

AMENDED IN SENATE JULY 16, 2001

AMENDED IN ASSEMBLY MAY 2, 2001

AMENDED IN ASSEMBLY APRIL 19, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 583

Introduced by Assembly Member Jackson

February 21, 2001

An act to amend Sections *1101*, 2100, 2102, ~~2103, 2104~~, 2105, 2106, ~~and 2107~~ *2107*, and *2122* of the Family Code, relating to dissolution of marriage.

LEGISLATIVE COUNSEL'S DIGEST

AB 583, as amended, Jackson. Dissolution of marriage: community property.

Existing law requires a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest to be made in a proceeding for dissolution of marriage or legal separation of the parties, regardless of the characterization as community or separate, together with a disclosure of all income and expenses of the parties. Existing law provides that each party has a continuing duty to update and augment that disclosure to the extent there have been any material changes, as specified.

This bill would modify the provision regarding each party's continuing duty to update and augment his or her disclosure by providing that each party shall do so immediately, fully, and accurately upon material change. *The bill would also make related, conforming changes.*

Existing law requires each party, from the date of separation to the date of the distribution of the community property, to provide the other party with an accurate and complete written disclosure of any investment opportunity that presents itself after the date of separation, but that results from any investment of either spouse from the date of marriage to the date of separation, inclusive. Existing law requires that written disclosure be made in sufficient time for the other spouse to make an informed decision as to whether he or she desires to participate in the investment opportunity.

This bill would additionally require the disclosure to contain any business or other potential income-producing opportunity that presents itself after the date of separation, but that results from any investment, business activity, training or education of either spouse from the date of marriage to the date of separation, inclusive. The bill would require that the written disclosure be made in time for the other spouse to make an informed decision as to whether he or she desires to participate in the business or other potential income-producing opportunity, and for the court to resolve any dispute regarding the right of the other spouse to participate in the opportunity. The bill would also provide that specified standards apply to all activities that affect the assets or liabilities of the other spouse, and the income or expenses of the party.

Existing law requires, ~~after or concurrently with service of the petition for each party to a proceeding for dissolution or nullity of marriage or legal separation of the parties, each party to serve on the other party a preliminary declaration of disclosure, and, subsequently, under specified circumstances, a final declaration of disclosure, each to be executed under penalty of perjury on a form prescribed by the Judicial Council.~~

This bill would ~~instead require service of that disclosure not later than 60 days after the service of the petition. The bill would additionally require the preliminary declaration to characterize the ownership of each asset, and would delete~~ *revise* provisions authorizing a stipulation of a mutual waiver of the requirement governing a final declaration of disclosure. The bill ~~would provide that failure to comply with the requirements regarding preliminary and final declarations is rebuttably presumed not to be harmless error, and would require a court to set aside a judgment upon failure to comply with all disclosure requirements, and~~ would revise the sanctions for violation of the requirements governing a preliminary or final declaration of disclosure. The bill would also make *related*, conforming changes. By revising the elements of perjury,



this bill would alter the definition of crime and thus impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 1101 of the Family Code is amended to*
2 *read:*

3 1101. (a) A spouse has a claim against the other spouse for a
4 *any* breach of the fiduciary duty ~~imposed by Section 1100 or 1102~~
5 that results in impairment to the claimant spouse's present
6 undivided one-half interest in the community estate, including, but
7 not limited to, a single transaction or a pattern or series of
8 transactions, which transaction or transactions have caused or will
9 cause a detrimental impact to the claimant spouse's undivided
10 one-half interest in the community estate.

11 (b) A court may order an accounting of the property and
12 obligations of the parties to a marriage and may determine the
13 rights of ownership in, the beneficial enjoyment of, or access to,
14 community property, and the classification of all property of the
15 parties to a marriage.

16 (c) A court may order that the name of a spouse shall be added
17 to community property held in the name of the other spouse alone
18 or that the title of community property held in some other title form
19 shall be reformed to reflect its community character, except with
20 respect to any of the following:

21 (1) A partnership interest held by the other spouse as a general
22 partner.

23 (2) An interest in a professional corporation or professional
24 association.

25 (3) An asset of an unincorporated business if the other spouse
26 is the only spouse involved in operating and managing the
27 business.



1 (4) Any other property, if the revision would adversely affect
2 the rights of a third person.

3 (d) (1) Except as provided in paragraph (2), any action under
4 subdivision (a) shall be commenced within three years of the date
5 a petitioning spouse had actual knowledge that the transaction or
6 event for which the remedy is being sought occurred.

7 (2) An action may be commenced under this section upon the
8 death of a spouse or in conjunction with an action for legal
9 separation, dissolution of marriage, or nullity without regard to the
10 time limitations set forth in paragraph (1).

11 (3) The defense of laches may be raised in any action brought
12 under this section.

13 (4) Except as to actions authorized by paragraph (2), remedies
14 under subdivision (a) apply only to transactions or events
15 occurring on or after July 1, 1987.

16 (e) In any transaction affecting community property in which
17 the consent of both spouses is required, the court may, upon the
18 motion of a spouse, dispense with the requirement of the other
19 spouse's consent if both of the following requirements are met:

20 (1) The proposed transaction is in the best interest of the
21 community.

22 (2) Consent has been arbitrarily refused or cannot be obtained
23 due to the physical incapacity, mental incapacity, or prolonged
24 absence of the nonconsenting spouse.

25 (f) Any action may be brought under this section without filing
26 an action for dissolution of marriage, legal separation, or nullity,
27 or may be brought in conjunction with the action or upon the death
28 of a spouse.

29 (g) Remedies for breach of the fiduciary duty by one spouse ~~as~~
30 ~~set out in Section 721, including those set out in Sections 721 and~~
31 *1100*, shall include, but not be limited to, an award to the other
32 spouse of 50 percent, or an amount equal to 50 percent, of any asset
33 undisclosed or transferred in breach of the fiduciary duty plus
34 attorney's fees and court costs. ~~However, in no event shall interest~~
35 ~~be assessed on the managing spouse. The value of the asset shall~~
36 *be determined to be its highest value from the time of nondisclosure*
37 *to the time of the award. In addition, the court, in its discretion,*
38 *may assess interest.*

39 (h) Remedies for the breach of the fiduciary duty by one
40 spouse, *as set forth in Sections 721 and 1100*, when the breach falls



1 within the ambit of Section 3294 of the Civil Code shall include,
2 but not be limited to, an award to the other spouse of 100 percent,
3 or an amount equal to 100 percent, of any asset undisclosed or
4 transferred in breach of the fiduciary duty.

5 *SEC. 2.* Section 2100 of the Family Code is amended to read:

6 2100. The Legislature finds and declares the following:

7 (a) It is the policy of the State of California (1) to marshal,
8 preserve, and protect community and quasi-community assets and
9 liabilities that exist at the date of separation so as to avoid
10 dissipation of the community estate before distribution, (2) to
11 ensure fair and sufficient child and spousal support awards, and (3)
12 to achieve a division of community and quasi-community assets
13 and liabilities on the dissolution or nullity of marriage or legal
14 separation of the parties as provided under California law.

15 (b) Sound public policy further favors the reduction of the
16 adversarial nature of marital dissolution and the attendant costs by
17 fostering full disclosure and cooperative discovery.

18 (c) In order to promote this public policy, a full and accurate
19 disclosure of all assets and liabilities in which one or both parties
20 have or may have an interest must be made in the early stages of
21 a proceeding for dissolution of marriage or legal separation of the
22 parties, regardless of the characterization as community or
23 separate, together with a disclosure of all income and expenses of
24 the parties. Moreover, each party has a continuing duty to
25 immediately, fully, and accurately update and augment that
26 disclosure to the extent there have been any material changes so
27 that at the time the parties enter into an agreement for the
28 resolution of any of these issues, or at the time of trial on these
29 issues, each party will have a full and complete knowledge of the
30 relevant underlying facts.

31 ~~SEC. 2.—~~

32 *SEC. 3.* Section 2102 of the Family Code is amended to read:

33 2102. (a) From the date of separation to the date of the
34 distribution of the community or quasi-community asset or
35 liability in question, each party is subject to the standards provided
36 in Section 721, as to all activities that affect the assets and
37 liabilities of the other party, including, but not limited to, the
38 following activities:

39 (1) The accurate and complete disclosure of all assets and
40 liabilities in which the party has or may have an interest or



1 obligation and all current earnings, accumulations, and expenses,
 2 including an immediate, full, and accurate update or augmentation
 3 to the extent there have been any material changes.

4 (2) The accurate and complete written disclosure of any
 5 investment opportunity, business, or other potential
 6 income-producing opportunity that presents itself after the date of
 7 ~~separation, but that results from any investment, business activity,~~
 8 ~~training, or education of either spouse from the date of marriage~~
 9 *separation, but that results from any investment, significant*
 10 *business activity outside the ordinary course of business, training,*
 11 *or education of either spouse from the date of marriage* to the date
 12 of separation, inclusive. The written disclosure shall be made in
 13 sufficient time for the other spouse to make an informed decision
 14 as to whether he or she desires to participate in the investment
 15 opportunity, business, or other potential income-producing
 16 opportunity, and for the court to resolve any dispute regarding the
 17 right of the other spouse to participate in the opportunity. In the
 18 event of nondisclosure of ~~such~~ an investment opportunity, the
 19 division of any gain resulting from that opportunity is governed by
 20 the standard provided in Section 2556.

21 (3) The operation or management of a business or an interest
 22 in a business in which the community may have an interest.

23 (b) From the date that a valid, enforceable, and binding
 24 resolution of the disposition of the asset or liability in question is
 25 reached, until the asset or liability has actually been distributed,
 26 each party is subject to the standards provided in Section 721 as to
 27 all activities that affect the assets or liabilities of the other party.
 28 *Once a particular asset or liability has been distributed, the duties*
 29 *and standards set forth in Section 721 shall end as to that asset or*
 30 *liability.*

31 (c) From the date of separation to the date of a valid,
 32 enforceable, and binding resolution of all issues relating to child
 33 or spousal support and professional fees, each party is subject to
 34 the standards provided in Section 721 as to all issues relating to the
 35 support and fees, including immediate, full, and accurate
 36 disclosure of all material facts and information regarding the
 37 income or expenses of the party.

38 ~~SEC. 3.—Section 2103 of the Family Code is amended to read:~~
 39 ~~2103.—In order to provide full and accurate disclosure of all~~
 40 ~~assets and liabilities in which one or both parties may have an~~



1 interest, each party to a proceeding for dissolution of the marriage
2 or legal separation of the parties shall serve on the other party a
3 preliminary declaration of disclosure under Section 2104 and a
4 final declaration of disclosure under Section 2105, unless service
5 of the final declaration of disclosure is waived pursuant to Section
6 2110, and shall file proof of service of each with the court.

7 SEC. 4. Section 2104 of the Family Code is amended to read:

8 2104. (a) Not later than 60 days after the service of the
9 petition for dissolution or nullity of marriage or legal separation
10 of the parties, each party shall serve on the other party a
11 preliminary declaration of disclosure, executed under penalty of
12 perjury on a form prescribed by the Judicial Council. The
13 commission of perjury by a party on the preliminary declaration
14 of disclosure may be grounds for setting aside the judgment, or any
15 part or parts thereof, pursuant to Chapter 10 (commencing with
16 Section 2120), in addition to any and all other remedies, civil or
17 criminal, that otherwise are available under law for the
18 commission of perjury. There shall be a rebuttable presumption
19 that the failure to comply with the requirements of this section does
20 not constitute harmless error.

21 (b) The preliminary declaration of disclosure shall not be filed
22 with the court, except on court order; however, the parties shall file
23 proof of service or acknowledgment of receipt of the preliminary
24 declaration of disclosure with the court.

25 (c) The preliminary declaration of disclosure shall set forth
26 with sufficient particularity, that a person of reasonable and
27 ordinary intelligence can ascertain, all of the following:

28 (1) The identity of all assets in which the declarant has or may
29 have an interest and all liabilities for which the declarant is or may
30 be liable, regardless of the characterization of the asset or liability
31 as community, quasi-community, or separate.

32 (2) The declarant's percentage of ownership in each asset and
33 percentage of obligation for each liability where property is not
34 solely owned by one or both of the parties. The preliminary
35 declaration shall also set forth the declarant's characterization of
36 each asset or liability.

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



1 ~~(c) Along with the preliminary declaration of disclosure, each~~
2 ~~party shall provide the other party with a completed income and~~
3 ~~expense declaration unless an income and expense declaration has~~
4 ~~already been provided and is current and valid.~~

5 ~~SEC. 5.—~~

6 *SEC. 3.* Section 2105 of the Family Code is amended to read:

7 2105. (a) Except by court order for good cause, before or at
8 the time the parties enter into an agreement for the resolution of
9 property or support issues other than pendente lite support, or, if
10 the case goes to trial, no later than 45 days before the first assigned
11 trial date, each party, or the attorney for the party in this matter,
12 shall serve on the other party a final declaration of disclosure and
13 a current income and expense declaration, executed under penalty
14 of perjury on a form prescribed by the Judicial Council, *unless the*
15 *parties mutually waive the final declaration of disclosure.* The
16 commission of perjury on the final declaration of disclosure by a
17 party may be grounds for setting aside the judgment, or any part
18 or parts thereof, pursuant to Chapter 10 (commencing with Section
19 2120), in addition to any and all other remedies, civil or criminal,
20 that otherwise are available under law for the commission of
21 ~~perjury. There shall be a rebuttable presumption that the failure to~~
22 ~~comply with the requirements of this section does not constitute~~
23 ~~harmless error. perjury.~~

24 (b) The final declaration of disclosure shall include all of the
25 following information:

26 (1) All material facts and information regarding the
27 characterization of all assets and liabilities.

28 (2) All material facts and information regarding the valuation
29 of all assets that are contended to be community property or in
30 which it is contended the community has an interest.

31 (3) All material facts and information regarding the amounts of
32 all obligations that are contended to be community obligations or
33 for which it is contended the community has liability.

34 (4) All material facts and information regarding the earnings,
35 accumulations, and expenses of each party that have been set forth
36 in the income and expense declaration.

37 (c) In making an order setting aside a judgment for failure to
38 comply with this section, the court may limit the set aside to those
39 portions of the judgment materially affected by the nondisclosure.



1 ~~(d) As to any judgment entered prior to January 1, 1996, the~~
2 ~~rights of any party to have any or all of the judgment set aside for~~
3 ~~failure to serve and file final declarations of disclosure, and the~~
4 ~~validity of any alleged waiver of the disclosure requirement, shall~~
5 ~~be subject to this section.~~

6 *(d) The parties may stipulate to a mutual waiver of the*
7 *requirements of subdivision (a) concerning the final declaration of*
8 *disclosure, by execution of a waiver under penalty of perjury*
9 *entered into in open court or by separate stipulation. The waiver*
10 *shall include all of the following representations:*

11 *(1) Both parties have complied with Section 2104 and the*
12 *preliminary declarations of disclosure have been completed and*
13 *exchanged.*

14 *(2) Both parties have completed and exchanged a current*
15 *income and expense declaration, that includes all material facts*
16 *and information regarding that party's earnings, accumulations,*
17 *and expenses.*

18 *(3) Both parties have fully complied with Section 2102 and*
19 *have fully augmented the preliminary declarations of disclosure,*
20 *including disclosure of all material facts and information*
21 *regarding the characterization of all assets and liabilities, the*
22 *valuation of all assets that are contended to be community property*
23 *or in which it is contended the community has an interest, and the*
24 *amounts of all obligations that are contended to be community*
25 *obligations or for which it is contended the community has*
26 *liability.*

27 *(4) The waiver is knowingly, intelligently, and voluntarily*
28 *entered into by each of the parties.*

29 *(5) Each party understands that, by signing this waiver under*
30 *penalty of perjury, the judgment shall be set aside for any*
31 *noncompliance with any disclosure requirements set forth in this*
32 *chapter and the court may take any other action deemed necessary.*

33 *(e) If a court enters a judgment when the parties have failed to*
34 *comply with all disclosure requirements of this section, the court*
35 *shall set aside the judgment. The failure to comply with the*
36 *disclosure requirements does not constitute harmless error.*

37 ~~SEC. 6.—~~

38 *SEC. 4.* Section 2106 of the Family Code is amended to read:

39 2106. Except as provided in *subdivision (d) of Section 2105*
40 *or in Section 2110, absent good cause, no judgment shall be*



1 entered with respect to the parties' property rights without each
2 party, or the attorney for that party in this matter, having executed
3 and served a copy of the final declaration of disclosure and current
4 income and expense declaration. Each party shall execute and file
5 with the court a declaration signed under penalty of perjury stating
6 that service of the final declaration of disclosure and current
7 income and expense declaration was made on the other party or
8 that service of the final declaration of disclosure has been waived
9 pursuant to *subdivision (d) of Section 2105 or in Section 2110.*

10 ~~SEC. 7.~~

11 *SEC. 5.* Section 2107 of the Family Code is amended to read:

12 2107. (a) If one party fails to serve on the other party a
13 preliminary declaration of disclosure under Section 2104 or a final
14 declaration of disclosure under Section 2105, or fails to provide
15 the information required in the respective declarations with
16 sufficient particularity, and if the other party has served the
17 respective declaration of disclosure on the noncomplying party,
18 the complying party may, within a reasonable time, request
19 preparation of the appropriate declaration of disclosure or further
20 particularity.

21 (b) If the noncomplying party fails to comply with a request
22 under subdivision (a), the complying party may do either or both
23 of the following:

24 (1) File a motion to compel a further response.

25 (2) File a motion for an order preventing the noncomplying
26 party from presenting evidence on issues that should have been
27 covered in the declaration of disclosure.

28 (c) If a party fails to comply with any provision of this chapter,
29 the court shall, in addition to any other remedy provided by law,
30 impose money sanctions against the noncomplying party.
31 Sanctions shall be in an amount sufficient to deter repetition of the
32 conduct or comparable conduct, and shall include reasonable
33 attorney's fees, costs incurred, or both, unless the court finds that
34 the noncomplying party acted with substantial justification or that
35 other circumstances make the imposition of the sanction unjust.

36 (d) *Upon the motion to set aside judgment, the court may order*
37 *the parties to provide the preliminary and final declarations of*
38 *disclosure that were exchanged between them. Absent a court*
39 *order to the contrary, the disclosure declarations shall not be filed*
40 *with the court and shall be returned to the parties.*



1 ~~SEC. 8.—~~

2 *SEC. 6. Section 2122 of the Family Code is amended to read:*

3 2122. The grounds and time limits for a motion to set aside a
4 judgment, or any part or parts thereof, are governed by this section
5 and shall be one of the following:

6 (a) Actual fraud where the defrauded party was kept in
7 ignorance, or in some other manner, ~~other than his or her own lack~~
8 ~~of care or attention~~, was fraudulently prevented from fully
9 participating in the proceeding. An action or motion based on
10 fraud shall be brought within one year after the date on which the
11 complaining party either did discover, or should have discovered,
12 the fraud.

13 (b) ~~Perjury~~. An action or motion based on perjury in the
14 preliminary or final declaration of disclosure, *the waiver of the*
15 *final declaration of disclosure*, or in the current income and
16 expense statement shall be brought within one year after the date
17 on which the complaining party either did discover, or should have
18 discovered, the perjury.

19 *SEC. 7.* No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.

