

AMENDED IN SENATE JULY 3, 1996
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

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

February 6, 1996

An act to amend 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 *or offer of proof* 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 or on any stipulated judgment to be notarized; 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



1 such document returned by the post office as part of the
2 court file in the case.

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

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

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

25 (1) Reconciliation of the parties is reasonably possible.

26 (2) A proposed child custody order is not in the best
27 interest of the child.

28 (3) A proposed child support order is less than a
29 noncustodial parent is capable of paying.

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

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

37 SEC. 3. Section 2338.5 is added to the Family Code, to
38 read:

1 2338.5. Where a judgment of dissolution or nullity of
2 marriage or legal separation of the parties is to be granted
3 upon the default of one of the parties:

4 (a) The signature of the spouse who has defaulted on
5 any marital settlement agreement or on any stipulated
6 judgment shall be notarized.

7 (b) The court clerk shall give notice of entry of
8 judgment of dissolution of marriage, nullity of marriage,
9 or legal separation to the attorney for each party or to the
10 party, if unrepresented.

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

19 SEC. 4. Notwithstanding Section 17610 of the
20 Government Code, if the Commission on State Mandates
21 determines that this act contains costs mandated by the
22 state, reimbursement to local agencies and school
23 districts for those costs shall be made pursuant to Part 7
24 (commencing with Section 17500) of Division 4 of Title
25 2 of the Government Code. If the statewide cost of the
26 claim for reimbursement does not exceed one million
27 dollars (\$1,000,000), reimbursement shall be made from
28 the State Mandates Claims Fund.

29 Notwithstanding Section 17580 of the Government
30 Code, unless otherwise specified, the provisions of this act
31 shall become operative on the same date that the act
32 takes effect pursuant to the California Constitution.

O

