

Assembly Bill No. 1297

CHAPTER 48

An act to amend, repeal, and add Section 2040 of the Family Code, relating to restraining orders.

[Approved by Governor July 14, 2025. Filed with Secretary of State July 14, 2025.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1297, Stefani. Automatic temporary restraining orders.

Existing law authorizes the issuance of temporary restraining orders in proceedings for dissolution of marriage, nullity of marriage, legal separation of the parties, and under the Uniform Parentage Act. Existing law requires that a temporary restraining order issued under these provisions remains in effect until the petition is dismissed, a final judgment is entered, or until further court order. Existing law prohibits the parties subject to a temporary restraining order from, among others, cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties and their child or children for whom support may be ordered.

Commencing on January 1, 2027, this bill would further prohibit both parties from allowing a plan to lapse for nonpayment of premiums or for failing to renew insurance, as specified.

Digest Key

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

Bill Text

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2040 of the Family Code is amended to read:

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

(1) Restraining both parties from removing the minor child or children of the parties, if any, from the state, or from applying for a new or replacement passport for the minor child or children, without the prior written consent of the other party or an order of the court.

(2) (A) Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of, any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the

necessities of life, and requiring each party to notify the other party of proposed extraordinary expenditures at least five business days before incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party.

(B) Notwithstanding subparagraph (A), the restraining order shall not preclude a party from using community property, quasi-community property, or the party's own separate property to pay reasonable attorney's fees and costs in order to retain legal counsel in the proceeding. A party who uses community property or quasi-community property to pay the party's attorney's retainer for fees and costs under this provision shall account to the community for the use of the property. A party who uses other property that is subsequently determined to be the separate property of the other party to pay the party's attorney's retainer for fees and costs under this provision shall account to the other party for the use of the property.

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

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

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

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

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

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

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

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

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

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

(d) For the purposes of this section:

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

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

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

(f) This section shall remain in effect only until January 1, 2027, and as of that date is repealed.

SEC. 2. Section 2040 is added to the Family Code, to read:

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

(1) Restraining both parties from removing the minor child or children of the parties, if any, from the state, or from applying for a new or replacement passport for the minor child or children, without the prior written consent of the other party or an order of the court.

(2) (A) Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of, any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life, and requiring each party to notify the other party of proposed extraordinary expenditures at least five business days before incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party.

(B) Notwithstanding subparagraph (A), the restraining order shall not preclude a party from using community property, quasi-community property, or the party's own separate property to pay reasonable attorney's fees and costs in order to retain legal counsel in the proceeding. A party who uses community property or quasi-community property to pay the party's attorney's retainer for fees and costs under this provision shall account to the community for the use of the property. A party who uses other property that is subsequently determined to be the separate property of the other party to pay the party's attorney's retainer for fees and costs under this provision shall account to the other party for the use of the property.

(3) Restraining both parties from cashing, borrowing against, canceling, allowing to lapse for nonpayment of premiums, failing to renew, transferring, disposing of, or changing the beneficiaries of insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties and their child or children for whom support may be ordered.

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

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

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

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

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

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

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

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

“WARNING: California law provides that, for purposes of division of property upon dissolution of marriage or legal separation, property acquired by the parties during marriage in joint form is presumed to be community

property. If either party to this action should die before the jointly held community property is divided, the language of how title is held in the deed (i.e., joint tenancy, tenants in common, or community property) will be controlling and not the community property presumption. You should consult your attorney if you want the community property presumption to be written into the recorded title to the property.”

(d) For the purposes of this section:

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

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

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

(f) This section shall become operative on January 1, 2027.