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AB-627 Recognition of tribal court orders: rights in retirement plans or deferred compensation. (2021-2022)

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Assembly Bill No. 627

CHAPTER 58

An act to amend Sections 1731, 1733, 1735, 1736, and 1737 of, and to add Section 1733.1 to, the Code of Civil Procedure, and to add Section 2611 to the Family Code, relating to civil actions.

[Approved by Governor July 09, 2021. Filed with Secretary of State July 09, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 627, Waldron. Recognition of tribal court orders: rights in retirement plans or deferred compensation.

Existing federal law recognizes the sovereignty of federally recognized Indian tribes and provides for financial, developmental, and operational support of tribal justice systems. Existing law, the Tribal Court Civil Money Judgment Act, governs the procedure by which the superior courts of the state recognize and enter tribal court money judgments of any federally recognized Indian tribe. Under the act, an applicant may apply for recognition and entry of a judgment based on a tribal court money judgment by filing an application, as specified. If granted, the act requires the court to enter a judgment that has the same terms and provisions as the tribal court money judgment and that has the same effect and is enforceable as a civil money judgment, order, or decree of a state court. The act does not apply to tribal court money judgment orders for which federal law requires that states grant full faith and credit recognition or for which state law otherwise provides for recognition.

This bill would establish a procedure pursuant to which one or both of the parties to a tribal court proceeding may file an application for recognition of a tribal court order that establishes a right to child support, spousal support payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant in a retirement plan or other plan of deferred compensation, and that assigns all or a portion of the benefits payable with respect to the plan participant to an alternate payee. The bill would prescribe a filing fee for the application and require the Judicial Council to develop forms for the application. The bill would make conforming changes.

Existing law establishes domestic relations laws, including laws governing the dissolution of domestic relationships. Existing law requires a court in a marital dissolution or legal separation proceeding to divide the community estate of the parties equally if the parties have not agreed otherwise. Existing law requires a court to make orders necessary and appropriate to ensure that each party receives the party's full community share in any retirement plan, as specified.

This bill would provide that a tribal court order that is recognized pursuant to the application process described above that would be established by this bill shall be recognized as an order made pursuant to the domestic relations laws of the state.

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

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

SECTION 1. Section 1731 of the Code of Civil Procedure is amended to read:

1731. (a) This chapter governs the procedures by which the superior courts of the State of California recognize and enter tribal court money judgments of any federally recognized Indian tribe. Determinations regarding recognition and entry of a tribal court money judgment pursuant to state law shall have no effect upon the independent authority of that judgment. To the extent not inconsistent with this chapter, the Code of Civil Procedure shall apply.

(b) This chapter does not apply to any of the following tribal court money judgments:

(1) For taxes, fines, or other penalties.

(2) For which federal law requires that states grant full faith and credit recognition, including child support orders under the Full Faith and Credit for Child Support Orders Act (28 U.S.C. Sec. 1738B), except for the purposes of recognizing a tribal court order establishing the right of a child or other dependent of a participant in a retirement plan or other plan of deferred compensation to an assignment of all or a portion of the benefits payable.

(3) For which state law provides for recognition, including child support orders recognized under the Uniform Child Custody Jurisdiction and Enforcement Act (Part 3 (commencing with Section 3400) of Division 8 of the Family Code), other forms of family support orders under the Uniform Interstate Family Support Act (Part 6 (commencing with Section 5700.101) of Division 9 of the Family Code), except for the purposes of recognizing a tribal court order establishing the right of a spouse, former spouse, child, or other dependent of a participant in a retirement plan or other plan of deferred compensation to an assignment of all or a portion of the benefits payable.

(4) For decedents' estates, guardianships, conservatorships, internal affairs of trusts, powers of attorney, or other tribal court money judgments that arise in proceedings that are or would be governed by the Probate Code.

(c) Nothing in this chapter shall be deemed or construed to expand or limit the jurisdiction of either the state or any Indian tribe.

SEC. 2. Section 1733 of the Code of Civil Procedure is amended to read:

1733. (a) An application for entry of a judgment under this chapter shall be filed in a superior court.

(b) Subject to the power of the court to transfer proceedings under this chapter pursuant to Title 4 (commencing with Section 392) of Part 2, and except as provided in Section 1733.1, the proper county for the filing of an application is either of the following:

(1) The county in which any respondent resides or owns property.

(2) If no respondent is a resident, any county in this state.

(c) A case in which the tribal court money judgment amounts to twenty-five thousand dollars (\$25,000) or less is a limited civil case.

SEC. 3. Section 1733.1 is added to the Code of Civil Procedure, to read:

1733.1. (a) Where the parties to the underlying tribal court proceeding agree, the parties may file a joint application for the recognition of a tribal court order that establishes a right to child support, spousal support payments, or marital property rights to such spouse, former spouse, child, or other dependent of a participant in a retirement plan or other plan of deferred compensation, which order assigns all or a portion of the benefits payable with respect to such participant to an alternate payee.

(1) The application shall be on a form adopted by the Judicial Council, executed under penalty of perjury by both parties to the proceeding.

(2) The application shall include the name, current address, telephone number and email address of each party, the name and mailing address of the issuing tribal court, and a certified copy of the order to be recognized.

(b) The filing fee for a joint application filed under this section is \$100.

(c) An application filed pursuant to this section may be filed in the county in which either one of the parties resides.

(d) Entry of the tribal court order under this section does not confer any jurisdiction on a court of this state to modify or enforce the tribal court order.

(e) Where one of the parties to a tribal court order described in subdivision (a) does not agree to join in the application, the other party may proceed by having the tribal court execute a certificate in lieu of the signature of the other party. The Judicial Council

shall adopt a format for the certificate.

SEC. 4. Section 1735 of the Code of Civil Procedure is amended to read:

1735. (a) Promptly upon the filing of an application pursuant to Section 1734, the applicant shall serve upon the respondent a notice of filing of the application to recognize and enter the tribal court money judgment, together with a copy of the application and any documents filed with the application. The notice of filing shall be in a form that shall be prescribed by the Judicial Council, and shall inform the respondent that the respondent has 30 days from service of the notice of filing to file objections to the enforcement of the tribal court money judgment. The notice shall include the name and address of the applicant and the applicant's attorney, if any, and the text of Sections 1736 and 1737.

(b) Except as provided in subdivision (c), service shall be made in the manner provided for service of summons by Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2.

(c) If a respondent is the State of California or any of its officers, employees, departments, agencies, boards, or commissions, service of the notice of filing on that respondent may be by mail to the office of the Attorney General.

(d) The fee for service of the notice of filing under this section is an item of costs recoverable in the same manner as statutory fees for service of a writ as provided in Chapter 5 (commencing with Section 685.010) of Division 1 of Title 9 of Part 2, but the recoverable amount for that fee shall not exceed the amount allowed to a public officer or employee of this state for that service.

(e) The applicant shall file a proof of service of the notice promptly following service.

SEC. 5. Section 1736 of the Code of Civil Procedure is amended to read:

1736. (a) If no objections are timely filed in accordance with Section 1737, the clerk shall certify that no objections were timely filed, and a judgment shall be entered.

(b) The judgment entered by the superior court shall be based on and contain the provisions and terms of the tribal court money judgment. The judgment shall be entered in the same manner, have the same effect, and be enforceable in the same manner as any civil judgment, order, or decree of a court of this state, except as provided in Section 1733.1.

SEC. 6. Section 1737 of the Code of Civil Procedure is amended to read:

1737. (a) Any objection to the recognition and entry of the tribal court money judgment sought under Section 1734 shall be served and filed within 30 days of service of the notice of filing. If any objection is filed within this time period, the superior court shall set a time period for replies and set the matter for a hearing. The hearing shall be held by the superior court within 45 days from the date the objection is filed unless good cause exists for a later hearing. The only grounds for objecting to the recognition or enforcement of a tribal court money judgment are the grounds set forth in subdivisions (b), (c), and (d).

(b) A tribal court money judgment shall not be recognized and entered if the respondent demonstrates to the superior court that at least one of the following occurred:

(1) The tribal court did not have personal jurisdiction over the respondent.

(2) The tribal court did not have jurisdiction over the subject matter.

(3) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law.

(c) (1) The superior court shall decline to recognize and enter a tribal court money judgment if any one of the following grounds applies:

(A) The defendant in the proceeding in the tribal court did not receive notice of the proceeding in sufficient time to enable the defendant to defend.

(B) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case.

(C) The judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of the state or of the United States.

(D) The proceeding in the tribal court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that tribal court.

(E) In the case of jurisdiction based on personal service only, the tribal court was a seriously inconvenient forum for the trial of the action.

(F) The judgment was rendered under circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment.

(G) The specific proceeding in the tribal court leading to the judgment was not compatible with the requirements of due process of law.

(H) The judgment includes recovery for a claim of defamation, unless the court determines that the defamation law applied by the tribal court provided at least as much protection for freedom of speech and the press as provided by both the United States and California Constitutions.

(2) Notwithstanding an applicable ground for nonrecognition under paragraph (1), the court may nonetheless recognize a tribal court money judgment if the applicant demonstrates good reason to recognize the judgment that outweighs the ground for nonrecognition.

(d) The superior court may, in its discretion, decline to recognize and enter a tribal court money judgment if the judgment conflicts with another final and conclusive judgment.

(e) If objections have been timely filed, the applicant has the burden of establishing that the tribal court money judgment is entitled to recognition. If the applicant has met its burden, a party resisting recognition of the tribal court money judgment has the burden of establishing that a ground for nonrecognition exists pursuant to subdivision (b), (c), or (d).

SEC. 7. Section 2611 is added to the Family Code, to read:

2611. (a) A final order of a tribal court that creates or recognizes the existence of the right of a spouse, former spouse, child, or other dependent of a participant in a retirement plan or other plan of deferred compensation to receive all or a portion of the benefits payable with respect to such plan participant, and that relates to the provision of child support, spousal support payments, or marital property rights to such spouse, former spouse, child, or other dependent, that is filed in accordance with Section 1733.1 of the Code of Civil Procedure shall be recognized as an order made pursuant to the domestic relations laws of this state.

(b) The filing of the tribal court order does not confer any jurisdiction on a court of this state to modify or enforce the tribal court order.