

First Supplement to Memorandum 92-12

Subject: Study F-1000 - Family Code (Statutes Subject to Sunset Provisions)

This supplement summarizes the statutes continued in the Family Code bill (AB 2650) that are subject to sunset provisions, their disposition in the bill, and a statement as to whether or not the disposition is likely to be changed by upcoming amendments. The staff proposes to include a summary of this information in the explanatory text of the Family Code recommendation. (See Memorandum 92-12.)

Overview

Sunset clauses provide that the affected provisions remain operative only until a certain date, at which time the provisions are repealed, unless the Legislature enacts otherwise before that date. There are two types of sunset statutes:

(1) Statutes that are replaced by an existing statute that becomes operative on the date the sunsetted statute is repealed. This class of sunset statute presents a cumbersome problem in preparation of a new code because it would require both versions to be included. Early in the project, the staff determined that it would be less cumbersome and confusing to continue only one version of a section in the new code. And if only one version is included, it should be the latest enactment without its sunset clause, since to include the sunset clause but omit the backup statute, would be misleading as well. The comments and notes in the draft statute marks this type of statutes for future review. If the statute sunsets, we would restore the replacement. If the sunset is extended past the operative date of the new code, we would restore the sunset clause. If the sunset clause is removed in existing law, then the bill would not need amendment.

(2) Statutes that sunset without any replacement statute. This type of sunset is simpler, because there is no need to continue two

versions of a statute. However, it must be determined whether the sunset clause should be included or omitted. Where it did not seem likely that the sunset clause would be repealed, the clause was continued. These statutes were also marked for future review and amendment when the staff learns whether or not the sunset takes effect.

Specific Sunset Statutes

Class 1:

Retroactive child support (Civ. Code §§ 196, 4700, 7010; Fam. Code §§ 4100-4105). These Civil Code sections contain identical subdivisions providing for recovery of child support paid prior to filing a proceeding for support. These subdivisions are subject to a January 1, 1993, sunset. The Family Code includes the retroactive child support provisions in a separate location and does not include the sunset clause. An attorney at one of the Family Code workshops stated that it is very likely that the sunset will become effective. If this is confirmed, we will amend the bill to delete Sections 4100-4105.

Class 2 -- Sunset Clause Omitted:

(1) Separate mediation in cases involving domestic violence (Civ. Code § 4607.2; Fam. Code § 3177). This statute was subject to a January 1, 1992, sunset. The December draft of the Family Code continued the law subject to the sunset and omitted the sunset provision. As the staff had anticipated, the sunset was repealed and no amendment to the draft was required. See 1991 Cal. Stat. ch. 410, § 3.

(2) Court-ordered counseling where custody or visitation is at issue (Civ. Code § 4608.1; Fam. Code §§ 3190-3192). This statute was subject to a January 1, 1992, sunset. The December draft of the Family Code continued the law subject to the sunset and omitted the sunset provision. As the staff had anticipated, the sunset was repealed and no amendment to the draft was required. See 1991 Cal. Stat. ch. 410, § 4.

(3) Deduction from earnings of state employee for court-ordered support (Civ. Code § 4701.2; Fam. Code § 4505): This statute is subject to a January 1, 1994, sunset. The law subject to the sunset is continued in Family Code Section 4505, but the sunset clause has been omitted. However, at a workshop session the staff learned that this statute will probably be repealed by its sunset. We were informed that a later enactment, continued in Family Code Section 5210(b), makes Civil Code Section 4701.2 (Family Code Section 4505) obsolete. Thus, the staff has drafted an amendment to delete Section 4505. (See Amendment 159, attached to Memorandum 92-19.) The staff will continue to monitor whether or not the Legislature acts to prevent repeal of Civil Code Section 4701.2 by its sunset provision and, if so, restore it to the bill.

Class 2 -- Sunset Clause Continued:

(1) Request to sign consent in presence of court in independent adoption (Civ. Code § 224.45; Fam. Code § 8809): This statute is subject to a January 1, 1993, sunset. The sunset is continued in Family Code Section 8809(d). The staff will amend the bill as required when we learn whether or not the sunset takes effect.

(2) Fee paid in independent adoption (Civ. Code § 224.47; Fam. Code § 8810): This statute is subject to a January 1, 1993, sunset. The sunset is continued in Family Code Section 8810(e). The staff will amend the bill as required when we learn whether or not the sunset takes effect.

(3) Interview, counseling, and assessment by department or agency in independent adoption (Civ. Code § 224.50; Fam. Code § 8812): This statute is subject to a January 1, 1994, sunset. The sunset is continued in Family Code Section 8812(p). At the adoption workshop session the staff was informed by an experienced adoption attorney that this section is not being used and will very likely be repealed by the sunset. Thus, the staff has drafted an amendment to delete Section 8812. (See Amendment 233, attached to Memorandum 92-19.) If the Legislature acts to prevent repeal of existing Civil Code Section 224.50 by its sunset provision, the section will be restored.

(4) Child support guidelines (Civ. Code § 4720.1; Fam. Code §§ 4050-4052, 4066, 4067): Civil Code Section 4720.1 (as added by 1991 Cal. Stat. ch. 110, § 12) contains a January 1, 1994, sunset. The sunset provision has been continued in Family Code Section 4067. The staff will amend the bill as required when we learn whether the sunset provision takes effect.

Sunset Leftovers Problem

A confusing situation can arise where a sunsetted statute is replaced by a new, permanent law, but the old law, which is lying in wait, is not repealed. This problem arises as to the Agnos Child Support Standards Act of 1984 (Civ. Code §§ 4720, 4721-4725, 4727, 4728, 4728.5), which was repealed but reenacted with a delayed operative date of January 1, 1993. The Family Code does not continue these statutes, since it seems obvious that the Legislature will not allow them to become operative again. They are being reviewed by the Judicial Council due to their possible lack of compliance with federal mandates. Additionally, at a Family Code workshop session the staff was informed that these statutes are very unlikely to be allowed to become effective and will most likely be repealed before they become operative. However, as with all of these statutes, the staff will amend the bill as required once we confirm what the Legislature does in this area.

Respectfully submitted,

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