

AMENDED IN SENATE APRIL 29, 2014

SENATE BILL

No. 1306

Introduced by Senator Leno

February 21, 2014

An act to amend Sections 300, 301, 302, 420, 500, 720, 721, 750, 751, 752, 754, 761, 1102, 1500, 1620, 1839, 2200, 2201, 2210, 2211, 2322, 2400, 2401, 3120, 3450, 3551, 3580, 3585, 3600, 4323, and 4930 of, to amend the heading of Chapter 2 (commencing with Section 720) of Part 1 of Division 4 of, to amend the heading of Chapter 3 (commencing with Section 1620) of Part 5 of Division 4 of, to repeal Section 308.5 of, and to repeal and add Section 308 of, the Family Code, relating to marriage.

LEGISLATIVE COUNSEL'S DIGEST

SB 1306, as amended, Leno. Marriage.

An existing provision of the California Constitution, which has been held unenforceable, states that only marriage between a man and a woman is valid or recognized in this state. An existing statutory provision likewise provides that only marriage between a man and a woman is valid or recognized in this state.

This bill would repeal that statutory provision.

Existing statutory law provides that marriage is a personal relationship arising out of a civil contract between a man and a woman. Under existing law, a marriage contracted outside this state that would be valid by the laws of the jurisdiction in which the marriage was contracted is valid in this state, except that a marriage between 2 persons of the same sex contracted outside this state is valid in this state only if the marriage was contracted prior to November 5, 2008.

This bill would instead provide that marriage is a personal relation arising out of a civil contract between 2 persons, and would make conforming changes with regard to the consent to, and solemnization of, marriage. The bill would also delete the limitation on the validity of marriages contracted outside this state between 2 persons of the same sex.

Under existing law, a reference to “husband” and “wife,” “spouses,” or “married persons,” or a comparable term, includes persons who are lawfully married to each other and persons who were previously lawfully married to each other, as is appropriate under the circumstances of the particular case.

The bill would delete references to “husband” or “wife” in the Family Code and would instead refer to a “spouse,” and would make other related changes.

Existing law establishes, except as specified, a rebuttable presumption of decreased need for spousal support if the supported party is cohabiting with a person of the opposite sex.

This bill would make that rebuttable presumption of decreased need for spousal support applicable if the supported party is cohabiting with a “nonmarital partner.”

This bill would declare that the purpose of the act is to clarify that laws relating to marriage and the rights and responsibilities of spouses apply equally to opposite-sex and same-sex spouses and that the changes are not intended to affect existing decisional law otherwise interpreting the laws amended in the act.

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

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

1 **SECTION 1.** *The Legislature finds and declares that the*
 2 *purpose of this act is to clarify that all laws relating to marriage*
 3 *and the rights and responsibilities of spouses apply equally to*
 4 *opposite-sex and same-sex spouses. These changes are not intended*
 5 *to affect any existing decisional law otherwise interpreting the*
 6 *statutes amended in this act.*

7 ~~**SECTION 1.**~~

8 **SEC. 2.** Section 300 of the Family Code is amended to read:
 9 300. (a) Marriage is a personal relation arising out of a civil
 10 contract between two persons, to which the consent of the parties

1 capable of making that contract is necessary. Consent alone does
2 not constitute marriage. Consent must be followed by the issuance
3 of a license and solemnization as authorized by this division, except
4 as provided by Section 425 and Part 4 (commencing with Section
5 500).

6 (b) For purposes of this part, the document issued by the county
7 clerk is a marriage license until it is registered with the county
8 recorder, at which time the license becomes a marriage certificate.

9 ~~SEC. 2.~~

10 *SEC. 3.* Section 301 of the Family Code is amended to read:

11 301. Two unmarried persons 18 years of age or older, who are
12 not otherwise disqualified, are capable of consenting to and
13 consummating marriage.

14 ~~SEC. 3.~~

15 *SEC. 4.* Section 302 of the Family Code is amended to read:

16 302. (a) An unmarried person under 18 years of age is capable
17 of consenting to and consummating marriage upon obtaining a
18 court order granting permission to the underage person or persons
19 to marry.

20 (b) The court order and written consent of the parents of each
21 underage person, or of one of the parents or the guardian of each
22 underage person shall be filed with the clerk of the court, and a
23 certified copy of the order shall be presented to the county clerk
24 at the time the marriage license is issued.

25 ~~SEC. 4.~~

26 *SEC. 5.* Section 308 of the Family Code is repealed.

27 ~~SEC. 5.~~

28 *SEC. 6.* Section 308 is added to the Family Code, to read:

29 308. A marriage contracted outside this state that would be
30 valid by laws of the jurisdiction in which the marriage was
31 contracted is valid in this state.

32 ~~SEC. 6.~~

33 *SEC. 7.* Section 308.5 of the Family Code is repealed.

34 ~~SEC. 7.~~

35 *SEC. 8.* Section 420 of the Family Code is amended to read:

36 420. (a) No particular form for the ceremony of marriage is
37 required for solemnization of the marriage, but the parties shall
38 declare, in the physical presence of the person solemnizing the
39 marriage and necessary witnesses, that they take each other as
40 spouses.

1 (b) Notwithstanding subdivision (a), a member of the Armed
 2 Forces of the United States who is stationed overseas and serving
 3 in a conflict or a war and is unable to appear for the licensure and
 4 solemnization of the marriage may enter into that marriage by the
 5 appearance of an attorney in fact, commissioned and empowered
 6 in writing for that purpose through a power of attorney. The
 7 attorney in fact must personally appear at the county clerk’s office
 8 with the party who is not stationed overseas, and present the
 9 original power of attorney duly signed by the party stationed
 10 overseas and acknowledged by a notary or witnessed by two
 11 officers of the United States Armed Forces. Copies in any form,
 12 including by facsimile, are not acceptable. The power of attorney
 13 shall state the full given names at birth, or by court order, of the
 14 parties to be married, and that the power of attorney is solely for
 15 the purpose of authorizing the attorney in fact to obtain a marriage
 16 license on the person’s behalf and participate in the solemnization
 17 of the marriage. The original power of attorney shall be a part of
 18 the marriage certificate upon registration.

19 (c) No contract of marriage, if otherwise duly made, shall be
 20 invalidated for want of conformity to the requirements of any
 21 religious sect.

22 ~~SEC. 8.~~

23 *SEC. 9.* Section 500 of the Family Code is amended to read:
 24 500. When two unmarried people, not minors, have been living
 25 together as spouses, they may be married pursuant to this chapter
 26 by a person authorized to solemnize a marriage under Chapter 1
 27 (commencing with Section 400) of Part 3, without the necessity
 28 of first obtaining health certificates.

29 ~~SEC. 9.~~

30 *SEC. 10.* The heading of Chapter 2 (commencing with Section
 31 720) of Part 1 of Division 4 of the Family Code is amended to
 32 read:

33
 34 CHAPTER 2. RELATION OF SPOUSES

35
 36 ~~SEC. 10.~~

37 *SEC. 11.* Section 720 of the Family Code is amended to read:
 38 720. Spouses contract toward each other obligations of mutual
 39 respect, fidelity, and support.

1 ~~SEC. 11.~~

2 *SEC. 12.* Section 721 of the Family Code is amended to read:

3 721. (a) Subject to subdivision (b), either spouse may enter
4 into any transaction with the other, or with any other person,
5 respecting property, which either might if unmarried.

6 (b) Except as provided in Sections 143, 144, 146, 16040, and
7 16047 of the Probate Code, in transactions between themselves,
8 spouses are subject to the general rules governing fiduciary
9 relationships that control the actions of persons occupying
10 confidential relations with each other. This confidential relationship
11 imposes a duty of the highest good faith and fair dealing on each
12 spouse, and neither shall take any unfair advantage of the other.
13 This confidential relationship is a fiduciary relationship subject to
14 the same rights and duties of nonmarital business partners, as
15 provided in Sections 16403, 16404, and 16503 of the Corporations
16 Code, including, but not limited to, the following:

17 (1) Providing each spouse access at all times to any books kept
18 regarding a transaction for the purposes of inspection and copying.

19 (2) Rendering upon request, true and full information of all
20 things affecting any transaction that concerns the community
21 property. Nothing in this section is intended to impose a duty for
22 either spouse to keep detailed books and records of community
23 property transactions.

24 (3) Accounting to the spouse, and holding as a trustee, any
25 benefit or profit derived from any transaction by one spouse
26 without the consent of the other spouse that concerns the
27 community property.

28 ~~SEC. 12.~~

29 *SEC. 13.* Section 750 of the Family Code is amended to read:

30 750. Spouses may hold property as joint tenants or tenants in
31 common, or as community property, or as community property
32 with a right of survivorship.

33 ~~SEC. 13.~~

34 *SEC. 14.* Section 751 of the Family Code is amended to read:

35 751. The respective interests of each spouse in community
36 property during continuance of the marriage relation are present,
37 existing, and equal interests.

38 ~~SEC. 14.~~

39 *SEC. 15.* Section 752 of the Family Code is amended to read:

1 752. Except as otherwise provided by statute, neither spouse
2 has any interest in the separate property of the other.

3 ~~SEC. 15.~~

4 *SEC. 16.* Section 754 of the Family Code is amended to read:

5 754. If notice of the pendency of a proceeding for dissolution
6 of the marriage, for nullity of the marriage, or for legal separation
7 of the parties is recorded in any county in which either spouse
8 resides on real property that is the separate property of the other,
9 the real property shall not for a period of three months thereafter
10 be transferred, encumbered, or otherwise disposed of voluntarily
11 or involuntarily without the joinder of both spouses, unless the
12 court otherwise orders.

13 ~~SEC. 16.~~

14 *SEC. 17.* Section 761 of the Family Code is amended to read:

15 761. (a) Unless the trust instrument or the instrument of
16 transfer expressly provides otherwise, community property that is
17 transferred in trust remains community property during the
18 marriage, regardless of the identity of the trustee, if the trust,
19 originally or as amended before or after the transfer, provides that
20 the trust is revocable as to that property during the marriage and
21 the power, if any, to modify the trust as to the rights and interests
22 in that property during the marriage may be exercised only with
23 the joinder or consent of both spouses.

24 (b) Unless the trust instrument expressly provides otherwise, a
25 power to revoke as to community property may be exercised by
26 either spouse acting alone. Community property, including any
27 income or appreciation, that is distributed or withdrawn from a
28 trust by revocation, power of withdrawal, or otherwise, remains
29 community property unless there is a valid transmutation of the
30 property at the time of distribution or withdrawal.

31 (c) The trustee may convey and otherwise manage and control
32 the trust property in accordance with the provisions of the trust
33 without the joinder or consent of either spouse unless the trust
34 expressly requires the joinder or consent of one or both spouses.

35 (d) This section applies to a transfer made before, on, or after
36 July 1, 1987.

37 (e) Nothing in this section affects the community character of
38 property that is transferred before, on, or after July 1, 1987, in any
39 manner or to a trust other than described in this section.

1 ~~SEC. 17.~~

2 *SEC. 18.* Section 1102 of the Family Code is amended to read:

3 1102. (a) Except as provided in Sections 761 and 1103, either
4 spouse has the management and control of the community real
5 property, whether acquired prior to or on or after January 1, 1975,
6 but both spouses, either personally or by a duly authorized agent,
7 must join in executing any instrument by which that community
8 real property or any interest therein is leased for a longer period
9 than one year, or is sold, conveyed, or encumbered.

10 (b) Nothing in this section shall be construed to apply to a lease,
11 mortgage, conveyance, or transfer of real property or of any interest
12 in real property between spouses.

13 (c) Notwithstanding subdivision (b):

14 (1) The sole lease, contract, mortgage, or deed of the husband,
15 holding the record title to community real property, to a lessee,
16 purchaser, or encumbrancer, in good faith without knowledge of
17 the marriage relation, shall be presumed to be valid if executed
18 prior to January 1, 1975.

19 (2) The sole lease, contract, mortgage, or deed of either spouse,
20 holding the record title to community real property to a lessee,
21 purchaser, or encumbrancer, in good faith without knowledge of
22 the marriage relation, shall be presumed to be valid if executed on
23 or after January 1, 1975.

24 (d) No action to avoid any instrument mentioned in this section,
25 affecting any property standing of record in the name of either
26 spouse alone, executed by the spouse alone, shall be commenced
27 after the expiration of one year from the filing for record of that
28 instrument in the recorder's office in the county in which the land
29 is situated.

30 (e) Nothing in this section precludes either spouse from
31 encumbering his or her interest in community real property, as
32 provided in Section 2033, to pay reasonable attorney's fees in
33 order to retain or maintain legal counsel in a proceeding for
34 dissolution of marriage, for nullity of marriage, or for legal
35 separation of the parties.

36 ~~SEC. 18.~~

37 *SEC. 19.* Section 1500 of the Family Code is amended to read:

38 1500. The property rights of spouses prescribed by statute may
39 be altered by a premarital agreement or other marital property
40 agreement.

1 ~~SEC. 19.~~

2 *SEC. 20.* The heading of Chapter 3 (commencing with Section
3 1620) of Part 5 of Division 4 of the Family Code is amended to
4 read:

5

6

CHAPTER 3. AGREEMENTS BETWEEN SPOUSES

7

8 ~~SEC. 20.~~

9 *SEC. 21.* Section 1620 of the Family Code is amended to read:
10 1620. Except as otherwise provided by law, spouses cannot,
11 by a contract with each other, alter their legal relations, except as
12 to property.

13 ~~SEC. 21.~~

14 *SEC. 22.* Section 1839 of the Family Code is amended to read:
15 1839. (a) At or after the hearing, the court may make orders
16 in respect to the conduct of the spouses or parents and the subject
17 matter of the controversy that the court deems necessary to preserve
18 the marriage or to implement the reconciliation of the spouses. No
19 such order shall be effective for more than 30 days from the hearing
20 of the petition unless the parties mutually consent to a continuation
21 of the time the order remains effective.

22 (b) A reconciliation agreement between the parties may be
23 reduced to writing and, with the consent of the parties, a court
24 order may be made requiring the parties to comply fully with the
25 agreement.

26 (c) During the pendency of a proceeding under this part, the
27 superior court may order a spouse or parent, as the case may be,
28 to pay an amount necessary for the support and maintenance of
29 the other spouse and for the support, maintenance, and education
30 of the minor children, as the case may be. In determining the
31 amount, the superior court may take into consideration the
32 recommendations of a financial referee if one is available to the
33 court. An order made pursuant to this subdivision shall not
34 prejudice the rights of the parties or children with respect to any
35 subsequent order that may be made. An order made pursuant to
36 this subdivision may be modified or terminated at any time except
37 as to an amount that accrued before the date of filing of the notice
38 of motion or order to show cause to modify or terminate.

39 ~~SEC. 22.~~

40 *SEC. 23.* Section 2200 of the Family Code is amended to read:

1 2200. Marriages between parents and children, ancestors and
2 descendants of every degree, and between siblings of the half as
3 well as the whole blood, and between uncles or aunts and nieces
4 or nephews, are incestuous, and void from the beginning, whether
5 the relationship is legitimate or illegitimate.

6 ~~SEC. 23.~~

7 *SEC. 24.* Section 2201 of the Family Code is amended to read:

8 2201. (a) A subsequent marriage contracted by a person during
9 the life of his or her former spouse, with a person other than the
10 former spouse, is illegal and void, unless:

11 (1) The former marriage has been dissolved or adjudged a nullity
12 before the date of the subsequent marriage.

13 (2) The former spouse (A) is absent, and not known to the person
14 to be living for the period of five successive years immediately
15 preceding the subsequent marriage, or (B) is generally reputed or
16 believed by the person to be dead at the time the subsequent
17 marriage was contracted.

18 (b) In either of the cases described in paragraph (2) of
19 subdivision (a), the subsequent marriage is valid until its nullity
20 is adjudged pursuant to subdivision (b) of Section 2210.

21 ~~SEC. 24.~~

22 *SEC. 25.* Section 2210 of the Family Code is amended to read:

23 2210. A marriage is voidable and may be adjudged a nullity if
24 any of the following conditions existed at the time of the marriage:

25 (a) The party who commences the proceeding or on whose
26 behalf the proceeding is commenced was without the capability
27 of consenting to the marriage as provided in Section 301 or 302,
28 unless, after attaining the age of consent, the party for any time
29 freely cohabited with the other as his or her spouse.

30 (b) The spouse of either party was living and the marriage with
31 that spouse was then in force and that spouse (1) was absent and
32 not known to the party commencing the proceeding to be living
33 for a period of five successive years immediately preceding the
34 subsequent marriage for which the judgment of nullity is sought
35 or (2) was generally reputed or believed by the party commencing
36 the proceeding to be dead at the time the subsequent marriage was
37 contracted.

38 (c) Either party was of unsound mind, unless the party of
39 unsound mind, after coming to reason, freely cohabited with the
40 other as his or her spouse.

1 (d) The consent of either party was obtained by fraud, unless
2 the party whose consent was obtained by fraud afterwards, with
3 full knowledge of the facts constituting the fraud, freely cohabited
4 with the other as his or her spouse.

5 (e) The consent of either party was obtained by force, unless
6 the party whose consent was obtained by force afterwards freely
7 cohabited with the other as his or her spouse.

8 (f) Either party was, at the time of marriage, physically incapable
9 of entering into the marriage state, and that incapacity continues,
10 and appears to be incurable.

11 ~~SEC. 25.~~

12 *SEC. 26.* Section 2211 of the Family Code is amended to read:

13 2211. A proceeding to obtain a judgment of nullity of marriage,
14 for causes set forth in Section 2210, must be commenced within
15 the periods and by the parties, as follows:

16 (a) For causes mentioned in subdivision (a) of Section 2210, by
17 any of the following:

18 (1) The party to the marriage who was married under the age
19 of legal consent, within four years after arriving at the age of
20 consent.

21 (2) A parent, guardian, conservator, or other person having
22 charge of the minor, at any time before the married minor has
23 arrived at the age of legal consent.

24 (b) For causes mentioned in subdivision (b) of Section 2210,
25 by either of the following:

26 (1) Either party during the life of the other.

27 (2) The former spouse.

28 (c) For causes mentioned in subdivision (c) of Section 2210, by
29 the party injured, or by a relative or conservator of the party of
30 unsound mind, at any time before the death of either party.

31 (d) For causes mentioned in subdivision (d) of Section 2210,
32 by the party whose consent was obtained by fraud, within four
33 years after the discovery of the facts constituting the fraud.

34 (e) For causes mentioned in subdivision (e) of Section 2210, by
35 the party whose consent was obtained by force, within four years
36 after the marriage.

37 (f) For causes mentioned in subdivision (f) of Section 2210, by
38 the injured party, within four years after the marriage.

39 ~~SEC. 26.~~

40 *SEC. 27.* Section 2322 of the Family Code is amended to read:

1 2322. For the purpose of a proceeding for dissolution of
2 marriage, each spouse may have a separate domicile or residence
3 depending upon proof of the fact and not upon legal presumptions.

4 ~~SEC. 27.~~

5 *SEC. 28.* Section 2400 of the Family Code is amended to read:

6 2400. (a) A marriage may be dissolved by the summary
7 dissolution procedure provided in this chapter if all of the following
8 conditions exist at the time the proceeding is commenced:

9 (1) Either party has met the jurisdictional requirements of
10 Chapter 3 (commencing with Section 2320) with regard to
11 dissolution of marriage.

12 (2) Irreconcilable differences have caused the irremediable
13 breakdown of the marriage and the marriage should be dissolved.

14 (3) There are no children of the relationship of the parties born
15 before or during the marriage or adopted by the parties during the
16 marriage, and neither party, to that party's knowledge, is pregnant.

17 (4) The marriage is not more than five years in duration as of
18 the date of separation of the parties.

19 (5) Neither party has any interest in real property wherever
20 situated, with the exception of the lease of a residence occupied
21 by either party which satisfies the following requirements:

22 (A) The lease does not include an option to purchase.

23 (B) The lease terminates within one year from the date of the
24 filing of the petition.

25 (6) There are no unpaid obligations in excess of four thousand
26 dollars (\$4,000) incurred by either or both of the parties after the
27 date of their marriage, excluding the amount of any unpaid
28 obligation with respect to an automobile.

29 (7) The total fair market value of community property assets,
30 excluding all encumbrances and automobiles, including any
31 deferred compensation or retirement plan, is less than twenty-five
32 thousand dollars (\$25,000), and neither party has separate property
33 assets, excluding all encumbrances and automobiles, in excess of
34 twenty-five thousand dollars (\$25,000).

35 (8) The parties have executed an agreement setting forth the
36 division of assets and the assumption of liabilities of the
37 community, and have executed any documents, title certificates,
38 bills of sale, or other evidence of transfer necessary to effectuate
39 the agreement.

40 (9) The parties waive any rights to spousal support.

1 (10) The parties, upon entry of the judgment of dissolution of
2 marriage pursuant to Section 2403, irrevocably waive their
3 respective rights to appeal and their rights to move for a new trial.

4 (11) The parties have read and understand the summary
5 dissolution brochure provided for in Section 2406.

6 (12) The parties desire that the court dissolve the marriage.

7 (b) On January 1, 1985, and on January 1 of each odd-numbered
8 year thereafter, the amounts in paragraph (6) of subdivision (a)
9 shall be adjusted to reflect any change in the value of the dollar.
10 On January 1, 1993, and on January 1 of each odd-numbered year
11 thereafter, the amounts in paragraph (7) of subdivision (a) shall
12 be adjusted to reflect any change in the value of the dollar. The
13 adjustments shall be made by multiplying the base amounts by the
14 percentage change in the California Consumer Price Index as
15 compiled by the Department of Industrial Relations, with the result
16 rounded to the nearest thousand dollars. The Judicial Council shall
17 compute and publish the amounts.

18 ~~SEC. 28.~~

19 *SEC. 29.* Section 2401 of the Family Code is amended to read:

20 2401. (a) A proceeding for summary dissolution of the
21 marriage shall be commenced by filing a joint petition in the form
22 prescribed by the Judicial Council.

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

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

28 (2) The mailing address of each spouse.

29 (3) A statement whether a spouse elects to have his or her former
30 name restored, and, if so, the name to be restored.

31 ~~SEC. 29.~~

32 *SEC. 30.* Section 3120 of the Family Code is amended to read:

33 3120. Without filing a petition for dissolution of marriage or
34 legal separation of the parties, a spouse may bring an action for
35 the exclusive custody of the children of the marriage. The court
36 may, during the pendency of the action, or at the final hearing
37 thereof, or afterwards, make such order regarding the support,
38 care, custody, education, and control of the children of the marriage
39 as may be just and in accordance with the natural rights of the
40 parents and the best interest of the children. The order may be

1 modified or terminated at any time thereafter as the natural rights
2 of the parties and the best interest of the children may require.

3 ~~SEC. 30.~~

4 *SEC. 31.* Section 3450 of the Family Code is amended to read:

5 3450. (a) Unless the court issues a temporary emergency order
6 pursuant to Section 3424, upon a finding that a petitioner is entitled
7 to immediate physical custody of the child, the court shall order
8 that the petitioner may take immediate physical custody of the
9 child unless the respondent establishes either of the following:

10 (1) That the child custody determination has not been registered
11 and confirmed under Section 3445 and one of the following is true:

12 (A) The issuing court did not have jurisdiction under Chapter
13 2 (commencing with Section 3421).

14 (B) The child custody determination for which enforcement is
15 sought has been vacated, stayed, or modified by a court of a state
16 having jurisdiction to do so under Chapter 2 (commencing with
17 Section 3421).

18 (C) The respondent was entitled to notice, but notice was not
19 given in accordance with the standards of Section 3408, in the
20 proceedings before the court that issued the order for which
21 enforcement is sought.

22 (2) That the child custody determination for which enforcement
23 is sought was registered and confirmed under Section 3445 but
24 has been vacated, stayed, or modified by a court of a state having
25 jurisdiction to do so under Chapter 2 (commencing with Section
26 3421).

27 (b) The court shall award the fees, costs, and expenses
28 authorized under Section 3452 and may grant additional relief,
29 including a request for the assistance of law enforcement officials,
30 and set a further hearing to determine whether additional relief is
31 appropriate.

32 (c) If a party called to testify refuses to answer on the ground
33 that the testimony may be self-incriminating, the court may draw
34 an adverse inference from the refusal.

35 (d) A privilege against disclosure of communications between
36 spouses and a defense of immunity based on the relationship of
37 spouses or parent and child may not be invoked in a proceeding
38 under this chapter.

39 ~~SEC. 31.~~

40 *SEC. 32.* Section 3551 of the Family Code is amended to read:

1 3551. Laws attaching a privilege against the disclosure of
2 communications between spouses are inapplicable under this
3 division. Spouses are competent witnesses to testify to any relevant
4 matter, including marriage and parentage.

5 ~~SEC. 32.~~

6 *SEC. 33.* Section 3580 of the Family Code is amended to read:

7 3580. Subject to this chapter and to Section 3651, spouses may
8 agree, in writing, to an immediate separation, and may provide in
9 the agreement for the support of either of them and of their children
10 during the separation or upon the dissolution of their marriage.
11 The mutual consent of the parties is sufficient consideration for
12 the agreement.

13 ~~SEC. 33.~~

14 *SEC. 34.* Section 3585 of the Family Code is amended to read:

15 3585. The provisions of an agreement between the parents for
16 child support shall be deemed to be separate and severable from
17 all other provisions of the agreement relating to property and
18 support of either spouse. An order for child support based on the
19 agreement shall be ~~law-imposed~~ *imposed by law* and shall be made
20 under the power of the court to order child support.

21 ~~SEC. 34.~~

22 *SEC. 35.* Section 3600 of the Family Code is amended to read:

23 3600. During the pendency of any proceeding for dissolution
24 of marriage or for legal separation of the parties or under Division
25 8 (commencing with Section 3000) (custody of children) or in any
26 proceeding where there is at issue the support of a minor child or
27 a child for whom support is authorized under Section 3901 or 3910,
28 the court may order (a) either spouse to pay any amount that is
29 necessary for the support of the other spouse, consistent with the
30 requirements of subdivisions (i) and (m) of Section 4320 and
31 Section 4325, or (b) either or both parents to pay any amount
32 necessary for the support of the child, as the case may be.

33 ~~SEC. 35.~~

34 *SEC. 36.* Section 4323 of the Family Code is amended to read:

35 4323. (a) (1) Except as otherwise agreed to by the parties in
36 writing, there is a rebuttable presumption, affecting the burden of
37 proof, of decreased need for spousal support if the supported party
38 is cohabiting with ~~another person~~ *a nonmarital partner*. Upon a
39 determination that circumstances have changed, the court may

1 modify or terminate the spousal support as provided for in Chapter
2 6 (commencing with Section 3650) of Part 1.

3 (2) Holding oneself out to be the spouse of the person with
4 whom one is cohabiting is not necessary to constitute cohabitation
5 as the term is used in this subdivision.

6 (b) The income of a supporting spouse's subsequent spouse or
7 nonmarital partner shall not be considered when determining or
8 modifying spousal support.

9 (c) Nothing in this section precludes later modification or
10 termination of spousal support on proof of change of circumstances.

11 ~~SEC. 36.~~

12 *SEC. 37.* Section 4930 of the Family Code, as added by Section
13 2 of Chapter 194 of the Statutes of 1997, is amended to read:

14 4930. (a) The physical presence of the petitioner in a
15 responding tribunal of this state is not required for the
16 establishment, enforcement, or modification of a support order or
17 the rendition of a judgment determining parentage.

18 (b) A verified petition, affidavit, document substantially
19 complying with federally mandated forms, and a document
20 incorporated by reference in any of them, not excluded under the
21 hearsay rule if given in person, is admissible in evidence if given
22 under oath by a party or witness residing in another state.

23 (c) A copy of the record of child support payments certified as
24 a true copy of the original by the custodian of the record may be
25 forwarded to a responding tribunal. The copy is evidence of facts
26 asserted in it, and is admissible to show whether payments were
27 made.

28 (d) Copies of bills for testing for parentage, and for prenatal
29 and postnatal health care of the mother and child, furnished to the
30 adverse party at least 10 days before trial, are admissible in
31 evidence to prove the amount of the charges billed and that the
32 charges were reasonable, necessary, and customary.

33 (e) Documentary evidence transmitted from another state to a
34 tribunal of this state by telephone, telecopier, or other means that
35 do not provide an original writing may not be excluded from
36 evidence on an objection based on the means of transmission.

37 (f) In a proceeding under this chapter, a tribunal of this state
38 may permit a party or witness residing in another state to be
39 deposed or to testify by telephone, audiovisual means, or other
40 electronic means at a designated tribunal or other location in that

1 state. A tribunal of this state shall cooperate with tribunals of other
2 states in designating an appropriate location for the deposition or
3 testimony.

4 (g) If a party called to testify at a civil hearing refuses to answer
5 on the ground that the testimony may be self-incriminating, the
6 trier of fact may draw an adverse inference from the refusal.

7 (h) A privilege against disclosure of communications between
8 spouses does not apply in a proceeding under this chapter.

9 (i) The defense of immunity based on the relationship of spouses
10 or parent and child does not apply in a proceeding under this
11 chapter.

12 ~~SEC. 37.~~

13 *SEC. 38.* Section 4930 of the Family Code, as amended by
14 Section 24 of Chapter 349 of the Statutes of 2002, is amended to
15 read:

16 4930. (a) The physical presence of a nonresident party who is
17 an individual in a tribunal of this state is not required for the
18 establishment, enforcement, or modification of a support order or
19 the rendition of a judgment determining parentage.

20 (b) An affidavit, a document substantially complying with
21 federally mandated forms, or a document incorporated by reference
22 in any of them, that would not be excluded under the hearsay rule
23 if given in person, is admissible in evidence if given under penalty
24 of perjury by a party or witness residing in another state.

25 (c) A copy of the record of child support payments certified as
26 a true copy of the original by the custodian of the record may be
27 forwarded to a responding tribunal. The copy is evidence of facts
28 asserted in it, and is admissible to show whether payments were
29 made.

30 (d) Copies of bills for testing for parentage, and for prenatal
31 and postnatal health care of the mother and child, furnished to the
32 adverse party at least 10 days before trial, are admissible in
33 evidence to prove the amount of the charges billed and that the
34 charges were reasonable, necessary, and customary.

35 (e) Documentary evidence transmitted from another state to a
36 tribunal of this state by telephone, telecopier, or other means that
37 do not provide an original record may not be excluded from
38 evidence on an objection based on the means of transmission.

39 (f) In a proceeding under this chapter, a tribunal of this state
40 shall permit a party or witness residing in another state to be

1 deposed or to testify by telephone, audiovisual means, or other
2 electronic means at a designated tribunal or other location in that
3 state. A tribunal of this state shall cooperate with tribunals of other
4 states in designating an appropriate location for the deposition or
5 testimony.

6 (g) If a party called to testify at a civil hearing refuses to answer
7 on the ground that the testimony may be self-incriminating, the
8 trier of fact may draw an adverse inference from the refusal.

9 (h) A privilege against disclosure of communications between
10 spouses does not apply in a proceeding under this chapter.

11 (i) The defense of immunity based on the relationship of spouses
12 or parent and child does not apply in a proceeding under this
13 chapter.

14 (j) A voluntary acknowledgment of paternity, certified as a true
15 copy, is admissible to establish parentage of the child.

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