

AMENDED IN ASSEMBLY MAY 6, 1996
AMENDED IN ASSEMBLY APRIL 11, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 2149

Introduced by Assembly Member Kuehl
(Coauthor: Assembly Member Vasconcellos)
(Coauthors: Senators Solis and Watson)

February 6, 1996

An act to amend ~~Sections 2330.5 and~~ *Section* 2336 of, and to add Sections 2335.5 and 2338.5 to, the Family Code, relating to family law.

LEGISLATIVE COUNSEL'S DIGEST

AB 2149, as amended, Kuehl. Marriage: dissolution: default.

Existing law specifies the procedures for obtaining a judgment of dissolution of marriage or legal separation of the parties, including special provisions where the judgment is to be entered upon the default of one of the parties.

This bill would revise these provisions regarding default and, among other things, would require the court clerk to mail specified documents to the spouse who has defaulted, thereby imposing a state-mandated local program; require any affidavit submitted to the court relating to dissolution or legal separation upon the default of a party or upon a referee's findings to include specified information pertaining to income and the value of the community estate; require the signature

of a spouse who has defaulted on any marital settlement agreement ~~and or on~~ any stipulated judgment to be notarized or certified by an attorney, as specified; and require the court clerk to give notice of entry of judgment of dissolution or nullity of marriage or legal separation to the attorney for each party or to the party, if unrepresented, where the judgment is to be granted upon the default of one of the parties ~~or on the stipulation of both parties~~, thereby imposing 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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 2330.5 of the Family Code is~~
2 ~~amended to read:~~

3 ~~2330.5. Notwithstanding any other provision of law,~~
4 ~~except as provided in Section 2336, if no demand for~~
5 ~~money, property, costs, or attorney's fees is contained in~~
6 ~~the petition and the judgment of dissolution of marriage~~
7 ~~is entered by default, the filing of income and expense~~
8 ~~declarations and property declarations in connection~~
9 ~~therewith shall not be required.~~

10 ~~SEC. 2.—~~

11 *SECTION 1.* Section 2335.5 is added to the Family
12 Code, to read:

13 2335.5. In a proceeding for dissolution of marriage or
14 legal separation of the parties, where the judgment is to
15 be entered by default, the petitioner shall provide the



1 court clerk with a stamped envelope *bearing sufficient*
2 *postage* addressed to the spouse who has defaulted, with
3 the address of the court clerk as the return address, and
4 the court clerk shall mail a copy of the request to enter
5 default ~~and the notice of entry of judgment to that spouse.~~
6 ~~A judgment of~~ *to that spouse in the envelope provided.*
7 *A judgment of* dissolution or legal separation, including
8 relief requested in the petition, shall not be denied solely
9 on the basis that the request to enter default was returned
10 unopened to the court. The court clerk shall maintain any
11 such document returned by the post office as part of the
12 court file in the case.

13 ~~SEC. 3.—~~

14 *SEC. 2.* Section 2336 of the Family Code is amended
15 to read:

16 2336. (a) No judgment of dissolution or of legal
17 separation of the parties may be granted upon the default
18 of one of the parties or upon a statement or finding of fact
19 made by a referee; but the court shall, in addition to the
20 statement or finding of the referee, require proof of the
21 grounds alleged, and the proof, if not taken before the
22 court, shall be by affidavit. In all cases where there are
23 minor children of the parties, each affidavit shall include
24 an estimate by the declarant of the monthly gross income
25 of each party. If the declarant has no knowledge of the
26 estimated monthly income of a party, the declarant shall
27 state why he or she has no knowledge. In all cases where
28 there is a community estate, each affidavit shall include
29 ~~an estimate of the value of all items comprising the~~
30 ~~community estate.~~ *estimate of the value of the assets and*
31 *the debts the declarant proposes to be distributed to each*
32 *party.*

33 (b) If the proof is by affidavit, the personal appearance
34 of the affiant is required only when it appears to the court
35 that any of the following circumstances exist:

- 36 (1) Reconciliation of the parties is reasonably possible.
37 (2) A proposed child custody order is not in the best
38 interest of the child.
39 (3) A proposed child support order is less than a
40 noncustodial parent is capable of paying.



1 (4) A personal appearance of a party or interested
2 person would be in the best interests of justice.

3 (c) An affidavit submitted pursuant to this section
4 shall contain a stipulation by the affiant that the affiant
5 understands that proof will be by affidavit and that the
6 affiant will not appear before the court unless so ordered
7 by the court.

8 ~~SEC. 4.—~~

9 *SEC. 3.* Section 2338.5 is added to the Family Code, to
10 read:

11 2338.5. Where a judgment of dissolution or nullity of
12 marriage or legal separation of the parties is to be granted
13 upon the default of one of the ~~parties or on the stipulation~~
14 ~~of both of the parties:~~

15 (a) The signature of the spouse who has defaulted on
16 any marital settlement agreement ~~and or on~~ any
17 stipulated judgment shall be notarized or certified by an
18 attorney representing one of the parties as having been
19 signed in the presence of that attorney.

20 (b) The court clerk shall give notice of entry of
21 judgment of dissolution of marriage, nullity of marriage,
22 or legal separation to the attorney for each party or to the
23 party, if unrepresented.

24 ~~(e) For purposes of mailing the judgment of~~
25 ~~dissolution of marriage or legal separation, the petitioner~~
26 ~~shall provide the court clerk with a stamped envelope~~
27 ~~addressed to the spouse who has defaulted, with the~~
28 ~~address of the court clerk as the return address, and the~~
29 ~~court clerk shall mail the judgment of dissolution of~~
30 ~~marriage or legal separation to that spouse.~~

31 *(c) For the purpose of mailing the notice of entry of*
32 *judgment, the party submitting the judgment shall*
33 *provide the court clerk with a stamped envelope bearing*
34 *sufficient postage addressed to the attorney for the other*
35 *party or to the party, if unrepresented, with the address*
36 *of the court clerk as the return address. The court clerk*
37 *shall maintain any such document returned by the post*
38 *office as part of the court file in the case.*

39 ~~SEC. 5.—~~



1 *SEC. 4.* Notwithstanding Section 17610 of the
2 Government Code, if the Commission on State Mandates
3 determines that this act contains costs mandated by the
4 state, reimbursement to local agencies and school
5 districts for those costs shall be made pursuant to Part 7
6 (commencing with Section 17500) of Division 4 of Title
7 2 of the Government Code. If the statewide cost of the
8 claim for reimbursement does not exceed one million
9 dollars (\$1,000,000), reimbursement shall be made from
10 the State Mandates Claims Fund.

11 Notwithstanding Section 17580 of the Government
12 Code, unless otherwise specified, the provisions of this act
13 shall become operative on the same date that the act
14 takes effect pursuant to the California Constitution.

