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**AB-3248 Judiciary omnibus.** (2017-2018)

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**Assembly Bill No. 3248**

**CHAPTER 504**

An act to amend Section 1010.6 of the Code of Civil Procedure, and to amend Sections 3901, 5614, and 7643 of, and to repeal and add Section 17311.7 of, the Family Code, relating to civil law.

[ Approved by Governor September 18, 2018. Filed with Secretary of State September 18, 2018. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 3248, Committee on Judiciary. Judiciary omnibus.

(1) Existing law continues the parental duty to support an unmarried child who has attained 18 years of age, is a full-time high school student, and who is not self-supporting, until the time the child completes the 12th grade or attains 19 years of age, whichever occurs first.

This bill would excuse a child from the requirement to be a full-time high school student for purposes of these provisions if the child has a medical condition documented by a physician that prevents full-time school attendance.

(2) Existing law provides various procedures for the collection of child support and establishes, within the Department of Child Support Services, the State Disbursement Unit for the collection and disbursement of payments pursuant to support orders. Existing law also provides for the collection of child support by private child support collectors and requires those entities to take specified actions, including establishing a direct deposit account with the State Disbursement Unit and, within 2 business days from the date the funds are disbursed from the State Disbursement Unit to the private child support collector, if a portion of the funds constitute an obligor's fee, to notify the department of the portion of each collection that constitutes a fee.

This bill would remove the requirement that a private child support collector establish a direct deposit account with the State Disbursement Unit and would remove the notification requirement. The bill would require any payment required to be made to a family through the State Disbursement Unit to be made directly to the obligee parent in the child support order requiring the payment, a special needs trust for the benefit of the obligee parent, or other specified individuals.

The bill would also remove requirements relating to the transfer of child support collection and distribution functions to the state, including a requirement that all child support collections remaining undisbursed, with interest earned on these funds, be transferred to the department for deposit in the Child Support Payment Trust Fund.

(3) The Uniform Parentage Act authorizes a hearing or trial held under its provisions to be held in closed court without admittance of any person other than those necessary to the action or proceeding. Under the act, all papers and records, other than the final judgment, pertaining to an action or proceeding are subject to inspection and copying only in exceptional cases upon an order of the court for good cause shown, except as specified.

This bill would authorize the papers and records relating to establishing paternity and establishing and enforcing child support orders in a proceeding under the act to be subject to inspection and copying by any local child support agency.

(4) Existing law authorizes a trial court to, by local rule, require the electronic filing and service of documents in civil actions, subject to certain conditions. Existing law exempts, until January 1, 2019, a local child support agency from a trial court's mandatory electronic filing and service requirements, unless the Department of Child Support Services and the local child support agency determine it has the capacity and functionality to comply with those requirements.

This bill would extend the above-described exemption for a local child support agency until January 1, 2021.

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

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

**SECTION 1.** Section 1010.6 of the Code of Civil Procedure is amended to read:

**1010.6.** (a) A document may be served electronically in an action filed with the court as provided in this section, in accordance with rules adopted pursuant to subdivision (e).

(1) For purposes of this section:

(A) "Electronic service" means service of a document, on a party or other person, by either electronic transmission or electronic notification. Electronic service may be performed directly by a party or other person, by an agent of a party or other person, including the party or other person's attorney, or through an electronic filing service provider.

(B) "Electronic transmission" means the transmission of a document by electronic means to the electronic service address at or through which a party or other person has authorized electronic service.

(C) "Electronic notification" means the notification of the party or other person that a document is served by sending an electronic message to the electronic address at or through which the party or other person has authorized electronic service, specifying the exact name of the document served, and providing a hyperlink at which the served document may be viewed and downloaded.

(2) (A) (i) For cases filed on or before December 31, 2018, if a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the document is not authorized unless a party or other person has agreed to accept electronic service in that specific action or the court has ordered electronic service on a represented party or other represented person under subdivision (c) or (d).

(ii) For cases filed on or after January 1, 2019, if a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of the document is not authorized unless a party or other person has expressly consented to receive electronic service in that specific action or the court has ordered electronic service on a represented party or other represented person under subdivision (c) or (d). Express consent to electronic service may be accomplished either by (I) serving a notice on all the parties and filing the notice with the court, or (II) manifesting affirmative consent through electronic means with the court or the court's electronic filing service provider, and concurrently providing the party's electronic address with that consent for the purpose of receiving electronic service. The act of electronic filing shall not be construed as express consent.

(B) If a document is required to be served by certified or registered mail, electronic service of the document is not authorized.

(3) In any action in which a party or other person has agreed or provided express consent, as applicable, to accept electronic service under paragraph (2), or in which the court has ordered electronic service on a represented party or other represented person under subdivision (c) or (d), the court may electronically serve any document issued by the court that is not required to be personally served in the same manner that parties electronically serve documents. The electronic service of documents by the court shall have the same legal effect as service by mail, except as provided in paragraph (4).

(4) (A) If a document may be served by mail, express mail, overnight delivery, or facsimile transmission, electronic service of that document is deemed complete at the time of the electronic transmission of the document or at the time that the electronic notification of service of the document is sent.

(B) Any period of notice, or any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended after service by electronic means by two court days, but the extension shall not apply to extend the time for filing any of the following:

(i) A notice of intention to move for new trial.

(ii) A notice of intention to move to vacate judgment under Section 663a.

(iii) A notice of appeal.

(C) This extension applies in the absence of a specific exception provided by any other statute or rule of court.

(5) Any document that is served electronically between 12:00 a.m. and 11:59:59 p.m. on a court day shall be deemed served on that court day. Any document that is served electronically on a noncourt day shall be deemed served on the next court day.

(6) A party or other person who has provided express consent to accept service electronically may withdraw consent at any time by completing and filing with the court the appropriate Judicial Council form. The Judicial Council shall create the form by January 1, 2019.

(7) Consent, or the withdrawal of consent, to receive electronic service may only be completed by a party or other person entitled to service or that person's attorney.

(8) Confidential or sealed records shall be electronically served through encrypted methods to ensure that the documents are not improperly disclosed.

(b) A trial court may adopt local rules permitting electronic filing of documents, subject to rules adopted pursuant to subdivision (e) and the following conditions:

(1) A document that is filed electronically shall have the same legal effect as an original paper document.

(2) (A) When a document to be filed requires the signature of any person, not under penalty of perjury, the document shall be deemed to have been signed by the person who filed the document electronically.

(B) When a document to be filed requires the signature, under penalty of perjury, of any person, the document shall be deemed to have been signed by that person if filed electronically and if either of the following conditions is satisfied:

(i) The person has signed a printed form of the document before, or on the same day as, the date of filing. The attorney or other person filing the document represents, by the act of filing, that the declarant has complied with this section. The attorney or other person filing the document shall maintain the printed form of the document bearing the original signature until final disposition of the case, as defined in subdivision (c) of Section 68151 of the Government Code, and make it available for review and copying upon the request of the court or any party to the action or proceeding in which it is filed.

(ii) The person has signed the document using a computer or other technology pursuant to the procedure set forth in a rule of court adopted by the Judicial Council by January 1, 2019.

(3) Any document received electronically by the court between 12:00 a.m. and 11:59:59 p.m. on a court day shall be deemed filed on that court day. Any document that is received electronically on a noncourt day shall be deemed filed on the next court day.

(4) The court receiving a document filed electronically shall issue a confirmation that the document has been received and filed. The confirmation shall serve as proof that the document has been filed.

(5) Upon electronic filing of a complaint, petition, or other document that must be served with a summons, a trial court, upon request of the party filing the action, shall issue a summons with the court seal and the case number. The court shall keep the summons in its records and may electronically transmit a copy of the summons to the requesting party. Personal service of a printed form of the electronic summons shall have the same legal effect as personal service of an original summons. If a trial court plans to electronically transmit a summons to the party filing a complaint, the court shall immediately, upon receipt of the complaint, notify the attorney or party that a summons will be electronically transmitted to the electronic address given by the person filing the complaint.

(6) The court shall permit a party or attorney to file an application for waiver of court fees and costs, in lieu of requiring the payment of the filing fee, as part of the process involving the electronic filing of a document. The court shall consider and determine the application in accordance with Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the Government Code and shall not require the party or attorney to submit any documentation other than that set forth in Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the Government Code. Nothing in this section shall require the court to waive a filing fee that is not otherwise waivable.

(7) A fee, if any, charged by the court, an electronic filing manager, or an electronic filing service provider to process a payment for filing fees and other court fees shall not exceed the costs incurred in processing the payment.

(c) If a trial court adopts rules conforming to subdivision (b), it may provide by order that all parties to an action file and serve documents electronically in a class action, a consolidated action, a group of actions, a coordinated action, or an action that is deemed complex under Judicial Council rules, provided that the trial court's order does not cause undue hardship or significant prejudice to any party in the action.

(d) A trial court may, by local rule, require electronic filing and service in civil actions, subject to the requirements and conditions stated in subdivision (b), the rules adopted by the Judicial Council under subdivision (f), and the following conditions:

(1) The court shall have the ability to maintain the official court record in electronic format for all cases where electronic filing is required.

(2) The court and the parties shall have access to more than one electronic filing service provider capable of electronically filing documents with the court or to electronic filing access directly through the court. The court may charge fees of no more than the actual cost of the electronic filing and service of the documents. Any fees charged by an electronic filing service provider shall be reasonable. The court, an electronic filing manager, or an electronic filing service provider shall waive any fees charged if the court deems a waiver appropriate, including in instances where a party has received a fee waiver.

(3) The court shall have a procedure for the filing of nonelectronic documents in order to prevent the program from causing undue hardship or significant prejudice to any party in an action, including, but not limited to, unrepresented parties. The Judicial Council shall make a form available to allow a party to seek an exemption from mandatory electronic filing and service on the grounds provided in this paragraph.

(4) Unrepresented persons are exempt from mandatory electronic filing and service.

(5) Until January 1, 2021, a local child support agency, as defined in subdivision (h) of Section 17000 of the Family Code, is exempt from a trial court's mandatory electronic filing and service requirements, unless the Department of Child Support Services and the local child support agency determine it has the capacity and functionality to comply with the trial court's mandatory electronic filing and service requirements.

(e) The Judicial Council shall adopt uniform rules for the electronic filing and service of documents in the trial courts of the state, which shall include statewide policies on vendor contracts, privacy, and access to public records, and rules relating to the integrity of electronic service. These rules shall conform to the conditions set forth in this section, as amended from time to time.

(f) The Judicial Council shall adopt uniform rules to permit the mandatory electronic filing and service of documents for specified civil actions in the trial courts of the state, which shall include statewide policies on vendor contracts, privacy, access to public records, unrepresented parties, parties with fee waivers, hardships, reasonable exceptions to electronic filing, and rules relating to the integrity of electronic service. These rules shall conform to the conditions set forth in this section, as amended from time to time.

(g) (1) The Judicial Council shall adopt uniform rules to implement this subdivision as soon as practicable, but no later than June 30, 2019.

(2) Any system for the electronic filing and service of documents, including any information technology applications, Internet Web sites, and Web-based applications, used by an electronic service provider or any other vendor or contractor that provides an electronic filing and service system to a trial court, regardless of the case management system used by the trial court, shall satisfy both of the following requirements:

(A) The system shall be accessible to individuals with disabilities, including parties and attorneys with disabilities, in accordance with Section 508 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794d), as amended, the regulations implementing that act set forth in Part 1194 of Title 36 of the Code of Federal Regulations and Appendices A, C, and D of that part, and the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.).

(B) The system shall comply with the Web Content Accessibility Guidelines 2.0 at a Level AA success criteria.

(3) A vendor or contractor that provides an electronic filing and service system to a trial court shall comply with paragraph (2) as soon as practicable, but no later than June 30, 2019. Commencing on June 27, 2017, the vendor or contractor shall provide an accommodation to an individual with a disability in accordance with subparagraph (D) of paragraph (4).

(4) A trial court that contracts with an entity for the provision of a system for electronic filing and service of documents shall require the entity, in the trial court's contract with the entity, to do all of the following:

(A) Test and verify that the entity's system complies with this subdivision and provide the verification to the Judicial Council no later than June 30, 2019.

(B) Respond to, and resolve, any complaints regarding the accessibility of the system that are brought to the attention of the entity.

(C) Designate a lead individual to whom any complaints concerning accessibility may be addressed and post the individual's name and contact information on the entity's Internet Web site.

(D) Provide to an individual with a disability, upon request, an accommodation to enable the individual to file and serve documents electronically at no additional charge for any time period that the entity is not compliant with paragraph (2) of this subdivision. Exempting an individual with a disability from mandatory electronic filing and service of documents shall not be deemed an accommodation unless the person chooses that as an accommodation. The vendor or contractor shall clearly state in its Internet Web site that an individual with a disability may request an accommodation and the process for submitting a request for an accommodation.

(5) A trial court that provides electronic filing and service of documents directly to the public shall comply with this subdivision to the same extent as a vendor or contractor that provides electronic filing and services to a trial court.

(6) (A) The Judicial Council shall submit four reports to the appropriate committees of the Legislature relating to the trial courts that have implemented a system of electronic filing and service of documents. The first report is due by June 30, 2018; the second report is due by December 31, 2019; the third report is due by December 31, 2021; and the fourth report is due by December 31, 2023.

(B) The Judicial Council's reports shall include all of the following information:

(i) The name of each court that has implemented a system of electronic filing and service of documents.

(ii) A description of the system of electronic filing and service.

(iii) The name of the entity or entities providing the system.

(iv) A statement as to whether the system complies with this subdivision and, if the system is not fully compliant, a description of the actions that have been taken to make the system compliant.

(7) An entity that contracts with a trial court to provide a system for electronic filing and service of documents shall cooperate with the Judicial Council by providing all information, and by permitting all testing, necessary for the Judicial Council to prepare its reports to the Legislature in a complete and timely manner.

**SEC. 2.** Section 3901 of the Family Code is amended to read:

**3901.** (a) (1) The duty of support imposed by Section 3900 continues as to an unmarried child who has attained 18 years of age, is a full-time high school student, unless excused pursuant to paragraph (2), and who is not self-supporting, until the time the child completes the 12th grade or attains 19 years of age, whichever occurs first.

(2) A child is excused from the requirement to be a full-time high school student for purposes of paragraph (1) if the child has a medical condition documented by a physician that prevents full-time school attendance.

(b) This section does not limit a parent's ability to agree to provide additional support or the court's power to inquire whether an agreement to provide additional support has been made.

**SEC. 3.** Section 5614 of the Family Code is amended to read:

**5614.** (a) A private child support collector shall do all of the following:

(1) (A) Provide to an obligee all of the following information:

(i) The name of, and any other identifying information relating to, an obligor who made child support payments collected by the private child support collector.

(ii) The amount of support collected by the private child support collector.

(iii) The date on which each amount was received by the private child support collector.

(iv) The date on which each amount received by the private child support collector was sent to the obligee.

(v) The amount of the payment sent to the obligee.

(vi) The source of payment of support collected and the actions affirmatively taken by the private child support collector that resulted in the payment.

(vii) The amount and percentage of each payment kept by the private child support collector as its fee.

(B) The information required by subparagraph (A) shall be made available, at the option of the obligee, by mail, telephone, or via secure Internet access. If provided by mail, the notice shall be sent at least quarterly and, if provided by any other method, the information shall be updated and made available at least monthly. Information accessed by telephone and the Internet shall be up to date.

(2) Maintain records of all child support collections made on behalf of a client who is an obligee. The records required under this section shall be maintained by the private child support collector for the duration of the contract plus a period of four years and four months from the date of the last child support payment collected by the private child support collector on behalf of an obligee. In addition to information required by paragraph (1), the private child support collector shall maintain the following:

(A) A copy of the order establishing the child support obligation under which a collection was made by the private child support collector.

(B) Records of all correspondence between the private child support collector and the obligee or obligor in a case.

(C) Any other pertinent information relating to the child support obligation, including any case, cause, or docket number of the court having jurisdiction over the matter and official government payment records obtained by the private child support collector on behalf of, and at the request of, the obligee.

(3) Safeguard case records in a manner reasonably expected to prevent intentional or accidental disclosure of confidential information pertaining to the obligee or obligor, including providing necessary protections for records maintained in an automated system.

(4) Ensure that every person who contracts with a private child support collector has the right to review all files and documents, both paper and electronic, in the possession of the private child support collector for the information specified in this paragraph regarding that obligee's case that are not required by law to be kept confidential. The obligee, during regular business hours, shall be provided reasonable access to and copies of the files and records of the private child support collector regarding all moneys received, collection attempts made, fees retained or paid to the private child support collector, and moneys disbursed to the obligee. The private child support collector may not charge a fee for access to the files and records, but may require the obligee to pay up to three cents (\$0.03) per page for the copies prior to their release.

(5) Provide, prior to commencing collection activities, written notice of a contract with an obligee to the local child support agency that is enforcing the obligee's support order, if known, or the local child support agency for the county in which the obligee resides as of the time the contract is signed by the obligee. The notice shall identify the obligee, the obligor, and the amount of the arrearage claimed by the obligee.

(b) A private child support collector shall not do any of the following:

(1) Charge fees on current support if the obligee received any current child support during the six months preceding execution of the contract with the private child support collector. A private child support collector shall inquire of the obligee and record the month and year of the last current support payment and may rely on information provided by the obligee in determining whether a fee may be charged on current support.

(2) Improperly retain fees from collections that are primarily attributable to the actions of a governmental entity. The private child support collector shall refund all of those fees to the obligee immediately upon discovery or notice of the improper retention of fees.

(3) Collect or attempt to collect child support by means of conduct that is prohibited of a debt collector collecting a consumer debt under Sections 1788.10 to 1788.16, inclusive, of the Civil Code. This chapter does not modify, alter, or amend the definition of a debt or a debt collector under the Rosenthal Fair Debt Collection Practices Act (Title 1.6C (commencing with Section 1788) of Part 4 of Division 3 of the Civil Code).

(4) Misstate the amount of the fee that may be lawfully paid to the private child support collector for the performance of the contract or the identity of the person who is obligated to pay that fee.

(5) Make a false representation of the amount of child support to be collected. A private child support collector is not in violation of this paragraph if it reasonably relied on sufficient documentation provided by the government entity collecting child support, a court with jurisdiction over the support obligation, or from the obligee, or upon sufficient documentation provided by the obligor.

(6) Ask a party other than the obligor to pay the child support obligation, unless that party is legally responsible for the obligation or is the legal representative of the obligor.

(7) On or after January 1, 2007, require, as a condition of providing services to the obligee, that the obligee waive any right or procedure provided for in state law regarding the right to file and pursue a civil action, or that the obligee agree to resolve disputes in a jurisdiction outside of California or to the application of laws other than those of California, as provided by law. Any waiver by the obligee of the right to file and pursue a civil action, the right to file and pursue a civil action in California, or the right to rely upon California law as provided by law must be knowing, voluntary, and not made a condition of doing business with the private child support collector. Any waiver, including, but not limited to, an agreement to arbitrate or regarding choice of forum or choice of law, that is required as a condition of doing business with the private child support collector, shall be presumed involuntary, unconscionable, against public policy, and unenforceable. The private child support collector has the burden of proving that any waiver of rights, including an agreement to arbitrate a claim or regarding choice of forum or choice of law, was knowing, voluntary, and not made a condition of the contract with the obligee.

**SEC. 4.** Section 7643 of the Family Code is amended to read:

**7643.** (a) Notwithstanding any other law concerning public hearings and records, a hearing or trial held under this part may be held in closed court without admittance of any person other than those necessary to the action or proceeding. Except as provided in subdivision (b), all papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in a public agency or elsewhere, are subject to inspection and copying only in exceptional cases upon an order of the court for good cause shown.

(b) (1) Papers and records pertaining to the action or proceeding that are part of the permanent record of the court are subject to inspection and copying by the parties to the action, their attorneys, and by agents acting pursuant to written authorization from the parties to the action or their attorneys. An attorney shall obtain the consent of the party to the action prior to authorizing an agent to inspect and copy the permanent record. An attorney shall also state on the written authorization that he or she has obtained the consent of the party to authorize an agent to inspect and copy the permanent record.

(2) For purposes of establishing parentage and establishing and enforcing child support orders, papers and records pertaining to the action or proceeding that are part of the permanent record of the court are subject to inspection and copying by any local child support agency, as defined in subdivision (h) of Section 17000.

**SEC. 5.** Section 17311.7 of the Family Code is repealed.

**SEC. 6.** Section 17311.7 is added to the Family Code, to read:

**17311.7.** (a) Any payment required to be made to a family through the State Disbursement Unit shall be made directly to the obligee parent in the child support order requiring the payment, the conservator or guardian of the obligee parent, a special needs trust for the benefit of the obligee parent, the guardian of the person and the estate of the child subject to the order, any caregiver relative having custody or responsibility for the child, pursuant to a written record, or an alternate caregiver to whom the obligee under the child support order directs, in a written record, that payments be made.

(b) For purposes of this section, "alternate caregiver" means a nonrelative caregiver who is designated in writing by the obligee parent to take care of the child for a limited time.