

ASSEMBLY BILL

No. 2081

Introduced by Assembly Member Wright

February 22, 2000

An act to amend Sections 3751, 4058, 17402, and 17416 of, and to add Sections 3651.5 and 17527 to, the Family Code, and to add Sections 488.2 and 669.2 to the Insurance Code, relating to child support.

LEGISLATIVE COUNSEL'S DIGEST

AB 2081, as introduced, R. Wright. Child support: orders and enforcement.

(1) Existing law authorizes the court to modify or terminate a support order at any time as the court deems necessary.

This bill would, with respect to a child support order for a child receiving public assistance, authorize the court to modify or terminate the order or relieve the obligor of arrearages if the support obligor is age 55 years or older, the obligee is age 23 years or older and other specified conditions exist.

(2) Under existing law, if current child support has been ordered, the court must require either or both parents to maintain health insurance for the supported child if that insurance is available at no cost or at a reasonable cost, as specified.

This bill would prohibit the court from requiring a noncustodial parent to pay for health insurance for the child if the child is enrolled in the Medi-Cal program.

(3) Under existing law, calculations of child support obligations are based, in part, upon the ‘annual gross income of each parent,’ which is defined to include, among other things, disability and social security benefits.

This bill would exclude from the definition of “annual gross income of each parent,” for these purposes, the amount of any social security disability benefits received by the noncustodial parent if the supported child is also receiving those benefits.

(4) Existing law provides that, if a child is receiving public assistance due to separation from or desertion by one or both parents, the noncustodial parent is obligated to the county for amounts specified, or deemed to be specified, in a support order less any amounts paid by the noncustodial parent. Existing law provides procedures for collection of child support arrearages by the state and the local child support agency.

This bill would provide that, in these circumstances, if and so long as the noncustodial parent resumes custody and support, accrual of the obligation to the county and efforts to collect arrearages shall be suspended.

(5) Existing law provides that a judgment for child or spousal support, or both, shall be entered based on an agreement between a local child support agency and a noncustodial parent only if the noncustodial parent (1) was represented by counsel, who certifies that the parent understands and agrees to the agreement, or (2) appears before the judge who finds that the noncustodial parent understands the agreement.

This bill would instead provide that a judgment shall be entered based on that agreement only if (1) the noncustodial parent signed a specified notice prior to any discussions with the local child support agency, (2) the agency consulted with the noncustodial parent or counsel or both regarding defenses or limiting circumstances, as specified, and (3) the noncustodial parent was represented by counsel who certifies that his or her client understands and agrees to the judgment, as specified. The bill would also provide that a judgement shall not be entered, or if previously entered, shall be revoked or modified, and that all of the noncustodial parent’s rights and defenses shall be preserved, if these requirements are not



met. By imposing new duties on the local child support agency, this bill would create a state-mandated local program.

(6) Existing law authorizes the Department of Motor Vehicles to refuse to issue or renew the driver’s license of a support obligor who is delinquent in the payment of child support.

This bill would prohibit an insurer from failing to renew or increasing the premium on an automobile insurance policy because the insured’s drivers license has been suspended for that reason. The bill would state that this provision is declaratory of existing law.

(7) 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 3651.5 is added to the Family
2 Code, to read:
3 3651.5. With respect to an order for support of a child
4 who is receiving public assistance, the court may, on its
5 own motion or on the motion of a party, enter an order
6 modifying or terminating a support order, or relieving
7 the support obligor of any or all unpaid arrearages, or
8 both, if it finds that all of the following conditions exists:
9 (a) The support obligor is 55 years of age or older.
10 (b) The child or children receiving the support are 23
11 years of age or older.



1 (c) The court finds, on the record, that the total
2 amount of money paid by the support obligor exceeds the
3 original principal amount of the order or that other facts
4 exist that necessitate, in the interest of justice, the entry
5 of the order.

6 SEC. 2. Section 3751 of the Family Code is amended
7 to read:

8 3751. (a) (1) Support orders issued or modified
9 pursuant to this chapter shall include a provision
10 requiring the child support obligor to keep the *local child*
11 ~~support agency designated under Title IV-D of the Social~~
12 ~~Security Act (42 U.S.C. Sec. 651 et seq.)~~ informed of
13 whether the obligor has health insurance coverage at
14 reasonable cost and, if so, the health insurance policy
15 information.

16 (2) In any case in which an amount is set for current
17 support, the court shall require that health insurance
18 coverage for a supported child shall be maintained by
19 either or both parents if that insurance is available at no
20 cost or at reasonable cost to the parent. Health insurance
21 coverage shall be rebuttably presumed to be reasonable
22 in cost if it is employment-related group health insurance
23 or other group health insurance, regardless of the service
24 delivery mechanism. The actual cost of the health
25 insurance to the obligor shall be considered in
26 determining whether the cost of insurance is reasonable.
27 If the court determines that the cost of health insurance
28 coverage is not reasonable, the court shall state its reasons
29 on the record.

30 (b) If the court determines that health insurance
31 coverage is not available at no or reasonable cost, the
32 court's order for support shall contain a provision that
33 specifies that health insurance coverage shall be obtained
34 if it becomes available at no or reasonable cost. Upon
35 health insurance coverage at no or reasonable cost
36 becoming available to a parent, the parent shall apply for
37 that coverage.

38 (c) *Notwithstanding subdivisions (a) and (b), if the*
39 *child is currently enrolled and receiving health benefits*
40 *under the Medi-Cal program, the court shall not require*



1 *a noncustodial parent to apply for or maintain any health*
2 *insurance unless that insurance is available at no cost to*
3 *the noncustodial parent.*

4 SEC. 3. Section 4058 of the Family Code is amended
5 to read:

6 4058. (a) The annual gross income of each parent
7 means income from whatever source derived, except as
8 specified in ~~subdivision~~ *subdivisions* (c) and (d) and
9 includes, but is not limited to, the following:

10 (1) Income such as commissions, salaries, royalties,
11 wages, bonuses, rents, dividends, pensions, interest, trust
12 income, annuities, workers' compensation benefits,
13 unemployment insurance benefits, disability insurance
14 benefits, social security benefits, and spousal support
15 actually received from a person not a party to the
16 proceeding to establish a child support order under this
17 article.

18 (2) Income from the proprietorship of a business, such
19 as gross receipts from the business reduced by
20 expenditures required for the operation of the business.

21 (3) In the discretion of the court, employee benefits or
22 self-employment benefits, taking into consideration the
23 benefit to the employee, any corresponding reduction in
24 living expenses, and other relevant facts.

25 (b) The court may, in its discretion, consider the
26 earning capacity of a parent in lieu of the parent's income,
27 consistent with the best interests of the children.

28 (c) Annual gross income does not include any income
29 derived from child support payments actually received,
30 and income derived from any public assistance program,
31 eligibility for which is based on a determination of need.
32 Child support received by a party for children from
33 another relationship shall not be included as part of that
34 party's gross or net income.

35 (d) *Notwithstanding paragraph (1) of subdivision (a),*
36 *annual gross income of a noncustodial parent does not*
37 *include any disability benefits received by that parent*
38 *under Title XVI of the federal Social Security Act (42*
39 *U.S.C. Sec. 1381 et seq.) if the child is also receiving*
40 *benefits under that title.*



1 SEC. 4. Section 17402 of the Family Code is amended
2 to read:

3 17402. (a) In any case of separation or desertion of a
4 parent or parents from a child or children that results in
5 aid under Chapter 2 (commencing with Section 11200) of
6 Part 3 of Division 9 of the Welfare and Institutions Code
7 being granted to that family, the noncustodial parent or
8 parents shall be obligated to the county for an amount
9 equal to the following:

10 (1) The amount specified in an order for the support
11 and maintenance of the family *during the period of*
12 *separation or desertion* issued by a court of competent
13 jurisdiction; or in the absence of a court order, the amount
14 specified in paragraph (2).

15 (2) The amount of support that would have been
16 specified in an order for the support and maintenance of
17 the family during the period of separation or desertion,
18 but not to exceed one year prior to the date of the filing
19 of the petition or complaint. However, the amount in
20 excess of the aid paid to the family shall not be retained
21 by the county, but disbursed to the family.

22 (3) The obligation shall be reduced by any amount
23 actually paid by the parent directly to the custodian of the
24 child or to the local child support agency of the county in
25 which the child is receiving aid during the period of
26 separation or desertion for the support and maintenance
27 of the family.

28 (b) The local child support agency shall take
29 appropriate action pursuant to this section as provided in
30 subdivision (1) of Section 17400. The local child support
31 agency may establish liability for child support as
32 provided in subdivision (a) when public assistance was
33 provided by another county or by other counties.

34 (c) The amount of the obligation established under
35 paragraph (2) of subdivision (a) shall be determined by
36 using the appropriate child support guidelines currently
37 in effect. If one parent remains as a custodial parent, the
38 guideline support shall be computed in the normal
39 manner. If neither parent remains as a custodial parent,
40 the support shall be computed by combining the



1 noncustodial parents' incomes and placing the figure
2 obtained in the column for noncustodial parent. A zero
3 shall be placed in the column for the custodial parent and
4 the amount of guideline support resulting shall be
5 proportionately shared between the parents as directed
6 by the court. The parents shall pay the amount of support
7 specified in the support order to the local child support
8 agency.

9 *(d) Accrual of the obligation to the county under this*
10 *section shall be suspended if and for so long as the*
11 *noncustodial parent or parents resume custody and*
12 *support of the child or children or when the child or*
13 *children are otherwise no longer receiving public*
14 *assistance. Section 3602 shall apply to the enforcement of*
15 *any order or judgement obtained pursuant to this section.*

16 SEC. 5. Section 17416 of the Family Code is amended
17 to read:

18 17416. (a) In any case where the local child support
19 agency has undertaken enforcement of support, the local
20 child support agency may enter into an agreement with
21 the noncustodial parent, on behalf of a minor child or
22 children, a spouse, or former spouse for the entry of a
23 judgment without action determining paternity, if
24 applicable, and for periodic child and spousal support
25 payments based on the noncustodial parent's *current*
26 reasonable ability to pay or, if for spousal support, an
27 amount previously ordered by a court of competent
28 jurisdiction. An agreement for entry of a judgment under
29 this section may be executed prior to the birth of the child
30 and may include a provision that the judgment is not to
31 be entered until after the birth of the child.

32 (b) A judgment based on the agreement shall be
33 entered only if ~~one~~ *all* of the following requirements ~~is~~ *are*
34 satisfied:

35 (1) *Prior to any discussions with the local child support*
36 *agency, the noncustodial parent signed a statement*
37 *acknowledging receipt of a notice, printed in at least*
38 *16-point type, stating: "You have a right to talk to an*
39 *attorney or any other person of your choosing before*
40 *speaking to a representative of this agency. There are no*

1 penalties if you do not agree to a settlement with this
2 agency regarding your support obligation. If you request,
3 the agency representative will inform you of the
4 availability of any free or low-cost legal services to assist
5 you before you begin discussions with the
6 representative.”

7 (2) The local child support agency has consulted with
8 the noncustodial parent or his or her attorney, or both,
9 and made a reasonable effort to determine if any defenses
10 or circumstances exist for limiting or reducing the
11 amount of support payable by the noncustodial parent.

12 (3) The noncustodial parent ~~is~~ has been represented
13 by legal counsel and the attorney ~~signs~~ has signed a
14 certificate stating: “I have examined the proposed
15 judgment and have personally or through an interpreter,
16 in a language understandable by client, fully advised my
17 client concerning his or her rights in connection with this
18 matter and the consequences of signing or not signing the
19 agreement for the entry of the judgment and my client,
20 after being so advised, has agreed to the entry of the
21 judgment.”

22 ~~(2) A judge of the court in which the judgment is to be~~
23 ~~entered, after advising the noncustodial parent~~
24 ~~concerning his or her rights in connection with the~~
25 ~~matter and the consequences of agreeing or not agreeing~~
26 ~~to the entry of the judgment, makes a finding that the~~
27 ~~noncustodial parent has appeared before the judge and~~
28 ~~the judge has determined that under the circumstances~~
29 ~~of the particular case the noncustodial parent has~~
30 ~~willingly, knowingly, and intelligently waived his or her~~
31 ~~due process rights in agreeing to the entry of the~~
32 ~~judgment.~~

33 (c) The clerk shall file the agreement, together with
34 ~~any the~~ certificate of the attorney ~~or finding of the court,~~
35 without the payment of any fees or charges. If the
36 requirements of this section are satisfied, the court shall
37 enter judgment thereon without action. The provisions of
38 Article 4 (commencing with Section 4200) of Chapter 2
39 of Part 2 of Division 9 or Chapter 4 (commencing with
40 Section 4350) of Part 3 of Division 9 shall apply to the



1 judgment. A judgment for support so entered may be
2 enforced by any means by which any other judgment for
3 support may be enforced.

4 (d) Upon request of the local child support agency,
5 *the noncustodial parent, or his or her counsel* in any case
6 under this section, the clerk shall set the matter for
7 hearing by the court. The hearing shall be held within 10
8 days after the clerk receives the request. The local child
9 support agency may require the person who signed the
10 agreement for the entry of judgment to attend the
11 hearing by process of subpoena in the same manner as the
12 attendance of a witness in a civil action may be required.
13 The presence of the person who signed the agreement for
14 entry of judgment at the hearing shall constitute the
15 presence of the person in court at the time the order is
16 pronounced for the purposes of Section 1209.5 of the Code
17 of Civil Procedure if ~~the court makes the findings~~
18 ~~required by paragraph (2) of subdivision (b)~~
19 *requirements of this section are satisfied. If it is*
20 *determined at the hearing, or in any subsequent*
21 *proceedings, that the requirements of this section were*
22 *not satisfied, the judgment shall not be entered or, if*
23 *already entered, shall be modified or revoked as provided*
24 *in subdivision (f) and the noncustodial parent shall have*
25 *all defenses and rights that were available to him or her*
26 *at the time the agreement was signed.*

27 (e) The local child support agency shall cause the
28 following to be served, in the manner specified in Section
29 415.10, 415.20, 415.30, or 415.40 of the Code of Civil
30 Procedure, upon the person who signed the agreement
31 for entry of the judgment and shall file proof of service
32 thereof with the court:

33 (1) A copy of the judgment as entered.

34 (2) If the judgment includes an order for child or
35 spousal support payments, a notice stating the substance
36 of the following: “The court has continuing authority to
37 make an order increasing or decreasing the amount of the
38 child or spousal support payments. You have the right to
39 request that the court order the child and spousal support
40 payments be decreased or eliminated entirely.”



1 (f) An order for child and spousal support included in
2 a judgment entered under this section may be modified
3 or revoked as provided in Article 1 (commencing with
4 Section 3650) of Chapter 6 of Part 1 of Division 9 and in
5 (1) Article 1 (commencing with Section 4000) of Chapter
6 2 of Part 2 of Division 9 or (2) Chapter 2 (commencing
7 with Section 4320) and Chapter 3 (commencing with
8 Section 4330) of Part 3 of Division 9. The court may
9 modify the order to make the support payments payable
10 to a different person.

11 (g) For the purposes of this section, in making a
12 determination of the noncustodial parent's *current*
13 reasonable ability to pay, any relevant circumstances set
14 out in Section 4005 shall be considered.

15 (h) After arrest and before plea or trial, or after
16 conviction or plea of guilty, under Section 270 of the Penal
17 Code, if the defendant appears before the court in which
18 the criminal action is pending and the requirements of
19 paragraph (1)—~~or~~, (2), *and* (3) of subdivision (b) have
20 been satisfied, the court may suspend proceedings or
21 sentence in the criminal action, but this does not limit the
22 later institution of a civil or criminal action or limit the use
23 of any other procedures available to enforce the
24 judgment entered pursuant to this section.

25 (i) Nothing in this section applies to a case where a
26 civil action has been commenced.

27 SEC. 6. Section 17527 is added to the Family Code, to
28 read:

29 17527. Notwithstanding any other provision of this
30 article, the local child support agency shall suspend
31 enforcement of arrearages with respect to an obligation
32 under Section 17402 if and so long as the noncustodial
33 parent resumes and continues custody and support of the
34 child or children.

35 SEC. 7. Section 488.2 is added to the Insurance Code,
36 to read:

37 488.2. (a) No insurer shall, in issuing or renewing a
38 private passenger automobile insurance policy, increase
39 the premium on that policy for the reason that the
40 insured or applicant for insurance has, at any time, had his



1 or her driver's license suspended under Section 17520 of
2 the Family Code.

3 (b) Any insured or applicant injured by a violation of
4 this section may bring an action for the recovery of
5 damages. Judgment shall be entered for two times the
6 amount at which the actual damages are assessed plus
7 reasonable attorneys' fees and costs. The foregoing shall
8 not be deemed to limit or preclude the imposition of any
9 administrative, civil, or criminal fines or penalties that
10 may otherwise be applicable to a violation of this section.

11 (c) The provisions of subdivision (a) are declaratory of
12 existing law.

13 SEC. 8. Section 669.2 is added to the Insurance Code,
14 to read:

15 669.2. (a) No insurer shall fail to renew any private
16 automobile insurance policy for the reason that the
17 insured insurance has, at any time, had his or her driver's
18 license suspended under Section 17520 of the Family
19 Code.

20 (b) Any insured injured by a violation of this section
21 may bring an action for the recovery of damages.
22 Judgment shall be entered for two times the amount at
23 which the actual damages are assessed plus reasonable
24 attorneys' fees and costs. The foregoing shall not be
25 deemed to limit or preclude the imposition of any
26 administrative, civil, or criminal fines or penalties that
27 may otherwise be applicable to a violation of this section.

28 (c) The provisions of subdivision (a) are declaratory of
29 existing law.

30 SEC. 9. Notwithstanding Section 17610 of the
31 Government Code, if the Commission on State Mandates
32 determines that this act contains costs mandated by the
33 state, reimbursement to local agencies and school
34 districts for those costs shall be made pursuant to Part 7
35 (commencing with Section 17500) of Division 4 of Title
36 2 of the Government Code. If the statewide cost of the
37 claim for reimbursement does not exceed one million



1 dollars (\$1,000,000), reimbursement shall be made from
2 the State Mandates Claims Fund.

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