



July 22, 2019

Hon. Xavier Becerra  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Anabel Renteria  
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative regarding spousal support (A.G. File No. 19-0002).

## **Background**

***Termination of Marriage.*** California law defines marriage as a personal relationship arising out of a civil contract between two consenting adults. Under state law, a marriage can only be terminated by (1) the death of one of the marital partners, (2) a dissolution of marriage (commonly known as divorce), or (3) the annulment of the marriage under specific circumstances (such as when consent to the marriage was obtained by fraud or force). If the marital partners wish to live separate lives but not officially terminate their marriage (such as due to religious beliefs or financial reasons), individuals can file for a legal separation. In 2016-17, the state trial courts received approximately 135,000 petitions for divorce, annulment, or legal separation.

In divorce or legal separation proceedings, decisions are made regarding spousal support payments—as well as the division of property and debt, child custody and visitation, and child support payments. A spousal support payment is a specified amount of money that the higher-earning marital partner must provide regularly to enable the lower-earning marital partner to become self-supporting. Decisions about spousal support payments and other issues (such as the division of property) can be reached in an uncontested or contested manner.

***Uncontested Spousal Support Payments.*** Uncontested cases occur when (1) both marital partners negotiate a contractual agreement between themselves and submit it to the courts or (2) a marital partner does not contest an agreement submitted by the other partner. This proposal is then accepted by the courts as the contractual agreement. While state law places certain requirements on contractual agreements between marital partners, such partners generally have flexibility on the terms. For example, a marital partner might offer to provide a one-time lump sum payment in order to avoid ongoing spousal support payments, to provide spousal support

payments over a longer period of time to reduce the amount paid annually, or to give up property in exchange for ongoing spousal support payments. When the above contractual agreements are filed with the court, the court only reviews them for completeness and compliance with statute. If approved, the marital partners are required to comply with the terms of the agreement.

***Contested Spousal Support Payments.*** Alternatively, if marital partners are unable to reach agreement, the case is contested and a judge determines how to resolve the dispute, such as by determining whether one partner must make spousal support payments and how to divide property between the marital partners. State law provides guidance to judges in resolving these disputes. For example, judges must divide certain property equally and must consider the division of property separately from requests for support payments. When marital partners are unable to agree on spousal support payments, the court determines whether spousal support is appropriate, the amount of the payments, and how long the payments should be made. Spousal support payments generally terminate upon remarriage of the supported marital partner, death of either marital partner, or as specified by the court. State law requires that the court consider a number of different circumstances in making this determination. Such circumstances include the marketable skills of the supported spouse, the amount of time the supported spouse remained unemployed in order to focus on domestic duties, the supported spouse's contribution to their partner's attainment of education and training, and evidence of domestic violence.

## **Proposal**

This measure prohibits the state's trial courts from ordering spousal support payments in contested cases as part of divorce or legal separation proceedings for more than five years.

## **Fiscal Effects**

The fiscal effect of this measure generally depends on how the measure impacts how individuals choose to reach decisions about spousal support payments. As we discuss below, a major factor that would impact such decisions is the effect of the measure on the total amount to be paid in spousal support and the specific amount to be paid annually, which is uncertain.

***Effects on Future Divorce and Legal Separation Proceedings.*** The measure could impact state court costs on proceedings for future cases regarding divorce and legal separation. On the one hand, the measure could result in a reduction in the number of contested cases or the amount of time spent on such cases in state courts. For example, the five-year limit could result in more marital partners choosing instead to negotiate uncontested agreements that allows for spousal support payments over more than five years if they believe this would result in a higher amount of spousal support than would have otherwise been received. This would reduce the cost of these proceedings. On the other hand, the measure could increase the number of contested cases or the amount of time spent on such cases heard by courts due to an increase in disagreements over other issues in divorce and legal separation proceedings. For example, the court's ability to order spousal support payments for only five years could result in more marital partners choosing to contest how property is divided or the amount of child support to be paid instead of resolving such issues through negotiated agreements. This would increase the costs of these proceedings. The net effect of the above factors on state court costs is unknown.

***Effects on Public Assistance Programs.*** The measure could increase costs related to various state and local programs that provide low-income individuals who meet certain income thresholds and other criteria with public assistance (such as for health, child care, food, or housing services). To the extent the proposed measure reduces the amount of spousal support provided to the lower-earning marital partner, some may find it difficult to become self-sufficient. As a result, these individuals could become eligible to participate in state or local public assistance programs. The actual increase in costs would depend on the number of individuals who become eligible and subsequently choose to participate in such programs. This increase in costs would likely be minor relative to the amount currently spent by state and local governments annually on these programs.

***Summary of Fiscal Effects.*** This measure would have the following major fiscal effect.

- Unknown net effect on state court costs related to future divorce and legal separation proceedings.

Sincerely,

---

Gabriel Petek  
Legislative Analyst

---

Keely Martin Bosler  
Director of Finance