

Memorandum 92-43

Subject: Study F-1001 - Disposition of Sunset Provisions

This memorandum updates the Commission on the status of Family Code provisions that are subject to a sunset clause. The First Supplement to Memorandum 92-12 contained a summary of Family Code provisions subject to sunset clauses and the disposition of each in the code. As stated in that supplement, the staff is monitoring whether or not the Legislature acts to repeal these sunsets or allows them to take effect. The Commission will need to propose legislation which disposes of each of the statutes subject to a January 1, 1993, sunset as part of the Commission's 1993 legislative program. The staff will continue to monitor those statutes that are subject to a January 1, 1994, sunset.

This memorandum is based on a review of the most current legislative history available at the time of writing, that is the weekly histories dated August 14, 1992. Where there are active bills pending, the staff will continue to monitor legislative activity regarding these provisions and will update the Commission on the actions taken and necessary legislation as early as possible.

Statutes Subject to January 1, 1993, Sunset Clause

(1) Retroactive child support (Civ. Code §§ 196, 4700, 7010; Fam. Code §§ 7637(b)-(c), 4100-4105): These Civil Code sections contain identical subdivisions providing for recovery of child support paid prior to filing a proceeding for support and are subject to a January 1, 1993, sunset. The Family Code includes the sunsetted provisions, but not the sunset clause.

There are no chaptered or active bills pending that effect these statutes. Thus, the sunset provision will take effect, repealing the provisions subject to the sunset, and requiring repeal of the Family Code provisions continuing these provisions. Draft legislation repealing these sections and making necessary conforming revisions is attached as Exhibit 1 to this memorandum.

(2) Request to sign consent in presence of court in independent adoption (Civ. Code § 224.45; Fam. Code § 8809): This statute and its sunset are continued in the Family Code. There are no chaptered bills that effect this statute. One pending bill had proposed, in an earlier version, repealing this section in its entirety, but has since been amended to remove the repeal of this section. (SB 1148) Thus, it appears likely that the sunset will be allowed to take effect requiring repeal of Family Code Section 8809. Draft legislation repealing this section is attached as Exhibit 2 to this memorandum. Repeal of this section does not require conforming changes to other statutes.

(3) Fee paid in independent adoption (Civ. Code § 224.47; Fam. Code § 8810): This statute and its sunset are continued in the Family Code. There are no chaptered bills that effect this statute. There are, however, two pending bills that propose changes to this section. (SB 919, SB 1148) Both propose repealing the sunset provision and amending the statute. The staff will continue to monitor these bills, both in the process of tracking sunsets and in implementing 1992 amendments to family law provisions in general.

Statutes Subject to January 1, 1994, Sunset Clause

(1) Interview, counseling, and assessment by department or agency in independent adoption (Civ. Code § 224.50): This statute is not continued in the Family Code, based on information from an experienced adoption attorney that this section is not being used and will likely be repealed by its sunset.

There are no chaptered bills that effect this section. There is a pending bill that had proposed repealing this section in its entirety, but has since been amended to remove this repeal. (SB 1148) The staff will continue to track whether or not the Legislature acts to prevent the repeal of this section by its sunset, and, if so, restore it to the code.

(2) Deduction from earnings of state employee for court-ordered support (Civ. Code § 4701.2): This statute is not continued in the Family Code, based on information that a later enactment, continued in Family Code Section 5210(b), makes this section obsolete.

There are no chaptered or active bills pending that effect this statute. The staff will continue to track whether or not the Legislature acts to prevent the repeal of this section by its sunset, and, if so, restore it to the code.

(3) Child support guidelines (Civ. Code § 4720.1; Fam. Code §§ 4050-4052, 4066-4067): Civil Code Sections 4720.1 and 4720.2 provided interim child support guidelines, intended for use while the Judicial Council continued work on drafting a new statewide child support guideline. The interim guidelines are continued in Family Code Sections 4050 through 4068.

The Judicial Council has completed its work on the guideline and Civil Code Sections 4720.1 and 4720.2 are repealed by Chapter 46 of the Statutes of 1992. Exhibit 1 to Memorandum 92-33, implementing 1992 family law legislation, includes draft repeals of Family Code Sections 4050 through 4068.

Sunset Leftovers

Agnos Child Support Standards Act of 1984 (Civ. Code §§ 4720-4725, 4727-4732):

All but four of the provisions of the former Agnos Child Support Standards Act of 1984 were repealed and reenacted with a delayed operative date of January 1, 1993. The Family Code does not continue those sections or the four Agnos provisions that were not subject to the delayed operative date.

Chapter 46 of the Statutes of 1992 repeals all of the Agnos provisions, except for Civil Code Sections 4731 and 4732. Exhibit 1 to Memorandum 92-33, implementing 1992 family law legislation, includes draft legislation that restores these two sections to the code.

Respectfully submitted,

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EXHIBIT 1

Retroactive Child Support

Staff Note. The draft legislation in this exhibit repeals sections subject to a January 1, 1993, sunset and makes necessary conforming revisions.

Code Civ. Proc. § 583.161 (technical amendment). Dismissal of petition for dissolution or legal separation

SEC. _____. Section 583.161 of the Code of Civil Procedure Code is amended to read:

583.161. No petition filed pursuant to Section 2330 of the Family Code shall be dismissed pursuant to this chapter if an order for child support has been issued in connection with the proceeding and the order has not been (1) terminated by the court or (2) terminated by operation of law pursuant to Sections 3900, 3901, 4007, and 4013, ~~and 4101~~ of the Family Code.

Comment. Section 583.161 is amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions and to conform it to Family Code Section 3601.

Interim Comment. Section 583.161 is amended to omit the reference to Family Code Section 4101, which continued a former section that was subject to repeal, on January 1, 1993, by a sunset clause. No action has been taken by the Legislature to prevent the sunset from taking effect and, therefore, Section 4101 has been repealed

Fam. Code § 3601 (technical amendment). Child support order continues in effect until terminated by court or by operation of law

SEC. _____. Section 3601 of the Family Code is amended to read:

3601. (a) An order for child support entered pursuant to this chapter continues in effect until the order (1) is terminated by the court or (2) terminates by operation of law pursuant to Sections 3900, 3901, 4007, and 4013, ~~and 4101~~.

(b) Subject to Section 3602, subdivision (a) applies notwithstanding any other provision of law and notwithstanding that the proceeding has not been brought to trial within the time limits specified in Chapter 1.5 (commencing with Section 583.110) of Title 8 of Part 2 of the Code of Civil Procedure.

Comment. Section 3601 continues the first sentence of former Civil Code Section 4357(b) without substantive change. In subdivision (a), the references to specific Family Code sections are narrower than the former references to former Civil Code sections. This is not a substantive change, since the relevant parts of the former sections are continued in the Family Code sections. In subdivision (a)(1), a reference to “terminated” has been substituted for “revoked.” This is not a substantive change.

Interim Comment. Section 3601 is amended to omit the reference to Family Code Section 4101, which continued a former section that was subject to repeal, on January 1, 1993, by a sunset clause. No action has been taken by the Legislature to prevent the sunset from taking effect and, therefore, Section 4101 has been repealed.

Fam. Code §§ 4100-4105 (repealed). Recovery for cost of support provided before filing proceeding

SEC. _____. Article 3 (commencing with Section 4100) of Chapter 2 of Part 2 of Division 9 the Family Code is repealed.

Interim Comment. Article 2 (commencing with Section 4100) of Chapter 2 of Part 2 of Division 9 continued former provisions that were subject to repeal, on January 1, 1993, by a sunset clause. No action has been taken by the Legislature to prevent the sunset from taking effect and, therefore, those sections have been repealed.

Fam. Code § 7637 (amended). Other provisions of judgment

SEC. _____. Section 7637 of the Family Code is amended to read:

7637. (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

~~(b) The judgment or order may include an order, made in accordance with, and subject to the requirements and limitations of, Article 3 (commencing with Section 4100) of Chapter 2 of Part 2 of Division 9, that requires one parent to pay to the other parent a reasonable amount for the cost of the support of the child for a period before the filing of the proceeding.~~

~~(c) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including, but not limited to, all of the following:~~

~~(1) Any agreements made between the parents before the date of the filing of the action.~~

~~(2) Any previous payments made for the support of the child by the parent from whom support is sought.~~

~~(3) Any bad faith on the part of either parent.~~

~~(4) Any undue delay in seeking to establish an order for child support, the reasons for the undue delay, and whether either parent has been prejudiced as a result of the delay.~~

~~(5) Any other factors deemed relevant by the court.~~

Comment. Section 7637 continues former Civil Code Section 7010(c) without change. This section is the same as Section 15(c) of the Uniform Parentage Act (1973).

Interim Comment. Subdivisions (b)-(c) of this section continued provisions that were subject to repeal, on January 1, 1993, by a sunset clause. No action has been taken by the Legislature to prevent the sunset from taking effect and, therefore, those sections have been repealed.

Welf. & Inst. Code § 11476.1 (technical amendment). Agreements with noncustodial parents

SEC. _____. Section 11476.1 of the Welfare and Institutions Code is amended to read:

11476.1. (a) In any case where the district attorney has undertaken enforcement of support, the district attorney may enter into an agreement with the noncustodial parent, on behalf of a minor child or children, a spouse, or former spouse for the entry of a judgment without action determining paternity, if applicable, and for periodic child and spousal support payments based on the noncustodial parent's reasonable ability to pay or, if for spousal support, an amount previously ordered by a court of competent jurisdiction. An agreement for entry of a judgment under this section may be executed prior to the birth of the child and may include a provision that the judgment is not to be entered until after the birth of the child.

(b) A judgment based on the agreement shall be entered only if one of the following requirements is satisfied:

(1) The noncustodial parent is represented by legal counsel and the attorney signs a certificate stating: "I have examined the proposed judgment and have advised my client concerning his or her rights in connection with this matter and the consequences of signing or not signing the agreement for the entry of the judgment and my client, after being so advised, has agreed to the entry of the judgment."

(2) A judge of the court in which the judgment is to be entered, after advising the noncustodial parent concerning his or her rights in connection with the matter and the consequences of agreeing or not agreeing to the entry of the judgment, makes a finding that the noncustodial parent has appeared before the judge and the judge has determined that under the circumstances of the particular case the noncustodial parent has willingly, knowingly, and intelligently waived his or her due process rights in agreeing to the entry of the judgment.

(c) The clerk shall file the agreement, together with any certificate of the attorney or finding of the court, without the payment of any fees or charges. If the requirements of this section are satisfied, the court shall enter judgment thereon without action. The provisions of Article 4 (commencing with Section 4200) of Chapter 2 of Part 2 of Division 9 of the Family Code or Chapter 4 (commencing with Section 4350) of Part 3 of Division 9 of the Family Code shall apply to such judgment. A judgment for support so entered may be enforced by any means by which any other judgment for support may be enforced.

(d) Upon request of the district attorney in any case under this section, the clerk shall set the matter for hearing by the court. The hearing shall be held within 10 days after the clerk receives the request. The district attorney may require the person who signed the agreement for the entry of judgment to attend the hearing by process of subpoena in the same manner as the attendance of a witness in a civil action may be required. The presence of the person who signed the agreement for entry of judgment at the hearing shall constitute the presence of the person in court at the time the order is pronounced for the purposes of Section 1209.5 of the Code of Civil Procedure if the court makes the findings required by paragraph (2) of subdivision (b).

(e) The district attorney shall cause the following to be served, in the manner specified in Section 415.10, 415.20, 415.30, or 415.40 of the Code of Civil Procedure, upon the person who signed the agreement for entry of the judgment and shall file proof of service thereof with the court:

(1) A copy of the judgment as entered.

(2) If the judgment includes an order for child or spousal support payments, a notice stating the substance of the following: “The court has continuing authority to make an order increasing or decreasing the amount of the child or spousal support payments. You have the right to request that the court order the child and spousal support payments be decreased or eliminated entirely.”

(f) An order for child and spousal support included in a judgment entered under this section may be modified or revoked as provided in Article 1 (commencing with Section 3650) of Chapter 6 of Part 1 of Division 9 of the Family Code and in (1) Article 1 (commencing with Section 4000) and ~~Article 3 (commencing with Section 4100)~~ of Chapter 2 of Part 2 of Division 9 of the Family Code or (2) Chapter 2 (commencing with Section 4320) and Chapter 3 (commencing with Section 4330) of Part 3 of Division 9 of the Family Code. The court may modify the order to make the support payments payable to a different person.

(g) For the purposes of this section, in making a determination of the noncustodial parent’s reasonable ability to pay, any relevant circumstances set out in Section 4005 of the Family Code shall be considered.

(h) After arrest and before plea or trial, or after conviction or plea of guilty, under Section 270 of the Penal Code, if the defendant appears before the court in which the criminal action is pending and the requirements of paragraph (1) or (2) of subdivision (b) have been satisfied, the court may suspend proceedings or sentence in the criminal action, but this does not limit the later institution of a civil or criminal action or limit the use of any other procedures available to enforce the judgment entered pursuant to this section.

(i) Nothing in this section applies to a case where a civil action has been commenced.

Comment. Subdivisions (c), (f), and (g) of Section 11476.1 are amended to substitute references to the Family Code provisions that replaced the former Civil Code provisions.

Interim Comment. Section 11476.1 is amended to omit the reference to Article 3 (commencing with Section 4100) of Chapter 2 of Part 2 of Division 9 of the Family Code which continued former sections that were subject to repeal, on January 1, 1993, by a sunset clause. No action has been taken by the Legislature to prevent the sunset from taking effect and, therefore, those sections have been repealed.

Appendix

Revised Comments

Staff Note. The following Comments need to be revised in connection with repeal of retroactive child support provisions. Revisions are shown in the same form as amendments.

§ 4201. Child support payable to person having custody of minor child

Comment. Section 4201 continues former Civil Code Section 4702(b) without substantive change. The former limitation to minor children “of the marriage” has been omitted. This section applies to proceedings for support involving unmarried parents. See, e.g., Section 7637(a) (court authorized to order child support in Uniform Parentage Act proceeding). In subdivision (a)(2), the reference to “proceeding” has been substituted for “action.” This is a nonsubstantive change that conforms with Section 4200(b). In subdivision (b), the reference to Welfare and Institutions Code Section 279 has been substituted for the former reference to a repealed section of that code. This is consistent with Section 4351, which provides a similar rule for enforcement by a district attorney of spousal support ordered to be paid to a court-designated officer.

See also Sections 3555 (forwarding of support payments paid through county officer), 4550-4573 (deposit of money to secure future child support payments), 4600-4641 (deposit of assets to secure future child support payments).

§ 4009. Retroactivity of order

Comment. Section 4009 continues the sixth sentence of former Civil Code Section 4700(a)(1) without substantive change, to the extent that sentence related to the making of the order for child support. See also ~~Article 3 (commencing with Section 4100) (recovery for cost of child support provided before filing proceeding); Section 3653 (retroactivity of order modifying or terminating child support order).~~ For a provision relating to spousal support, see Section 4333 (retroactivity of spousal support order).

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EXHIBIT 2

Request To Sign Consent in Presence of Court in Independent Adoption

Staff Note. The draft legislation in this exhibit repeals a section subject to a January 1, 1993, sunset.

Fam. Code § 8809 (repealed). Request to sign consent in presence of court

SEC. ____ . Section 8809 of the Family Code is repealed.

~~8809. (a) With respect to petitions for which a fee is charged, deferred, reduced, or waived under Section 8810, if the department or delegated county adoption agency fails without good cause to conduct the interviews of the petitioners and all persons whose consent is required as specified in Section 8808 and, within the period of time specified in Section 8808, the petitioners, upon giving 10 days' written notice to the department or delegated county adoption agency responsible for the investigation of the adoption, may request the court in which the adoption petition has been filed, or the superior court in the county in which a birth parent resides, to permit the signing of the consent in the presence of the court by any person whose consent is required. The consent and a statement of understanding shall be obtained on forms prescribed by the department. In all cases in which the consent of the birth parent or parents is taken pursuant to this subdivision, the consent form and the statement of understanding shall be read and signed by the birth parent or parents in the presence of the court. Consent provided pursuant to this subdivision is in lieu of the otherwise applicable provisions of subdivisions (a) and (c) of Section 8814, but has the same effect.~~

~~(b) "Good cause" for failure to conduct an interview for purposes of this section includes, but is not limited to, the following:~~

~~(1) An inability to contact or locate any of the persons who are required to be interviewed pursuant to Section 8808.~~

~~(2) Failure of the petitioner to provide the district office of the department or the delegated county adoption agency with a copy of the filed petition and the names, addresses, and telephone numbers of all persons to be interviewed, within 10 working days of the date the petition is filed with the court.~~

~~(c) The fee authorized by subdivision (a) of Section 8810 shall be waived if the consent of any party from whom consent is required is taken in the presence of the court pursuant to subdivision (a) of this section.~~

~~(d) This section remains in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.~~

Interim Comment. Section 8809 has been repealed because no action has been taken by the Legislature to prevent the effect of the sunset clause in subdivision (d).

Appendix

Revised Comments

Staff Note. The following Comments need to be revised in connection with repeal of Family Code Section 8809. Revisions are shown in the same form as amendments.

§ 8700. Relinquishment of child to department or licensed adoption agency

Comment. Section 8700 continues former Civil Code Section 222.10 without substantive change. Throughout this section, “birth parent” has been substituted for “birth father or mother.” See Section 8512 (“birth parent” defined). The word “duly,” formerly preceding “acknowledged,” has been omitted as surplus. See also Sections 8518 (“department” defined), 8530 (“licensed adoption agency” defined).

For related provisions, see Sections ~~8809~~, 8814 (consent to independent adoption), 9003 (consent to stepparent adoption).

§ 8814. Consent of birth parents to adoption

Comment. Section 8814 continues former Civil Code Section 224.62 without substantive change. The word “duly” formerly preceding “acknowledged” has been omitted as surplus. See also Sections 8512 (“birth parent” defined), 8515 (“delegated county adoption agency” defined), 8518 (“department” defined), ~~8809 (request to sign consent in presence of court).~~

For related provisions, see Sections 8700 (consent to agency adoption), 9003 (consent to stepparent adoption).

§ 9003. Consent of birth parents to adoption

Comment. Section 9003 continues former Civil Code Section 227.40 without substantive change. The first sentence of subdivision (a) has been revised to require consent of “birth parents” rather than “parents.” This terminology is consistent with subdivision (d). The reference to the “superior” court has been omitted as surplus. See Section 200 (jurisdiction in superior court). The word “duly” formerly preceding “acknowledged” has been omitted as surplus. See also Sections 8512 (“birth parent” defined), 8548 (“stepparent adoption” defined).

For related provisions, see Sections 8700 (consent to agency adoption), ~~8809~~–8814 (consent to independent adoption).