



July 5, 2022

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to spousal support (A.G. File No. 22-0004).

BACKGROUND

Termination of Marriage and Legal Separation. State 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 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 court. State trial courts received nearly 122,000 petitions for divorce, annulment, or legal separation in 2018-19 (most recent data unaffected by the COVID-19 pandemic).

Spousal Support Payments and Other Issues. In divorce or legal separation proceedings, decisions are made regarding the division of property and debt and spousal support payments, as well as child custody, visitation, and support if the partners have children (also known as child support). A spousal support payment is a specified amount that the higher-earning partner (known as the supporting partner) must provide regularly to enable the lower-earning partner (known as the supported 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 Cases.*** Uncontested cases occur when (1) both partners negotiate a contractual agreement between themselves and submit it to the courts or (2) one partner does not contest an agreement submitted by the other partner. While state law places certain requirements on these contractual agreements, the partners generally have flexibility on the terms. For example, one partner might offer to provide a one-time lump sum payment in order to avoid ongoing spousal support payments 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 partners are required to comply with the terms of the agreement.

- **Contested Cases.** If partners are unable to agree on spousal support payments or other issues, 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 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 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. State law requires that the court consider a number of different circumstances in making this determination. Such circumstances include the ability of the supporting partner to pay spousal support, the duration of the marriage, the marketable skills of the supported partner, how the earning capacity of the supported partner has been impacted by reduced work in order to spend time on domestic duties, the needs of each partner based on the standard of living established during the marriage, and evidence of domestic violence.

Payment of Spousal Support. Spousal support payments are generally made in one of three ways. First, the supporting partner can pay spousal support directly to the other partner if both agree to this. Second, a court can order an employer to withhold spousal support payments from the supporting partner's wages. Third, the state Department of Child Support Services can collect spousal support for the supported partners in those cases where the department is also collecting child support for minor children that live with them. A supported partner can seek a court order to require the other partner to make payments when payments become delinquent. Delinquent spousal support payments are subject to interest of 10 percent per year. Spousal support payments generally terminate upon remarriage of the supported partner, death of either partner, or as specified by the court.

PROPOSAL

Shifts Responsibility for Paying Spousal Support to State. This measure proposes to shift responsibility for spousal support payments from the supporting partner to the state. This change would apply to both existing and future divorce or legal separation agreements and court orders. However, the other provisions of existing divorce or legal separation agreements (such as the amount of spousal support payments) would generally not change. Additionally, the state would not be responsible for making any delinquent payments associated with existing divorce or legal separation agreements. Under the measure, the California Department of Social Services (DSS) would generally be responsible for administering spousal support payments.

Makes Other Changes. This measure makes various other changes related to divorce and legal separation proceedings, largely related to spousal support. For example, when determining the appropriate amount of spousal support, the court would no longer consider the ability of the supporting partner to pay spousal support. Additionally, supported partners would be able to continue to receive spousal support payments even after the death of the supporting partner unless otherwise specified by the court or upon remarriage of the supported partner.

Changes Effective Only if Sufficient State Funding Is Provided. The measure specifies that the above changes only go into effect if the Legislature appropriates sufficient funds to implement the changes. In addition, DSS would need to agree that the level of funding provided is sufficient to implement the proposed changes.

FISCAL EFFECTS

As mentioned above, the changes proposed in this measure would go into effect only if the Legislature appropriates sufficient funds to implement the changes. As such, whether the measure has any fiscal effect on the state and local governments would depend on whether the Legislature provides funding to fully cover all identified effects resulting from the measure's implementation.

No Fiscal Effects if Sufficient Funding Is Not Provided

If the Legislature does not provide sufficient funding to implement it at any point in time, the measure would have no fiscal effect. This is because sufficient funding is a condition of this measure taking effect.

Various Fiscal Effects if Sufficient Funding Provided

If the Legislature provides funding to implement this measure, the funding would need to be sufficient to account for all identified fiscal effects. In particular, the funding would need to account for the measure's changes that impact state costs. These increased costs would depend on how the measure is interpreted and implemented as well as how individuals respond to it. For example, it is possible that shifting responsibility for spousal support payments to the state could result in more individuals seeking spousal support. It is also unclear whether the level of spousal support payments would change from current levels due to the measure, such as its provisions that the supporting partner's ability to pay spousal support can no longer be considered. Below, we identify the various fiscal effects that the funding provided by the Legislature would need to take into account.

Increased State Costs for Spousal Support Payments. This measure would increase state costs as responsibility for paying spousal support would shift from supporting partners to the state. The size of the increase depends on how individuals and courts respond to this measure—such as whether more individuals seek and are awarded spousal support payments, individuals are granted spousal support for shorter or longer periods of time, or the courts order smaller or larger payment amounts. This increase would likely total at least a couple billion dollars annually.

Increased State Administration Costs. This measure would create work for state agencies—particularly DSS—to administer the spousal support payment program. The amount of work would depend on how the program is implemented. For example, it is unclear what technology may be needed to record court orders and issue payments. It is also unclear whether DSS would participate in any court hearings to determine the appropriate level of spousal support payments. Total state costs for this work could reach the tens of millions of dollars annually.

Unknown Effects on State Court Costs. This measure could impact state court work and costs of proceedings for future divorce and legal separation cases in different ways. On the one hand, this measure could increase court work and costs. For example, work and costs could increase due to an increase in divorce and legal separation filings and/or requests for spousal support. This could happen as spousal support payments would no longer be impacted by the supporting partner's ability

to pay them—meaning more people could have incentive to seek and may be awarded such payments. This would also mean that the courts would likely need to assess and determine the appropriate level of spousal support in a greater proportion of uncontested divorce and legal proceedings. This is because courts generally have a limited decision-making role related to spousal support payments in uncontested cases currently. The additional time spent on such court hearings would depend on how the measure is implemented, such as how much justification the court requires from the partner seeking spousal support and whether DSS participates in the case. On the other hand, the measure could reduce court work and costs. For example, the courts would no longer need to conduct hearings or issue orders to enforce spousal support orders. More proceedings could also be resolved in an uncontested manner. This is because shifting responsibility for spousal support payments to the state could reduce disagreement between partners that require court intervention. The net effect of the above factors on state court work and costs is unknown.

Various Other Effects. The measure could potentially have other state and local fiscal effects. For example, it is possible that state responsibility for spousal support payments could reduce the number of individuals who require, or are eligible for, state or local health, child care, or other public assistance programs, which would reduce state and local costs. This could occur if spousal support payments are set at a level to enable individuals to become self-sufficient faster than otherwise—reducing the amount of time they would have required public assistance. However, if spousal support payments are set a level lower than they are currently, it could result in more individuals requiring public assistance as well. The net effect of the above impacts on the state and local governments is unknown.

Summary of Fiscal Effects

This measure would have the following major fiscal effects:

- No fiscal effect if the Legislature does not provide sufficient funding to implement the measure. This is because the measure specifies it will not go into effect if sufficient funding is not provided.
- Increased state costs to make and administer spousal support payments that could be at least a couple billion dollars annually, as well as an unknown net effect on state court costs related to future divorce and legal separation proceedings, if the Legislature provides sufficient funding to implement the measure as required.

Sincerely,

for Gabriel Petek
Legislative Analyst

for Keely Martin Bosler
Director of Finance