

AMENDED IN SENATE AUGUST 5, 2002

AMENDED IN SENATE JUNE 19, 2002

AMENDED IN ASSEMBLY MAY 23, 2002

AMENDED IN ASSEMBLY APRIL 3, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2975

Introduced by Assembly Member Reyes

February 26, 2002

An act to amend Section 2040 of, *and to add Section 6302.5 to*, the Family-~~code~~ Code, relating to restraining orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 2975, as amended, Reyes. ~~Dissolution of marriage~~ Domestic relations: temporary restraining orders.

(1) Existing law requires, for proceedings for dissolution or nullity of marriage or legal separation of the parties, that the summons contain a temporary restraining order restraining both parties from, among other things, removing their minor children from the state without the prior consent of the other party or the court, transferring or encumbering property, or cashing or borrowing against insurance policies held for the benefit of ~~the~~ their children, as specified.

This bill would additionally require the party seeking the temporary restraining order to provide sufficient information, at the time of filing, for the court to notify the biological parent of any child residing in the household of the person against whom the temporary restraining order is sought, of the request for a temporary restraining order.

By placing additional notification requirements on the courts, this bill would impose a state-mandated local program.

(2) Existing law provides for the issuance of protective orders in cases of domestic violence.

This bill would require any person who has been granted a domestic violence protective order to notify any other person, as specified, who has been awarded custody of any child who resides with the petitioner and any child as to whom the petitioner has been granted unsupervised visitation, that the order has been issued. The bill would also require the petitioner to provide the court with specified information about the persons so notified, and would authorize the court to inquire whether the notification requirement has been met.

(3) 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 2040 of the Family Code is amended to
2 read:

3 2040. (a) In addition to the contents required by Section
4 412.20 of the Code of Civil Procedure, the summons shall contain
5 a temporary restraining order:

6 (1) Restraining both parties from removing the minor child or
7 children of the parties, if any, from the state without the prior
8 written consent of the other party or an order of the court.

9 (2) Restraining both parties from transferring, encumbering,
10 hypothecating, concealing, or in any way disposing of any
11 property, real or personal, whether community, quasi-community,
12 or separate, without the written consent of the other party or an



1 order of the court, except in the usual course of business or for the
2 necessities of life, and requiring each party to notify the other party
3 of any proposed extraordinary expenditures at least five business
4 days before incurring those expenditures and to account to the
5 court for all extraordinary expenditures made after service of the
6 summons on that party.

7 The restraining order may not preclude a party from using
8 community property, quasi-community property, or the separate
9 property of a party to pay reasonable attorney's fees and costs in
10 order to retain legal counsel in the proceeding. A party who uses
11 community property or quasi-community property to pay his or
12 her attorney's retainer for fees and costs under this section shall
13 account to the community for the use of the property. A party who
14 uses other property that is subsequently determined to be the
15 separate property of the other party to pay his or her attorney's
16 retainer for fees and costs under this section shall account to the
17 other party for the use of the property.

18 (3) Restraining both parties from cashing, borrowing against,
19 canceling, transferring, disposing of, or changing the beneficiaries
20 of any insurance or other coverage, including life, health,
21 automobile, and disability, held for the benefit of the parties and
22 their child or children for whom support may be ordered.

23 (4) Restraining both parties from creating a nonprobate
24 transfer or modifying a nonprobate transfer in a manner that affects
25 the disposition of property subject to the transfer, without the
26 written consent of the other party or an order of the court.

27 (b) This section does not prohibit any of the following:

28 (1) Creation, modification, or revocation of a will.

29 (2) Revocation of a nonprobate transfer, including a revocable
30 trust, pursuant to the instrument, if that notice of the change is filed
31 and served on the other party before the change takes effect.

32 (3) Elimination of a right of survivorship to property, provided
33 that notice of the change is filed and served on the other party
34 before the change takes effect.

35 (4) Creation of an unfunded revocable or irrevocable trust.

36 (5) Execution and filing of a disclaimer pursuant to Part 8
37 (commencing with Section 260) of Division 2 of the Probate Code.

38 (c) In all actions filed on and after January 1, 1995, the
39 summons shall contain the following notice:



1 “WARNING: California law provides that, for purposes of
2 division of property upon dissolution of marriage or legal
3 separation, property acquired by the parties during marriage in
4 joint form is presumed to be community property. If either party
5 to this action should die before the jointly held community
6 property is divided, the language of how title is held in the deed
7 (i.e., joint tenancy, tenants in common, or community property)
8 will be controlling and not the community property presumption.
9 You should consult your attorney if you want the community
10 property presumption to be written into the recorded title to the
11 property.”

12 (d) For the purposes of this section:

13 (1) “Nonprobate transfer” means an instrument, other than a
14 will, that makes a transfer of property on death, including a
15 revocable trust, pay on death account in a financial institution,
16 Totten trust, transfer on death registration of personal property, or
17 other instrument of a type described in Section 5000 of the Probate
18 Code.

19 (2) “Nonprobate transfer” does not include a provision for the
20 transfer of property on death in an insurance policy or other
21 coverage held for the benefit of the parties and their child or
22 children for whom support may be ordered, to the extent that the
23 provision is subject to paragraph (3) of subdivision (a).

24 (e) The restraining order included in the summons shall include
25 descriptions of the notices required by paragraphs (2) and (3) of
26 subdivision (b).

27 (f) The party seeking the temporary restraining order shall, at
28 the time of filing, provide sufficient information for the court to
29 notify the biological parent of any child residing in the household
30 of the party against whom the temporary restraining order is
31 sought, of the request for a temporary restraining order. The
32 information submitted to the court shall include, but not be limited
33 to, the name, address, and phone number of the biological parent
34 of the child.

35 SEC. 2. *Section 6302.5 is added to the Family Code, to read:*

36 6302.5. (a) *Any person who has been granted an order under*
37 *this part shall notify any other person, other than the respondent*
38 *to the petition, who has been awarded custody of (1) any child who*
39 *resides with the person who sought the order and (2) any child with*
40 *whom the person who sought the order has been granted*



1 *unsupervised visitation, that the order has been issued. The person*
2 *who has been granted the order shall also provide to the court the*
3 *name, address, and telephone number of the persons notified*
4 *pursuant to this section. The court may inquire whether this*
5 *notification requirement has been met.*

6 (b) *An order issued under this part shall set forth on its face a*
7 *notice in substantially the following form:*

8
9 “*NOTICE TO THE PETITIONER: You must notify any person*
10 *who has been awarded custody of (1) any child who resides with*
11 *you and (2) any child as to whom you have been granted*
12 *unsupervised visitation, that this order has been issued. You must*
13 *also provide the name, address, and telephone number of any*
14 *persons so notified to the court. The court may inquire whether this*
15 *notification requirement has been met.*”

16 *SEC. 3.* Notwithstanding Section 17610 of the Government
17 Code, if the Commission on State Mandates determines that this
18 act contains costs mandated by the state, reimbursement to local
19 agencies and school districts for those costs shall be made pursuant
20 to Part 7 (commencing with Section 17500) of Division 4 of Title
21 2 of the Government Code. If the statewide cost of the claim for
22 reimbursement does not exceed one million dollars (\$1,000,000),
23 reimbursement shall be made from the State Mandates Claims
24 Fund.

