

AMENDED IN ASSEMBLY MAY 21, 1996  
AMENDED IN ASSEMBLY MAY 6, 1996  
AMENDED IN ASSEMBLY APRIL 11, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2149**

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

February 6, 1996

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of a spouse who has defaulted on any marital settlement agreement 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, 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 2335.5 is added to the Family  
2 Code, to read:  
3 2335.5. In a proceeding for dissolution of marriage or  
4 legal separation of the parties, where the judgment is to  
5 be entered by default, the petitioner shall provide the  
6 court clerk with a stamped envelope bearing sufficient  
7 postage addressed to the spouse who has defaulted, with  
8 the address of the court clerk as the return address, and  
9 the court clerk shall mail a copy of the request to enter  
10 default to that spouse in the envelope provided. A  
11 judgment of dissolution or legal separation, including  
12 relief requested in the petition, shall not be denied solely  
13 on the basis that the request to enter default was returned  
14 unopened to the court. The court clerk shall maintain any  
15 such document returned by the post office as part of the  
16 court file in the case.



1 SEC. 2. Section 2336 of the Family Code is amended  
2 to read:

3 2336. (a) No judgment of dissolution or of legal  
4 separation of the parties may be granted upon the default  
5 of one of the parties or upon a statement or finding of fact  
6 made by a referee; but the court shall, in addition to the  
7 statement or finding of the referee, require proof of the  
8 grounds alleged, and the proof, if not taken before the  
9 court, shall be by affidavit. In all cases where there are  
10 minor children of the parties, each affidavit shall include  
11 an estimate by the declarant of the monthly gross income  
12 of each party. If the declarant has no knowledge of the  
13 estimated monthly income of a party, the declarant shall  
14 state why he or she has no knowledge. In all cases where  
15 there is a community estate, each affidavit shall include  
16 an estimate of the value of the assets and the debts the  
17 declarant proposes to be distributed to each party.

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

- 21 (1) Reconciliation of the parties is reasonably possible.
- 22 (2) A proposed child custody order is not in the best  
23 interest of the child.
- 24 (3) A proposed child support order is less than a  
25 noncustodial parent is capable of paying.
- 26 (4) A personal appearance of a party or interested  
27 person would be in the best interests of justice.

28 (c) An affidavit submitted pursuant to this section  
29 shall contain a stipulation by the affiant that the affiant  
30 understands that proof will be by affidavit and that the  
31 affiant will not appear before the court unless so ordered  
32 by the court.

33 SEC. 3. Section 2338.5 is added to the Family Code, to  
34 read:

35 2338.5. Where a judgment of dissolution or nullity of  
36 marriage or legal separation of the parties is to be granted  
37 upon the default of one of the parties:

38 (a) The signature of the spouse who has defaulted on  
39 any marital settlement agreement or on any stipulated  
40 judgment shall be notarized ~~or certified by an attorney~~



1 ~~representing one of the parties as having been signed in~~  
2 ~~the presence of that attorney.~~

3 (b) The court clerk shall give notice of entry of  
4 judgment of dissolution of marriage, nullity of marriage,  
5 or legal separation to the attorney for each party or to the  
6 party, if unrepresented.

7 (c) For the purpose of mailing the notice of entry of  
8 judgment, the party submitting the judgment shall  
9 provide the court clerk with a stamped envelope bearing  
10 sufficient postage addressed to the attorney for the other  
11 party or to the party, if unrepresented, with the address  
12 of the court clerk as the return address. The court clerk  
13 shall maintain any such document returned by the post  
14 office as part of the court file in the case.

15 SEC. 4. Notwithstanding Section 17610 of the  
16 Government Code, if the Commission on State Mandates  
17 determines that this act contains costs mandated by the  
18 state, reimbursement to local agencies and school  
19 districts for those costs shall be made pursuant to Part 7  
20 (commencing with Section 17500) of Division 4 of Title  
21 2 of the Government Code. If the statewide cost of the  
22 claim for reimbursement does not exceed one million  
23 dollars (\$1,000,000), reimbursement shall be made from  
24 the State Mandates Claims Fund.

25 Notwithstanding Section 17580 of the Government  
26 Code, unless otherwise specified, the provisions of this act  
27 shall become operative on the same date that the act  
28 takes effect pursuant to the California Constitution.

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