



FAMILY LAW SECTION

THE STATE BAR OF CALIFORNIA

***PROPOSAL TO RE-ENACT FAMILY CODE SECTION 4326
REGARDING TERMINATION OF CHILD SUPPORT
AS A CHANGE OF CIRCUMSTANCES***

LEGISLATIVE PROPOSAL (FL-2014-03)

TO: Office of Governmental Affairs

FROM: Michele B. Brown, CLS-F

DATE: September 30, 2013

RE: Proposal to Re-enact Family Code § 4326

SECTION ACTION AND CONTACTS:

Date of Approval by Section Executive Committee: September 30, 2013
Approval vote: 10-0-0

Section Chair of Affirmative Legislation Ana Storey (818) 590-0861 (private cell) Astorey1@sbcglobal.net	Author of Proposed Legislation: Michele B. Brown, CLS-F Law Offices of Beatrice L. Snider 9663 Tierra Grande, #301 San Diego, CA 92126 619-886-2057 (cell) 858-566-6650 (work) Fax: 858-566-7201 mbrowngraser@sbcglobal.net Michele.brown@blsapc.com
--	--

SUMMARY OF PROPOSAL: The purpose of this proposed legislation is to re-enact Family Code Section 4326. That statute contains a sunset provision, providing that it will remain in effect only until January 1, 2014, unless a later statute, enacted before January 1, 2014, deletes or extends that date. Through oversight (not design) the sunset date was neither deleted nor

extended by legislation enacted before January 1, 2014. This proposal would re-enact language that is identical to existing Section 4326, but without any sunset provision.

ISSUES AND PURPOSE:

Family Code Section 4326 was initially added by SB 415 (Harman, Stats. 2007, ch. 247). The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) sponsored that legislation.

SB 415 was enacted to address family law cases where a spousal support order exists and a companion child support order is also in effect. Since child support is calculated prior to spousal support, the amount of spousal support ordered when a child support order is also in effect is usually lower than it would be but for the child support. Thus, when the child support order terminates, the amount of spousal support may be insufficient to meet the supported spouse's needs.

Under case law existing prior to the enactment of SB 415, termination of the child support order by operation of law did not – in and of itself – allow the party who received the child support to automatically return to court to seek either a new spousal support order or an increase in an existing spousal support order, based on “changed circumstances.” As one example only, there are situations where the supported former spouse no longer receives child support (due to a child graduating from high school, terminating child support by operation of law), but the supported spouse still has the child at home or is bearing the entire cost of a college education for that child. SB 415 overturned case law existing at the time, and permitted courts to utilize termination of child support as a change of circumstances for a modification of spousal support. When enacted, Section 4326 contained a sunset provision, providing that it would remain in effect only until January 1, 2011, unless that sunset date was deleted or extended.

In 2010, FLEXCOM sponsored SB 1482 (Wright, Stats. 2010, ch. 297). That bill extended the sunset date in Family Code Section 4326 until January 1, 2014 and made various other changes to the statute, including the addition of a six month timeframe for a parent to file a motion to modify spousal support after the termination of a child support order, in response to *In re Marriage of Kacik* (2009) 179 Cal.App.4th 410, in which the Court of Appeal specifically requested that the Legislature specify a timeframe in the statute.

Family Code Section 4326 addresses important issues and has worked well. FLEXCOM is not aware of any problems with the current statute. Now that Section 4326 will be repealed effective January 1, 2014, FLEXCOM proposes a re-enactment of the same statutory language, but without any sunset provision.

HISTORY:

Family Code Section 4326 was added by SB 415 (Stats. 2007, ch. 24), amended by SB 1482 (Stats. 2010, ch. 297), and amended with nonsubstantive changes to maintain the code by AB 1023 (Stats. 2011, ch. 296, § 91).

PENDING LITIGATION: A motion to modify spousal support that is pending under existing Family Code Section 4326 would be subject to the current statute. This proposal would have no impact on those motions.

LIKELY SUPPORT AND OPPOSITION: FLEXCOM anticipates that family law practitioners will support this proposal. FLEXCOM is not aware of any opposition.

FISCAL IMPACT: No fiscal impact is anticipated.

GERMANENESS: FLEXCOM was the sponsor of SB 415 and SB 1482, and this area of the law is within the expertise of FLEXCOM's members.

TEXT OF PROPOSAL

SECTION 1. Section 4326 is added to the Family Code, to read:

[Inserted text begins] 4326. (a) Except as provided in subdivision (d), in a proceeding in which a spousal support order exists or in which the court has retained jurisdiction over a spousal support order, if a companion child support order is in effect, the termination of child support pursuant to subdivision (a) of Section 3901 constitutes a change of circumstances that may be the basis for a request by either party for modification of spousal support.

(b) A motion to modify spousal support based on the change of circumstances described in subdivision (a) shall be filed by either party no later than six months from the date the child support order terminates.

(c) If a motion to modify a spousal support order pursuant to subdivision (a) is filed, either party may request the appointment of a vocational training counselor pursuant to Section 4331.

(d) Notwithstanding subdivision (a), termination of the child support order does not constitute a change of circumstances under subdivision (a) in any of the following circumstances:

(1) The child and spousal support orders are the result of a marital settlement agreement or judgment and the marital settlement agreement or judgment contains a provision regarding what is to occur when the child support order terminates.

(2) The child and spousal support orders are the result of a marital settlement agreement or judgment, which provides that the spousal support order is nonmodifiable or that spousal support is waived and the court's jurisdiction over spousal support has been terminated.

(3) The court's jurisdiction over spousal support was previously terminated. [Inserted text ends]