seem to be a declaration of freedom from parental custody and control. See Section 7800e et seq. Parental rights can be terminated by order of court under the Uniform Parentage Act. See §§ 7660-7670 (termination of parental rights in adoption proceedings). This is a problem in existing law.

Fam. Code § 7506 (added). Compensation where adult child continues to serve and be supported by parent

7506. Where a child, after attaining the age of majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement for the compensation.

Comment. Section 7506 continues former Civil Code Section 210 without substantive change.

Interim Comment. Section 7506 is the same as existing Section 3016.

Fam. Code § 7507 (added). Remedy for abuse of parental authority

7507. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, or by the child's relative within the third degree, or by the supervisors of the county where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

Comment. Section 7507 continues former Civil Code Section 203 without change.

Interim Comment. Section 7507 is the same as existing Section 3018.

Staff Note. This section should be considered for repeal as superseded by more detailed provisions of Welfare and Institutions Code. Before recommending this action, however, the staff plans to consult some county counsel offices.

SEC. _____. A part heading is added immediately preceding Section 7540 of the Family Code, to read:

PART 2. PRESUMPTION CONCERNING CHILD OF MARRIAGE AND BLOOD TESTS TO DETERMINE PATERNITY

SEC. _____. A chapter heading is added immediately preceding Section 7540 of the Family Code, to read:

CHAPTER 1. CHILD OF WIFE COHABITING WITH HER HUSBAND

Fam. Code § 7540 (amended and renumbered). Conclusive presumption concerning child of marriage

SEC. _____. Section 7500 of the Family Code is amended and renumbered to read:

~~7500.~~ 7540. Except as provided in Section ~~7501~~ 7541, the child of a wife cohabiting with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage.

Comment. Section 7540 continues former Evidence Code Section 621(a) without substantive change.

Fam. Code § 7541 (amended and renumbered). Use of blood tests to determine paternity

SEC. _____. Section 7501 of the Family Code is amended and renumbered to read:

~~7501.~~ 7541. (a) Notwithstanding Section ~~7500~~ 7540, if the court finds that the conclusions of all the experts, as disclosed by the evidence based on blood tests performed pursuant to Part 2 (commencing with Section 7550), are that the husband is not the father of the child, the question of paternity of the husband shall be resolved accordingly.

(b) The notice of motion for blood tests under this section may be filed not later than two years from the child's date of birth by the husband, or for the purposes of establishing paternity by the presumed father or the child through or by the child's guardian ad litem. As used in this subdivision, "presumed father" has the meaning given in Sections 7611 and 7612.

(c) The notice of motion for blood tests under this section may be filed by the mother of the child not later than two years from the child's date of birth if the child's biological father has filed an affidavit with the court acknowledging paternity of the child.

(d) The notice of motion for blood tests pursuant to this section shall be supported by a declaration under oath submitted by the moving party stating the factual basis for placing the issue of paternity before the court.

(e) Subdivision (a) does not apply in any of the following cases:

(1) A case which reached final judgment of paternity on or before September 30, 1980.

(2) A case coming within Section 7613.

(3) A case in which the wife, with the consent of the husband, conceived by means of a surgical procedure.

Comment. Section 7501 restates former Evidence Code Section 621(b)-(h) without substantive change. The last sentence of former Evidence Code Section 621(f), pertaining to cases pending on September 30, 1980, has been omitted as obsolete.

Staff Note. A pilot project to encourage signing of paternity declarations, enacted by SB 1959 (1992 Cal. Stat. ch. 849, § 2), has been added to the Evidence Code at Section 621.1. Consistent with the structure of the Family Code, the staff will draft legislation to add this legislation to Division 20 (pilot projects).

SEC. _____. The heading of Part 2 (commencing with Section 7550) of Division 12 of the Family Code is amended to read:

PART CHAPTER 2. BLOOD TESTS TO DETERMINE PATERNITY

Fam. Code § 7550 (technical amendment). Short title

7550. This ~~part~~ chapter may be cited as the Uniform Act on Blood Tests to Determine Paternity.

Comment. Section 7550 continues former Evidence Code Section 890 without substantive change. This section is similar to Section 9 of the Uniform Act on Blood Tests to Determine Paternity (1952). See also Sections 3 (construction of provisions drawn from uniform acts), 13 (severability of provisions).

Interim Comment. Section 7550 is revised to reflect the reorganization of Part 1 of this division.

MEMORANDUM

TO: LARRY DOYLE, DIRECTOR, OFFICE OF GOVERNMENTAL AFFAIRS

FROM: JENNIFER GORDON

**SUBJECT: A.B. 2650, Speier, amended 3/23/92
DIVISION 8: CUSTODY OF CHILDREN**

DATE: August 18, 1992

SECTION POSITION: SUPPORT IF AMENDED

DATE POSITION RECOMMENDED: 5/9/92

SECTION VOTE: AYES: 9 NOES: 0

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ANALYSIS:

(1) *Description of provisions*

a. Generally

This bill would cull sections from the Civil Code, Code of Civil Procedure, Evidence and Probate Codes that concern family law, repeal those provisions as they appear in those codes, and enact them as one body of law under the Family Law Act.

b. Division 8 specifically

This Division culls provisions from the various codes and from disparate sections of the Civil Code into one division concerning children.

(2) **Reasons for Support**

There are obvious advantages to family lawyers of having all provisions related to the family presented in one Family Code. Bringing together all aspects of family law provides a broader and better-informed perspective, not to mention ease of locating formerly obscure sections.

Specifically, provisions concerning children have been notoriously scattered. The committee applauds the Family Code drafters' efforts to bring all provisions about children together in Division 8.

The Family Code's new structure is exceedingly well organized, and provides the family lawyer with a usable, valuable tool.

(3) **Proposed Amendments**

Generally:

Remember when the work on the Code is completed to go back and renumber the sections, unless you are reserving certain numbers for some reason. There are several missing sections (e.g.: 3008, 3009, etc.)

3000-3006:

Generally speaking, the committee was in favor of leading off the division on custody with definitions. These appear to have been lifted intact from former section 4600.5

However, we question whether the definitions should be moved to Part 2. "Custody" seems to have a different meaning when applied to Part 1. This is so in that Part 1 involves a much different concept of "custody", mainly "control", mainly financial.

In the Definitions, the general term "joint custody" is defined as including physical and legal custody, which are each in turn defined, but the general term "custody" is not defined.

Nowhere in part 1 are any of the terms in the current Definition sections used at all. Only the simple word "custody" is used, which has a different meaning in the context of controlling the child's property, etc. And as is pointed out below, most of Part 1 is really financial.

Perhaps the Definitions section should precede or preface *both* Part 1 and Part 2, with an added definition of the word "custody", standing alone, as it is used in Part 1.

[Note for future modification: should there not be a definition for "children of the marriage?"]

3007-3010:

The change from "unmarried" (former section 197) to "unemancipated" is definitely a substantive change. *Unemancipated* is probably what the original drafters probably meant, but the word they *did use* - "unmarried" - is narrower in scope than the word *unemancipated*, which the Family Code drafters are now using.

3012-3014:

Aren't these really property or support? Is the rationale behind having these sections in Division 8 rather than in other Divisions that the issue of control of the child is related to custody of a child which is in turn related to these financial issues?

[Note for future modification: There is a conflict inherent in 3012, 3013, 3010 and 3014, which has nothing to do with its introduction into this section of the Family Code. When it is said that a parent has no control over the property of the child, then the Code goes on to say the parent has control over the earnings of the child, what does this mean? Does it mean that a child's father cannot touch her \$20 inheritance from her grandfather, but that he can spend the \$1,000,000 a year she earns as a television star? Do a child's earnings become property when they are deposited in a bank account?]

3020

Adding former section 4608 to former 4600 makes great sense.

However, after this the organization gets muddy. The first part of former 4600 - the seminal "custody" statute - leads off the Chapter 1 ["General Provisions"]. However, the tail end of former 4600 is lopped off and moves to Chapter 2. What is left of it is then followed by sections on trial preference, reunification, and District Attorney compensation provisions.

One now must wait until Chapter 2 to find out how custody is determined. The general custody pronouncements and the methodology and policy in determining custody were formerly all subsections of original 4600. Now they are split in two, separated by technical procedural provisions.

Query: if you are going to bring other sections *into* former 4600, why would you then tear 4600 into other parts separated by notification about addresses, reunification, and the like? Why not keep it ALL together and just separate it into smaller sections?

3024

[Note for future legislation: Noting that this is not the fault of the drafters of the Family Code, the committee points out that this section is hopelessly garbled. It very much relates, however, to the very hot relocation issue, and ought to be cleaned up. The group feels that if someone is that bent on relocating, he or she could give the other more notice, and that the statute should read A MINIMUM OF [say, 90 days]. The problem with this statute, as with all of them, is that the 30 days and the 45 days are taken as gospel. The group feels that this section has not been given enough press, and that parents are still "sneaking" out of state with their children without giving notice to the other parent, and without giving it a second thought.]

Chapter 4: Joint Custody

There has been horrendous confusion over this even when it was just one section with many subparts. The importance of having it be just one section with many subparts is that all of the subparts ONLY apply when making an order of JOINT custody, which, by definition, is JOINT LEGAL AND PHYSICAL CUSTODY.

Attorneys have tried to trick the Court and other attorneys by lifting provisions out of this section to allege that there is a preference for joint custody, that the conciliation court may be consulted even where the parties are not seeking joint custody, etc.

Therefore, because titles do not generally infer that what follows is necessarily limited to what the title states, we are allowing even more latitude for this, and actually making a substantive change in the law.

If the Family Code drafters insist on this chapter, with the former joint custody statute broken into several independent sections, then EVERY section within Chapter 4 MUST begin by the words: "When making an order for joint custody", or "relating to joint custody of a minor child", or similar language.

Chapter 5: Visitation Rights

3100:

The committee points out that the drafters are taking great liberties in referring to section 3155, in that former section 4601 does not make such a reference. The committee is not opposed, in that parties *are indeed* required to mediate prior to litigating custody issues, but suggest that the drafters carefully review this section to insure that they are not creating new law.

However, this *is* a broad reference, and could possibly have dangerous repercussions.

[Note for future legislation: The committee is concerned at 3100 (b) about spurious accusations re: domestic violence. The committee suggests a change of "shall" to "may".]

3101:

The proposed structure of this chapter may be a substantive change in the law, as there is a major rearrangement of former 4351.5. Former 4351.5 (d) through (l) have now been moved to the mediation section. While this feels organizationally correct, it is frustrating that all sections pertaining to step parents and grandparents are not in one place, and the result might be that special provisions about mediation in these situations may be ignored.

The committee recommends a reference in 3101 to Chapter 11, Article 3.

3176:

[Note for future legislation: There was concern that the mediator had authority to meet separately with the parties only in cases of domestic violence. Most mediators feel they have the authority to meet with the parties separately when the mediator or the parties and the mediator deem that procedure appropriate.]

Part 3: UNIFORM CHILD CUSTODY JURISDICTION ACT

It is critical that this remain absolutely intact and in the same order and structure for it to conform with the UCCJA provisions of other states. The committee notes that all the numbers have changed to letters and vice versa, which probably accounts for a *major omission* as pointed out below.

To avoid this, I would propose using a scanner or some other device, to check that the entire section is reproduced absolutely and word for word intact. There is really no tinkering with this.

3401 (8), which would have been former 5150 (h):

Former (i) or current (9) is left out: "To make uniform the law of those states which enact it". This is important and necessary policy, which should not be omitted. If it is hiding somewhere else in part 3, it shouldn't be. If anything, it should be moved to the "head of the class".

cc: John David Rothschild
Melissa Toben
Robert O'Hair
Don Breer, State Bar
Director of Research; State Bar of California

#F-1180
Memo 92-74

su
10/23/92

EXHIBIT 3

Miscellaneous Revisions

Fam. Code § 110 (added). “Proceeding”

SEC. _____. Section 110 is added to the Family Code, to read:

110. “Proceeding” includes an action.

Comment. Section 110 is a new provision added for drafting convenience. One purpose of this section is to make clear that where “proceeding” is used in a section in this code, there is no intention to exclude an “action.” This section rejects hypertechnical arguments that the application of a particular rule could depend on the fortuity of whether a particular matter is termed an action or a proceeding. Thus, for example, Section 200 concerning the jurisdiction of the superior court in “proceedings” under this code, applies with equal force to any matter referred to as an “action.”

Fam. Code § 1839 (technical amendment). Temporary orders; reconciliation agreement

SEC. _____. Section 1839 of the Family Code is amended to read:

1839. (a) At or after the hearing, the court may make orders in respect to the conduct of the spouses or parents and the subject matter of the controversy that the court deems necessary to preserve the marriage or to implement the reconciliation of the spouses. No such order shall be effective for more than 30 days from the hearing of the petition unless the parties mutually consent to a continuation of the time the order remains effective.

(b) A reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully with the agreement.

(c) During the pendency of a proceeding under this part, the superior court may order the husband or wife, or father or mother, as the case may be, to pay an amount necessary for the support and maintenance of the wife or husband and for the support, maintenance, and education of the minor children, as the case may be. In determining the amount, the superior court may take into consideration the recommendations of a financial referee if one is available to the court. An order made pursuant to this subdivision shall not prejudice the rights of the parties or children with respect to any subsequent order which may be made. An order made pursuant to this subdivision may be modified or terminated at any time except as to an amount that accrued before the date of filing of the notice of motion or order to show cause to modify or ~~revoke~~ terminate.

Comment. Section 1839 continues former Code of Civil Procedure Section 1769 without substantive change. References to termination have been substituted for the former references to revocation.

Interim Comment. “Revoke” is changed to “terminate” for consistency with the language of the rest of the section.

Fam. Code § 2335 (technical amendment). Evidence of specific acts of misconduct

SEC. _____. Section 2335 of the Family Code is amended to read:

2335. In Except as otherwise provided by statute, in a pleading or proceeding for dissolution of marriage or legal separation of the parties, including depositions and discovery proceedings, evidence of specific acts of misconduct is improper and inadmissible, ~~except in any of the following cases:~~

~~(a) Where child custody is in issue and the evidence is relevant to that issue.~~

~~(b) Where a domestic violence prevention order is sought or has been obtained and the evidence is relevant in connection with the order.~~

Comment. Section 2335 restates the central rule of former Civil Code Section 4509 without substantive change. The phrase “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), has been omitted as surplus. The former exception for child custody matters is superseded by the introductory clause, which recognizes any statutory exceptions. See Section [3022] (history of abuse of child or other parent must be considered in determining best interest of child for purposes of custody). See also Section 2036 (presentation of evidence of abuse or domestic violence required for mutual restraining order)

Interim Comment. Existing Civil Code Section 4509 mentions only child custody matters. Family Code Section 2335 added the material in subdivision (b), in strike-out here. Some commentators have suggested that there may be other situations where evidence of specific acts of misconduct may be admissible, and that this section is incomplete. Rather than attempting to find these instances and characterize them in an adequate way in this section, it is better to refer in general terms to exceptions. This also avoids the potential that this section would become inconsistent with other enactments in the future.

Fam. Code § 2556 (technical amendment). Continuing jurisdiction to award community estate assets or liabilities

SEC. _____. Section 2556 of the Family Code is amended to read:

2556. In a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation of the parties, the court has continuing jurisdiction to award community estate assets or community estate liabilities to the parties that ~~has~~ have not been previously adjudicated by a judgment in the proceeding. A party may file a postjudgment motion or order to show cause in the proceeding in order to obtain adjudication of any community estate asset or liability omitted or not adjudicated by the judgment. In these cases, the court shall equally divide the omitted or unadjudicated community estate asset or liability, unless the court finds upon good cause shown that the interests of justice require an unequal division of the asset or liability.

Comment. Section 2556 continues former Civil Code Section 4353 without substantive change. In the introductory clause, “proceeding” has been substituted for “action.” The term “community estate” has been substituted for “community” to conform with the language of Section 2550 regarding property subject to division. The terms “asset” and “liability” are used in place of “property” and “debt” for consistency with the definition of “community estate” in Section 2501. See also *In re Marriage of Craig*, 219 Cal. App. 3d 683, 686, 268 Cal. Rptr 396 (1990) (“California’s marital property laws are designed to provide for uniform treatment of quasi-community and community property when the parties have changed their domicile to this state and seek to legally alter their marital status in a

California court. This intent is apparent from statutes such as [former Civil Code Section] 4800 (equal division of ‘community estate’ consisting of community and quasi-community property) and [former Civil Code Section] 4800.5 (power to order conveyance of out-of-state property).”).

Fam. Code § 3687 (technical amendment). Modification without showing of changed circumstances

SEC. _____. Section 3687 of the Family Code is amended to read:

3687. (a) The court may grant a modification of child support, not to exceed an amount equal to 10 percent of the current child support award for each year after the date on which the current child support award was granted, without requiring a showing of changed circumstances by the moving party, to the extent justified by the economic evidence presented by way of the income statements (and expense statements, if the court deems them necessary and relevant) of the parties.

(b) The court may grant an increase of spousal support, not to exceed an amount equal to the increase in the California all consumer price index provided by the federal government for each year after the date on which the current spousal support award was granted, without requiring a showing of changed circumstances by the moving party, to the extent justified by the economic evidence presented by way of income statements (and expense statements, if the court deems them necessary and relevant) of the parties.

(c) If the responding party fails to file a response, the court shall order a modification of the support order without requiring the submission of economic evidence by the moving party.

Comment. Subdivision (a) of Section 3687 continues without substantive change the first sentence of the second paragraph of former Section 4700.1(d). Subdivision (b) continues without substantive change the first sentence of the second paragraph of former Section 4801.9(d). Subdivision (c) continues without substantive change the last sentence of the second paragraph of former Sections 4700.1(d) and 4801.9(d). In subdivision (c), a reference to failure to file a response has been substituted for the former reference to a default. This is not a substantive change.

Interim Comment. The language “necessary and” is added in subdivision (b) because it appears in Civil Code Section 4700.1(d) and appears to have been unintentionally omitted.

Staff Note. *There are two additional issues with regard to this section and the staff would appreciate assistance from the family law bar in resolving them:*

(1) Is modification of family support treated under subdivision (a) (child support) or under subdivision (b) (spousal support)? Family Code Section 3680 purports to apply the simplified procedure for modification to family support orders, but does not make clear which part of Section 3687 applies.

(2) As in existing law, subdivision (a) refers to a modification whereas subdivision (b) refers to an increase. It may be intentional in existing law to allow a summary increase or decrease in child support, but only a summary increase in spousal support. This scheme looks like a political compromise, unless it is the result of arbitrary drafting or separate origins. Subdivision (c) uses “modification,” apparently to include both a modification under subdivision (a) and an increase under subdivision (b). The instructions in the applicable Judicial Council form state: “New laws make it easier for a person to ask the court to raise or lower the amount paid for child or spousal support.” Later language is more precise: “The

increase or decrease in child support can be only 10 percent a year and the increase in spousal support cannot be higher than the increase in the California All Consumer Price Index” The staff is not suggesting that the Commission change the statute, but we are interested in any comments practitioners may have.

Fam. Code § 3761 (technical amendment). Application and order for health insurance coverage assignment; notice of intent to seek order

SEC. _____. Section 3761 of the Family Code is amended to read:

3761. (a) Upon application by a party or district attorney in any proceeding where the court has ordered either or both parents to maintain health insurance coverage under Article 1 (commencing with Section 3750), the court shall order the employer of the obligor parent or other person providing health insurance to the obligor to enroll the supported child in the health insurance plan available to the obligor through the employer or other person and to deduct the appropriate premium or costs, if any, from the earnings of the obligor unless the court makes a finding of good cause for not making the order.

(b) The application shall state that the party or district attorney seeking the assignment has given the obligor a written notice of the intent to seek a health insurance coverage assignment in the event of a default in instituting coverage required by court order on behalf of the parties’ child and that the notice was transmitted by first-class mail, postage prepaid, or personally served at least 15 days before the date of the filing of the application. The written notice of the intent to seek an assignment required by this subdivision may be given at the time of filing a petition or complaint for support or at any ~~time~~ later time, but shall be given at least 15 days before the date of filing the application under this section. The obligor may at any time waive the written notice required by this subdivision.

Comment. Subdivision (a) of Section 3761 continues the first sentence of former Civil Code Section 4726.1(a)(1) without substantive change. Subdivision (b) continues former Civil Code Section 4726.1(c) without substantive change. A reference to “wages” has been omitted as surplus. This is not a substantive change. See also Sections 2050-2053 (notice to insurance carriers in dissolution, nullity, or legal separation proceeding), 5206 (“earnings” defined).

Fam. Code § 4849 (technical amendment). Registration of foreign support order

SEC. _____. Section 4849 of the Family Code is amended to read:

4849. The obligee may register a foreign support order ~~or a foreign order for the assignment of wages for support~~ in a court of this state in the manner, with the effect, and for the purposes provided in this article.

Comment. Section 4849 continues former Code of Civil Procedure Section 1698 without substantive change. The reference to a “foreign order for the assignment of wages” has been omitted as surplus. See Section 4802(p) (“foreign support order” defined).