

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 627 (Waldron)
Version: February 12, 2021
Hearing Date: June 8, 2021
Fiscal: Yes
Urgency: No
JT

SUBJECT

Recognition of tribal court orders: rights in retirement plans or deferred compensation

DIGEST

This bill establishes procedures for California courts to recognize tribal court family law orders involving the division of retirement and other deferred compensation benefits.

EXECUTIVE SUMMARY

In 2014, the Judicial Council sponsored SB 406 (Evans, Ch. 243, Stats. 2014), which led to the enactment of the Tribal Court Civil Money Judgment Act (Act). The Act prescribes procedures for applying for recognition and entry of a judgement based on a tribal court money judgement, objecting to such a judgement, and guiding courts in determining whether to refuse to enter the judgment or grant a stay of enforcement. When a tribal court order involves the division of retirement or other deferred compensation benefits, the order must be recognized under state law in order to comply with the federal Employee Retirement Income Security Act of 1974 (ERISA).

This bill, which is sponsored by the Judicial Council, seeks to ensure that tribal court divorce or dissolution orders that include a division of a pension or other deferred compensation assets are fully recognized by state law as required under ERISA. Specifically, the bill provides that parties to such a judgement may jointly apply for recognition of the order in accordance with specified procedures. If one of the parties to the order does not agree to join in the application, the other party may proceed by having the tribal court execute a certificate in lieu of the signature of the other party. Additionally, the bill provides that such an order filed in accordance with that procedure must be recognized as an order made pursuant to the domestic relations laws of the state. The bill is supported by the California Judges Association, the California Tribal Business Alliance, the Child Support Directors Association of California, and the Executive Committee of the Family Law Section of the California Lawyers Association. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes, under ERISA, minimum standards for private retirements and health plans. (Public Law 93-406; 88 Stat. 829, 29 U.S.C. § 1001 et seq.)
- 2) Establishes the Act, which governs the procedures by which the superior courts of California recognize and enter tribal court money judgments of any federally recognized Indian tribe. (Code Civ. Proc. § 1730 et seq.; § 1730(a).)¹
- 3) Provides that the Act does not apply to tribal court money judgments for which federal law requires that states grant full faith and credit recognition, or for which state law provides for recognition, including child support orders recognized under other specified laws. (§ 1730(b).)

This bill:

- 1) Provides that where the parties to the underlying tribal court proceeding agree, the parties may file a joint application for the recognition of a tribal court order that establishes a right to child support, spousal support payments, or marital property rights to the spouse, former spouse, child, or other dependent of a participant in a retirement plan or other plan of deferred compensation, provided the order assigns all or a portion of the benefits payable with respect to the participant to an alternate payee.
- 2) Establishes procedures for submitting the application under penalty of perjury and requires the Judicial Council to adopt a form for the application.
- 3) Provides that if one of the parties to the order does not agree to join in the application, the other party may proceed by having the tribal court execute a certificate in lieu of the signature of the other party.
- 4) Provides that a final order of a tribal court that creates or recognizes the existence of the right of a spouse, former spouse, child, or other dependent of a participant in a retirement plan or other plan of deferred compensation to receive all or a portion of the benefits payable with respect to the plan participant, and that relates to the provision of child support, spousal support payment or marital property rights to the spouse, former spouse, child, or other dependent, filed in accordance with the procedure described above, must be recognized as an order made pursuant to the domestic relations laws of the state.

¹ All further section references are to the Code of Civil Procedure unless otherwise indicated.

- 5) Provides that these changes do not confer jurisdiction on a court of this state to modify or enforce a tribal court order.
- 6) Makes other conforming changes.

COMMENTS

1. Author's statement

The author writes:

Tribal courts (and tribes and tribal justice institutions in general) in California are rebuilding. Supporting this rebuilding and expansion of effective tribal court capacity serves a number of complementary goals. On June 18, 2019, Governor Newsom signed Executive Order N-15-19 acknowledging and apologizing for the historic injustices done to California's tribal peoples and committing to addressing those historic wrongs and supporting tribal sovereignty. Likewise, the Judicial Branch is committed to equity and access to justice for minority and underserved communities. Tribal communities are remote and underserved. Allowing tribal members to effectively resolve their justice needs in tribal court within their own communities promotes equity and access to justice. Promoting tribal court capacity also promotes justice capacity overall. Cases that are resolved in tribal court relieve a burden on state courts.

In California's quest to continue to honor the thousands of tribal families who live here, we have an opportunity with this bill to expand the reality of tribal sovereignty by ensuring that divorce or dissolution orders and judgments issued by tribal courts that include division of pension or other deferred compensation assets are effective and, in particular, can be recognized as meeting the requirements of the Employee Retirement Income Security Act of 1974 (ERISA) (Public Law 93-406; 88 Stat. 829) and other similar statutes that restrict the transfer or division of such assets.

2. Background

Native American tribes are "nations that exercise inherent sovereign authority over their members and territories." (Cal. Jur. 3d. Indians Sec. 2.) For a tribal court to hear a case, it must have both subject matter jurisdiction (the power to hear the specific kind of claim that is brought to that court), and personal jurisdiction (the requirement that a defendant have certain minimum contacts with the forum in which the court sits) over the defendant.

At times, just as a party may seek to enforce another state's judgment against a resident of California by bringing their judgment to a California court, a party who has obtained a tribal court judgment may turn to California courts to seek recognition and enforcement of the party's tribal court judgment against a California resident. In contrast to the full faith and credit that is constitutionally required to be given to the judgments rendered by sister states' courts, under existing law, California state courts generally recognize tribal court judgments under the principles of comity, as they do the judgments of foreign country tribunals.²

Claims to recognize money judgments of foreign country tribunals, including of tribal courts, were traditionally governed by the Uniform Foreign Country Money Judgment Act (California's Uniform Act), Code of Civil Procedure Section 1713 et seq. That process, however, was considered costly and time-consuming. In 2012, the Judicial Council, upon recommendation of several of its committees, including the California Tribal Court/State Court Forum and the Civil and Small Claims Advisory Committee, adopted a proposal that would provide "a discrete procedure for recognizing and enforcing tribal court civil judgments, providing for swifter recognition of such judgments while continuing to apply the principles of comity appropriate to judgments of sovereign tribes."³

Based on that proposal, Senator Evans, then the Chair of this Committee, authored a bill, SB 406 (Evans, Chapter 243, Statutes 2014), sponsored by Judicial Council and Blue Lake Rancheria, that established a new legal framework known as the Tribal Court Civil Money Judgment Act (Tribal Court Judgment Act). The Tribal Court Judgment Act provides the rules and procedures for seeking recognition of a tribal court money judgment in California state courts. Among other things, the Act: (1) provides timelines for both submitting an application for recognition and timely objecting to recognition; (2) provides rules for proper venue; (3) specifies notice requirements; (4) lists the

² Comity, as described by the Ninth Circuit in *Wilson v. Marchington* (9th Cir. 1997) 127 F.3d 805, 809-810, "is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other." The court reasoned:

As a general policy, comity should be withheld only when its acceptance would be contrary or prejudicial to the interest of the nation called upon to give it effect." At its core, comity involves a balancing of interests. "It is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws." Although the status of Indian tribes as "dependent domestic nations" presents some unique circumstances, comity still affords the best general analytical framework for recognizing tribal judgments.

(*Id.* (citations omitted).) The court made clear that "[c]omity does not require that a tribe utilize judicial procedures identical to those used in the United States Courts." (*Id.* at 811).

³ *Report to the Judicial Council: Judicial Council-sponsored Legislation: Tribal Court Civil Judgment Act* (October 26, 2012).

requisite contents of an application and supporting documentation; (5) mandates grounds for declining recognition and provides discretionary grounds for declining recognition; and (6) specifies grounds for staying enforcement of a judgment.

3. Simplified process for state recognition of tribal court orders that divide pension benefits

Tribal courts hear and decide a variety of cases, including family law cases, which may involve dissolution of marriages. Dissolution cases may, in turn, involve asset division and distribution, including the division of retirement and other deferred compensation benefits. These are governed, under federal law, by ERISA, which requires that there be a “judgment, decree or order . . . made pursuant to *State domestic relations law*.” (29 U.S.C. 1056 (d)(3)(B)(ii) [emphasis added].)

The U.S. Department of Labor has issued guidance, in an advisory opinion, on whether tribal dissolution orders are “made pursuant to *State domestic relations law*.” The opinion concludes:

In the Department’s view, a tribal court order may constitute a “judgment, decree or order . . . made pursuant to *State domestic relations law*” for purposes of ERISA section 206(d)(3)(B)(ii), if it is treated or recognized as such by the law of a State that could issue a valid domestic relations order with respect to the participant and alternate payee.⁴

The Advisory Letter notes that Oregon has effectively complied with the guidance by providing a process to recognize tribal court dissolution judgments that divide retirement benefits.⁵

California currently provides a procedure to register foreign judgments with the state courts that would satisfy the ERISA requirements. The parties must both pay initial filing fees of \$435 each and complete necessary paperwork. According to the author, the “process is not simple, requires a specific filing in the trial court, and typically takes many months to complete. It is an unnecessary burden on tribal families who already have received a decree from their tribal court. And, once registration is complete, the California court, not the tribe, is responsible for the order, representing yet a further deterioration of tribal sovereignty.”

This bill seeks to provide a simplified and less expensive process to allow California courts to recognize tribal orders dividing retirement and other deferred compensation benefits, as required by ERISA, but still recognizing tribal sovereignty over the orders.

⁴ U.S. Department of Labor, *Employee Benefits Security Administration*, Advisory Opinion 2011-03A (Feb 2, 2011).

⁵ *Id.*, citing Oregon Revised Statutes 24.115(4).

Under the procedure set forth in the bill, the parties to an underlying tribal court proceeding may file a joint application, executed under penalty of perjury for the recognition of the tribal court order. If one of the parties does not agree to join in the application, the other party may proceed by having the tribal court execute a certificate in lieu of the signature of the other party. The application may be filed in the county in which either of the parties resides, and the filing fee is a comparatively small (\$100). The tribal court retains jurisdiction over its order. The bill also requires the Judicial Council, the bill's sponsor, to adopt forms to effectuate the process.

The Judicial Council argues the bill "ensures that divorce or dissolution orders and judgments issued by tribal courts that include division of pension or other deferred or other deferred compensation assets are effective and can be recognized as meeting the requirements of the Employee Retirement Income Security Act of 1974 (ERISA) (Public Law 93-406; 88 Stat. 829) and other similar statutes that restrict the transfer or division of such assets." According to Judicial Council, the process that would result from this bill will:

- Provide an easier and less expensive alternative to "registration" of a tribal divorce or dissolution order in state court. This reduces barriers for tribal members who have a divorce or dissolution order from the tribal court.
- Reduce burdens on state trial courts. California's trial courts manage significant caseloads. Reducing, even by a small number, the complex procedural filings that flow from the registration process enables courts to be more efficient.
- Support the capacity of and respect for tribal courts in California. Given the complex relationships that exist between the State of California and the tribal nations within the state's boundaries, enactment of AB 627 is a small but valuable step in validating the role of tribal courts in resolving issues important to the tribe's members.

SUPPORT

Judicial Council of California (sponsor)
California Judges Association
California Tribal Business Alliance,
Child Support Directors Association of California
Executive Committee of the Family Law Section of the California Lawyers Association

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

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Prior Legislation: *See* Comment 2.

PRIOR VOTES:

Assembly Floor (Ayes 77, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Judiciary Committee (Ayes 11, Noes 0)
