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SB-1427 Marriage: joint petition for dissolution of marriage. (2023-2024)

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Senate Bill No. 1427

CHAPTER 190

An act to amend Sections 2330, 2331, 2342, 2401, and 2402 of, and to add Sections 2342.5 and 2342.51 to, the Family Code, relating to marriage.

[Approved by Governor August 19, 2024. Filed with Secretary of State August 19, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1427, Allen. Marriage: joint petition for dissolution of marriage.

Existing law requires a proceeding for dissolution of marriage or for legal separation of the parties to be commenced by filing a petition containing specific information, including the date of marriage and the date of separation. Existing law requires a party to serve a copy of the petition with a copy of a summons upon the other party and requires the other party to respond in a specified time and manner.

Existing law requires a proceeding for summary dissolution of marriage, which can only be used in specified limited situations, to be commenced by filing a joint petition, as prescribed. A joint petition does not require service or response. Existing law authorizes a party to a marriage to revoke a joint petition for summary dissolution and terminate the proceeding, as specified.

This bill would, commencing January 1, 2026, establish a process by which parties to a marriage that does not meet the requirements for summary dissolution may file a joint petition for dissolution of marriage or for legal separation, as specified. Among other things, the bill would require parties in a joint petition proceeding for dissolution of marriage or for legal separation to provide specific facts, including the age and date of birth of each child of the marriage, if any. The bill would, upon the filing of a joint petition with the court in a form approved by the Judicial Council, deem that the joint petition was served on both parties.

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

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

SECTION 1. Section 2330 of the Family Code is amended to read:

2330. (a) A proceeding for dissolution of marriage or for legal separation of the parties is commenced by filing a petition or joint petition entitled "In re the marriage of ____ and ____," which shall state whether it is a petition for dissolution of the marriage or for legal separation of the parties.

(b) In a proceeding for dissolution of marriage or for legal separation of the parties, the petition shall set forth, among other matters, as nearly as can be ascertained, the following facts:

(1) The date of marriage.

(2) The date of separation.

(3) The number of years from marriage to separation.

(4) The number of children of the marriage, if any, and if none a statement of that fact.

(5) The age and birth date of each minor child of the marriage.

(c) In a joint petition proceeding for dissolution of marriage or for legal separation of the parties, the joint petition shall set forth, among other matters, as nearly as can be ascertained, the following facts:

(1) The date of the marriage.

(2) (A) If there are children of the marriage, all of the following information:

(i) The number of children.

(ii) The age of each child.

(iii) The date of birth of each child.

(B) If there are no children of the marriage, a statement of that fact.

(3) (A) A list of issues upon which the parties intend to resolve by agreement, which may include, but is not limited to, the following:

(i) The legal grounds for dissolution or legal separation.

(ii) The date of separation.

(iii) Child custody.

(iv) Child support.

(v) Spousal support or domestic partner support.

(vi) Separate property.

(vii) Community and quasi-community property.

(viii) Restoration of former name.

(ix) Attorney's fees and costs.

(B) The list of issues required by subparagraph (A) shall represent all of the matters at issue in the dissolution. If the parties have an issue that they do not intend to resolve by agreement, they shall file a petition pursuant to subdivision (b).

SEC. 2. Section 2331 of the Family Code is amended to read:

2331. (a) A copy of the petition, together with a copy of a summons, in a form and content approved by the Judicial Council, shall be served upon the other party to the marriage in the same manner as service of papers in civil actions generally.

(b) If the parties file a joint petition and joint summons, in a form and content approved by the Judicial Council, the joint petition shall be deemed to be served on both parties upon the filing of the joint petition with the court and both parties shall be determined to have appeared in the matter.

SEC. 3. Section 2342 of the Family Code is amended to read:

2342. Where a joint petition for summary dissolution under Chapter 5 (commencing with Section 2400) is thereafter revoked and either party commences a proceeding pursuant to Section 2330 within 90 days from the date of the filing of the revocation, the date the judgment becomes a final judgment under Section 2339 shall be calculated by deducting the period of time that has elapsed from the date of filing the joint petition to the date of filing the revocation.

SEC. 4. Section 2342.5 is added to the Family Code, to read:

2342.5. (a) (1) If the parties file a joint petition for dissolution of marriage or for legal separation of the parties and joint summons in accordance with Sections 2330 and 2331, for identification purposes, including, but not limited to, identification on a Judicial

Council form, the first joint petitioner shall be deemed petitioner and the other joint petitioner shall be deemed respondent.

(2) A joint summons shall include the temporary restraining order required by Section 2040.

(3) Section 412.20 of the Code of Civil Procedure does not apply to a joint summons.

(b) (1) At any time before the entry of judgment on the joint petition, without leave of court, in a form and content approved by the Judicial Council, a petitioner may file an amended petition or the respondent may file an amended response.

(2) (A) If either party is served with an amended petition or amended response, the party served shall file and serve an amended petition or amended response, as applicable, within 30 days, in accordance with Section 2020, in a form and content approved by the Judicial Council.

(B) Subject to the court's discretion to regulate the order of proof, pursuant to Section 320 of the Evidence Code, the order of proof shall be determined by the order of service of the amended pleadings.

(3) If an amended petition or amended response is filed pursuant to paragraph (1), the joint petition for dissolution or for legal separation of the parties is deemed revoked and the proceeding shall proceed as a petition for dissolution or for legal separation of the parties under Section 2330. The filing date of the joint petition shall be considered the filing date for the action and all relevant deadlines, including, but not limited to, the deadlines set forth in Section 2339.

(4) A temporary restraining order included in the summons shall remain in effect if a party files an amended petition or amended response.

(c) The parties may file an amended joint petition. The filing of an amended joint petition does not affect the parties' ability to proceed pursuant to a joint petition.

(d) Either party may seek discovery, as set forth in the Code of Civil Procedure, under the joint petition process.

(e) If either party files a request for order, including, but not limited to, a request for a motion to compel or other discovery motion, or request for trial setting with the court, that party shall file an amended petition or amended response, pursuant to subdivision (b), before making, or simultaneously with, the request.

(f) A judgment based on the agreement of the parties shall be in the same form as if one party had filed a petition for dissolution of marriage or legal separation and the other party had filed a response to the petition for dissolution of marriage or legal separation or otherwise appeared prior to entry of judgment because both joint petitioners will have appeared in the matter pursuant to subdivision (b) of Section 2331 due to the filing of a joint petition.

(g) The provisions of Division 6 (commencing with Section 2000) of this code that apply to a petition for dissolution of marriage or for the legal separation of the parties also apply to a joint petition for dissolution of marriage or for legal separation of the parties unless otherwise provided for by this section, in which case the provisions of this section shall supersede.

(h) The filing of a joint petition shall be accompanied by the fees provided in subdivisions (b) and (d) of Section 70670 of the Government Code and the supplemental fees provided in Sections 70602.5 and 70602.6 of the Government Code unless both parties have been granted a fee waiver pursuant to Section 68632 of the Government Code.

(i) This section shall become operative on January 1, 2026.

SEC. 5. Section 2342.51 is added to the Family Code, to read:

2342.51. The Judicial Council shall adopt or amend any rules or forms necessary to implement Section 2342.5 on or before January 1, 2026.

SEC. 6. Section 2401 of the Family Code is amended to read:

2401. (a) A proceeding for summary dissolution of the marriage shall be commenced by filing a joint petition for summary dissolution in the form prescribed by the Judicial Council.

(b) The petition shall be signed under oath by both spouses and shall include all of the following:

(1) A statement that as of the date of the filing of the joint petition all of the conditions set forth in Section 2400 have been met.

(2) The mailing address of each spouse.

(3) A statement whether a spouse elects to have their former name restored and, if so, the name to be restored.

SEC. 7. Section 2402 of the Family Code is amended to read:

2402. (a) At any time before the filing of application for judgment pursuant to Section 2403, either party to the marriage may revoke the joint petition for summary dissolution and thereby terminate the summary dissolution proceeding filed pursuant to this chapter.

(b) The revocation shall be effected by filing with the clerk of the court where the proceeding was commenced a notice of revocation in a form and content as shall be prescribed by the Judicial Council.

(c) The revoking party shall send a copy of the notice of revocation to the other party by first-class mail, postage prepaid, at the other party's last known address.