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AB-1519 Judiciary omnibus: family support. (2015-2016)

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Assembly Bill No. 1519

CHAPTER 416

An act to amend Sections 2104, 17325, and 17400 of the Family Code, and to add Section 69619 to the Government Code, relating to family law.

[Approved by Governor October 01, 2015. Filed with Secretary of State October 01, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1519, Committee on Judiciary. Judiciary omnibus: family support.

(1) Existing law obligates a parent to support his or her child. Existing law establishes the Department of Child Support Services within the California Health and Human Services Agency, which administers all services and performs all functions necessary to establish, collect, and distribute child support. Existing law requires, if child support payments are directly deposited to an account of the recipient's choice, that the payments only be deposited to a qualifying account, as defined, and prohibits a person or entity that issues a prepaid card or maintains or manages a prepaid card account from accepting or facilitating the direct deposit of child support payments to a prepaid card account that does not meet the requirements of a qualifying account. Existing law prohibits the Department of Child Support Services from being held liable for authorizing a direct deposit of child support payments into a prepaid card account designated by the recipient that does not meet the requirements of a qualifying account.

This bill would specify that the Department of Child Support Services has no obligation to determine whether an account at the financial institution of the recipient's choice is a qualifying account.

(2) Existing law requires each party to a proceeding for dissolution of marriage or legal separation of the parties to serve on the other party a preliminary declaration of disclosure of assets, as specified, either concurrently with the petition for dissolution, or within 60 days of filing the petition.

This bill would clarify that the petitioner is required to serve the preliminary declaration of disclosure either concurrently with the petition for dissolution or legal separation or within 60 days of filing the petition.

(3) Existing law requires each county to maintain a local child support agency that has the responsibility, among other things, to promptly and effectively establish, modify, and enforce child support obligations. Existing law authorizes attorneys employed within the local child support agency to direct, control, and prosecute civil actions and proceedings in the name of the county in support of the child support activities of the Department of Child Support Services and the local child support agency.

This bill, effective July 1, 2016, would authorize a local child support agency to electronically file pleadings signed by an agent of the local child support agency under penalty of perjury. The bill would require the Judicial Council to develop rules to implement this provision.

(4) Existing law specifies the number of judges of the superior court for each county, and allocates additional judgeships to the various counties in accordance with uniform standards for factually determining additional need in each county, as approved by

the Judicial Council, and other specified criteria. Existing law provides for the conversion of 146 subordinate judicial officer positions in eligible superior courts upon the occurrence of specified conditions, including that the proposed action is ratified by the Legislature, except that no more than 16 positions may be converted to judgeships in any fiscal year. Notwithstanding this provision, existing law authorizes up to 10 additional subordinate judicial officer positions to be converted to judgeships in any fiscal year if the conversions will result in a judge being assigned to a family law or juvenile law assignment previously presided over by a subordinate judicial officer and the proposed action is ratified by the Legislature.

This bill would ratify the authority of the Judicial Council to convert 10 subordinate judicial officer positions to judgeships in the 2015–16 fiscal year when the conversion will result in a judge being assigned to a family law or juvenile law assignment previously presided over by a subordinate judicial officer.

This bill would incorporate additional changes to Section 2104 of the Family Code proposed by SB 340, which would become operative only if SB 340 and this bill are enacted and become effective on or before January 1, 2016, and this bill is chaptered last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2104 of the Family Code is amended to read:

2104. (a) Except by court order for good cause, as provided in Section 2107, in the time period set forth in subdivision (f), 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 preliminary declaration of disclosure shall include all tax returns filed by the declarant within the two years prior to the date that the party served the declaration.

(b) The preliminary declaration of disclosure shall not be filed with the court, except on court order. However, the parties shall file proof of service of the preliminary declaration of disclosure with the court.

(c) The preliminary declaration of disclosure shall set forth with sufficient particularity, that 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. The preliminary declaration may also set forth the declarant's characterization of each asset or liability.

(d) A declarant may amend his or her preliminary declaration of disclosure without leave of the court. Proof of service of any amendment shall be filed with 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.

(f) The petitioner shall serve the other party with the preliminary declaration of disclosure either concurrently with the petition for dissolution or legal separation, or within 60 days of filing the petition. The respondent shall serve the other party with the preliminary declaration of disclosure either concurrently with the response to the petition, or within 60 days of filing the response. The time periods specified in this subdivision may be extended by written agreement of the parties or by court order.

SEC. 1.5. Section 2104 of the Family Code is amended to read:

2104. (a) Except by court order for good cause, as provided in Section 2107, or when service of the preliminary declaration of disclosure is not required pursuant to Section 2110, in the time period set forth in subdivision (f), 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 preliminary declaration of disclosure shall include all tax returns filed by the declarant within the two years prior to the date that the party served the declaration.

(b) The preliminary declaration of disclosure shall not be filed with the court, except on court order. However, the parties shall file proof of service of the preliminary declaration of disclosure with the court.

(c) The preliminary declaration of disclosure shall set forth with sufficient particularity, that 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 when property is not solely owned by one or both of the parties. The preliminary declaration may also set forth the declarant's characterization of each asset or liability.

(d) A declarant may amend his or her preliminary declaration of disclosure without leave of the court. Proof of service of any amendment shall be filed with 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.

(f) The petitioner shall serve the other party with the preliminary declaration of disclosure either concurrently with the petition for dissolution or legal separation, or within 60 days of filing the petition. When a petitioner serves the summons and petition by publication or posting pursuant to court order and the respondent files a response prior to a default judgment being entered, the petitioner shall serve the other party with the preliminary declaration of disclosure within 30 days of the response being filed. The respondent shall serve the other party with the preliminary declaration of disclosure either concurrently with the response to the petition, or within 60 days of filing the response. The time periods specified in this subdivision may be extended by written agreement of the parties or by court order.

SEC. 2. Section 17325 of the Family Code is amended to read:

17325. (a) (1) Notwithstanding any other law, if child support payments are directly deposited to an account of the recipient's choice, as authorized under the federal Electronic Fund Transfer Act (EFTA) (15 U.S.C. Sec. 1693 et seq.), the payments may only be deposited to an account that meets the requirements of a qualifying account, as defined in paragraph (2), for deposit of child support payments.

(2) For purposes of this section, a "qualifying account" is one of the following:

(A) A demand deposit or savings account at an insured financial institution in the name of the person entitled to the receipt of child support payments.

(B) A prepaid card account that meets all of the following:

(i) The account is held at an insured financial institution.

(ii) The account is set up to meet the requirements for passthrough deposit or share insurance so that the funds accessible through the account are eligible for insurance for the benefit of the person entitled to the receipt of child support payments by the Federal Deposit Insurance Corporation in accordance with Part 330 of Title 12 of the Code of Federal Regulations, or the National Credit Union Share Insurance Fund in accordance with Part 745 of Title 12 of the Code of Federal Regulations.

(iii) The account is not attached to any credit or overdraft feature that is automatically repaid from the account after delivery of the payment.

(iv) The issuer of the card complies with all of the requirements, and provides the holder of the card with all of the consumer protections, that apply to a payroll card account under the rules implementing the EFTA or other rules subsequently adopted under the EFTA that apply to prepaid card accounts.

(3) A person or entity that issues a prepaid card or maintains or manages a prepaid card account that does not comply with paragraph (2) shall not accept or facilitate the direct deposit of child support payments to the prepaid card account.

(b) For purposes of this section, the department shall not be held liable for authorizing a direct deposit of child support payments into a prepaid card account designated by the recipient that does not comply with paragraph (2) of subdivision (a). The department has no obligation to determine whether an account at the financial institution of the recipient's choice is a qualifying account as described in subdivision (a).

(c) For the purposes of this section, the following definitions shall apply:

(1) "Financial institution" means a state or national bank, a state or federal savings and loan association, a mutual savings bank, or a state or federal credit union.

(2) "Issuer" means a person or entity that issues a prepaid card.

(3) "Payroll card account" shall have the same meaning as that term is defined in the regulations implementing the EFTA.

(4) "Prepaid card" or "prepaid card account" means either of the following:

(A) A card, code, or other means of access to funds of a recipient that is usable at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines.

(B) The same as those terms or related terms are defined in the regulations adopted under the EFTA regarding general use reloadable cards.

SEC. 3. Section 17400 of the Family Code is amended to read:

17400. (a) Each county shall maintain a local child support agency, as specified in Section 17304, that shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The local child support agency shall take appropriate action, including criminal action in cooperation with the district attorneys, to establish, modify, and enforce child support and, if appropriate, enforce spousal support orders if the child is receiving public assistance, including Medi-Cal, and, if requested, shall take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal.

(b) (1) Notwithstanding Sections 25203 and 26529 of the Government Code, attorneys employed within the local child support agency may direct, control, and prosecute civil actions and proceedings in the name of the county in support of child support activities of the Department of Child Support Services and the local child support agency.

(2) Notwithstanding any other law, and except for pleadings or documents required to be signed under penalty of perjury, a local child support agency may substitute original signatures with any form of electronic signatures, including, but not limited to, typed, digital, or facsimile images of signatures, digital signatures, or other computer-generated signatures, on pleadings filed for the purpose of establishing, modifying, or enforcing paternity, child support, or medical support. Any substituted signature used by a local child support agency shall have the same effect as an original signature, including, but not limited to, the requirements of Section 128.7 of the Code of Civil Procedure.

(3) Notwithstanding any other law, effective July 1, 2016, a local child support agency may electronically file pleadings signed by an agent of the local child support agency under penalty of perjury. An original signed pleading shall be executed prior to, or on the same day as, the day of electronic filing. Original signed pleadings shall be maintained by the local child support agency for the period of time proscribed by subdivision (a) of Section 68152 of the Government Code. A local child support agency may maintain the original signed pleading by way of an electronic copy in the Statewide Automated Child Support System. The Judicial Council, by July 1, 2016, shall develop rules to implement this subdivision.

(c) Actions brought by the local child support agency to establish paternity or child support or to enforce child support obligations shall be completed within the time limits set forth by federal law. The local child support agency's responsibility applies to spousal support only if the spousal support obligation has been reduced to an order of a court of competent jurisdiction. In any action brought for modification or revocation of an order that is being enforced under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the effective date of the modification or revocation shall be as prescribed by federal law (42 U.S.C. Sec. 666(a)(9)), or any subsequent date.

(d) (1) The Judicial Council, in consultation with the department and representatives of the California Family Support Council, the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and a legal services organization providing representation on child support matters, shall develop simplified summons, complaint, and answer forms for any action for support brought pursuant to this section or Section 17404. The Judicial Council may combine the summons and complaint in a single form.

(2) The simplified complaint form shall provide notice of the amount of child support that is sought pursuant to the guidelines set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 based upon the income or income history of the support obligor as known to the local child support agency. If the support obligor's income or income history is unknown to the local child support agency, the complaint shall inform the support obligor that income shall be presumed to be the amount of the minimum wage, at 40 hours per week, established by the Industrial Welfare Commission pursuant to Section 1182.11 of the Labor Code unless information concerning the support obligor's income is provided to the court. The complaint form shall be accompanied by a proposed judgment. The complaint form shall include a notice to the support obligor that the proposed judgment will become effective if he or she fails to file an answer with the court within 30 days of service. Except as

provided in paragraph (2) of subdivision (a) of Section 17402, if the proposed judgment is entered by the court, the support order in the proposed judgment shall be effective as of the first day of the month following the filing of the complaint.

(3) (A) The simplified answer form shall be written in simple English and shall permit a defendant to answer and raise defenses by checking applicable boxes. The answer form shall include instructions for completion of the form and instructions for proper filing of the answer.

(B) The answer form shall be accompanied by a blank income and expense declaration or simplified financial statement and instructions on how to complete the financial forms. The answer form shall direct the defendant to file the completed income and expense declaration or simplified financial statement with the answer, but shall state that the answer will be accepted by a court without the income and expense declaration or simplified financial statement.

(C) The clerk of the court shall accept and file answers, income and expense declarations, and simplified financial statements that are completed by hand provided they are legible.

(4) (A) The simplified complaint form prepared pursuant to this subdivision shall be used by the local child support agency or the Attorney General in all cases brought under this section or Section 17404.

(B) The simplified answer form prepared pursuant to this subdivision shall be served on all defendants with the simplified complaint. Failure to serve the simplified answer form on all defendants shall not invalidate any judgment obtained. However, failure to serve the answer form may be used as evidence in any proceeding under Section 17432 of this code or Section 473 of the Code of Civil Procedure.

(C) The Judicial Council shall add language to the governmental summons, for use by the local child support agency with the governmental complaint to establish parental relationship and child support, informing defendants that a blank answer form should have been received with the summons and additional copies may be obtained from either the local child support agency or the superior court clerk.

(e) In any action brought or enforcement proceedings instituted by the local child support agency pursuant to this section for payment of child or spousal support, an action to recover an arrearage in support payments may be maintained by the local child support agency at any time within the period otherwise specified for the enforcement of a support judgment, notwithstanding the fact that the child has attained the age of majority.

(f) The county shall undertake an outreach program to inform the public that the services described in subdivisions (a) to (c), inclusive, are available to persons not receiving public assistance. There shall be prominently displayed in every public area of every office of the agencies established by this section a notice, in clear and simple language prescribed by the Director of Child Support Services, that the services provided in subdivisions (a) to (c), inclusive, are provided to all individuals, whether or not they are recipients of public assistance.

(g) (1) In any action to establish a child support order brought by the local child support agency in the performance of duties under this section, the local child support agency may make a motion for an order effective during the pendency of that action, for the support, maintenance, and education of the child or children that are the subject of the action. This order shall be referred to as an order for temporary support. This order has the same force and effect as a like or similar order under this code.

(2) The local child support agency shall file a motion for an order for temporary support within the following time limits:

(A) If the defendant is the mother, a presumed father under Section 7611, or any father if the child is at least six months old when the defendant files his or her answer, the time limit is 90 days after the defendant files an answer.

(B) In any other case in which the defendant has filed an answer prior to the birth of the child or not more than six months after the birth of the child, then the time limit is nine months after the birth of the child.

(3) If more than one child is the subject of the action, the limitation on reimbursement shall apply only as to those children whose parental relationship and age would bar recovery were a separate action brought for support of that child or those children.

(4) If the local child support agency fails to file a motion for an order for temporary support within the time limits specified in this section, the local child support agency shall be barred from obtaining a judgment of reimbursement for any support provided for that child during the period between the date the time limit expired and the date the motion was filed, or, if no motion is filed, when a final judgment is entered.

(5) Except as provided in Section 17304, nothing in this section prohibits the local child support agency from entering into cooperative arrangements with other county departments as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation with the departments approved by the Department of Child Support Services.

(6) Nothing in this section otherwise limits the ability of the local child support agency from securing and enforcing orders for support of a spouse or former spouse as authorized under any other law.

(h) As used in this article, "enforcing obligations" includes, but is not limited to, all of the following:

(1) The use of all interception and notification systems operated by the department for the purpose of aiding in the enforcement of support obligations.

(2) The obtaining by the local child support agency of an initial order for child support that may include medical support or that is for medical support only, by civil or criminal process.

(3) The initiation of a motion or order to show cause to increase an existing child support order, and the response to a motion or order to show cause brought by an obligor parent to decrease an existing child support order, or the initiation of a motion or order to show cause to obtain an order for medical support, and the response to a motion or order to show cause brought by an obligor parent to decrease or terminate an existing medical support order, without regard to whether the child is receiving public assistance.

(4) The response to a notice of motion or order to show cause brought by an obligor parent to decrease an existing spousal support order if the child or children are residing with the obligee parent and the local child support agency is also enforcing a related child support obligation owed to the obligee parent by the same obligor.

(5) The referral of child support delinquencies to the Franchise Tax Board under subdivision (c) of Section 17500 in support of the local child support agency.

(i) As used in this section, "out of wedlock" means that the biological parents of the child were not married to each other at the time of the child's conception.

(j) (1) The local child support agency is the public agency responsible for administering wage withholding for current support for the purposes of Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(2) Nothing in this section limits the authority of the local child support agency granted by other sections of this code or otherwise granted by law.

(k) In the exercise of the authority granted under this article, the local child support agency may intervene, pursuant to subdivision (b) of Section 387 of the Code of Civil Procedure, by ex parte application, in any action under this code, or other proceeding in which child support is an issue or a reduction in spousal support is sought. By notice of motion, order to show cause, or responsive pleading served upon all parties to the action, the local child support agency may request any relief that is appropriate that the local child support agency is authorized to seek.

(l) The local child support agency shall comply with all regulations and directives established by the department that set time standards for responding to requests for assistance in locating noncustodial parents, establishing paternity, establishing child support awards, and collecting child support payments.

(m) As used in this article, medical support activities that the local child support agency is authorized to perform are limited to the following:

(1) The obtaining and enforcing of court orders for health insurance coverage.

(2) Any other medical support activity mandated by federal law or regulation.

(n) (1) Notwithstanding any other law, venue for an action or proceeding under this division shall be determined as follows:

(A) Venue shall be in the superior court in the county that is currently expending public assistance.

(B) If public assistance is not currently being expended, venue shall be in the superior court in the county where the child who is entitled to current support resides or is domiciled.

(C) If current support is no longer payable through, or enforceable by, the local child support agency, venue shall be in the superior court in the county that last provided public assistance for actions to enforce arrearages assigned pursuant to Section 11477 of the Welfare and Institutions Code.

(D) If subparagraphs (A), (B), and (C) do not apply, venue shall be in the superior court in the county of residence of the support obligee.

(E) If the support obligee does not reside in California, and subparagraphs (A), (B), (C), and (D) do not apply, venue shall be in the superior court of the county of residence of the obligor.

(2) Notwithstanding paragraph (1), if the child becomes a resident of another county after an action under this part has been filed, venue may remain in the county where the action was filed until the action is completed.

(o) The local child support agency of one county may appear on behalf of the local child support agency of any other county in an action or proceeding under this part.

SEC. 4. Section 69619 is added to the Government Code, to read:

69619. (a) The Legislature hereby ratifies the authority of the Judicial Council to convert 10 subordinate judicial officer positions to judgeships in the 2015–16 fiscal year when the conversion will result in a judge being assigned to a family law or juvenile law assignment previously presided over by a subordinate judicial officer, pursuant to subparagraph (C) of paragraph (1) of subdivision (c) of Section 69615.

(b) The action described in subdivision (a) shall be in addition to any action that may be taken pursuant to the authority described in subparagraph (B) of paragraph (1) of subdivision (c) of Section 69615 to convert up to 16 subordinate judicial officer positions to judgeships.

SEC. 5. Section 1.5 of this bill incorporates amendments to Section 2104 of the Family Code proposed by both this bill and Senate Bill 340. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2) each bill amends Section 2104 of the Family Code, and (3) this bill is enacted after Senate Bill 340, in which case Section 1 of this bill shall not become operative.