

AMENDED IN ASSEMBLY JANUARY 6, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 414

Introduced by Assembly Member Fox

February 15, 2013

An act to amend ~~Sections 3047 and 3104 of the Family Code, relating to visitation rights~~ *Section 4326 of the Family Code, relating to spousal support.*

LEGISLATIVE COUNSEL'S DIGEST

AB 414, as amended, Fox. ~~Visitation rights: grandparent rights. Spousal support: modifications.~~

Existing law, until January 1, 2014, provides that 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 constitutes a change of circumstances that may be the basis for a request for modification of spousal support, except as specified. Existing law requires that a motion to modify spousal support based on that change of circumstances be filed within 6 months of the termination of the child support order.

This bill would extend the operation of these provisions indefinitely.

~~Existing law provides that a grandparent may petition the court for visitation rights, and a relocating party may petition the court for visitation rights on behalf of a grandparent when the party is relocating because of his/her military duty. The court may grant visitation if the court finds that the grandparent and grandchild have a preexisting relationship that has created such a bond that granting the grandparent visitation is in the best interests of the child, the court balances the interest of the child in having visitation with the grandparent against~~

~~the parent's right to exercise his or her parental authority, and, in the case of a party relocating because of his or her military duty, the court finds that visitation will facilitate the child's contact with the relocating party, subject to specified exceptions.~~

~~This bill would delete the requirement that a court find that there was a preexisting relationship between the grandparent and the grandchild before granting the grandparent visitation rights.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4326 of the Family Code is amended to
2 read:

3 4326. (a) Except as provided in subdivision (d), in a proceeding
4 in which a spousal support order exists or in which the court has
5 retained jurisdiction over a spousal support order, if a companion
6 child support order is in effect, the termination of child support
7 pursuant to subdivision (a) of Section 3901 constitutes a change
8 of circumstances that may be the basis for a request by either party
9 for modification of spousal support.

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

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

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

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

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

1 (3) The court's jurisdiction over spousal support was previously
2 terminated.

3 ~~(c) This section shall remain in effect only until January 1, 2014,~~
4 ~~and as of that date is repealed, unless a later enacted statute, that~~
5 ~~is enacted before January 1, 2014, deletes or extends that date.~~

6 SECTION 1. ~~Section 3047 of the Family Code is amended to~~
7 ~~read:~~

8 ~~3047. (a) A party's absence, relocation, or failure to comply~~
9 ~~with custody and visitation orders shall not, by itself, be sufficient~~
10 ~~to justify a modification of a custody or visitation order if the~~
11 ~~reason for the absence, relocation, or failure to comply is the party's~~
12 ~~activation to military duty or temporary duty, mobilization in~~
13 ~~support of combat or other military operation, or military~~
14 ~~deployment out of state.~~

15 ~~(b) (1) If a party with sole or joint physical custody or visitation~~
16 ~~receives temporary duty, deployment, or mobilization orders from~~
17 ~~the military that require the party to move a substantial distance~~
18 ~~from his or her residence or otherwise has a material effect on the~~
19 ~~ability of the party to exercise custody or visitation rights, any~~
20 ~~necessary modification of the existing custody order shall be~~
21 ~~deemed a temporary custody order made without prejudice, which~~
22 ~~shall be subject to review and reconsideration upon the return of~~
23 ~~the party from military deployment, mobilization, or temporary~~
24 ~~duty.~~

25 ~~(2) If the temporary order is reviewed upon return of the party~~
26 ~~from military deployment, mobilization, or temporary duty, there~~
27 ~~shall be a presumption that the custody order shall revert to the~~
28 ~~order that was in place before the modification, unless the court~~
29 ~~determines that it is not in the best interest of the child. The court~~
30 ~~shall not, as part of its review of the temporary order upon the~~
31 ~~return of the deploying party, order a child custody evaluation~~
32 ~~under Section 3111 of this code or Section 730 of the Evidence~~
33 ~~Code, unless the party opposing reversion of the order makes a~~
34 ~~prima facie showing that reversion is not in the best interest of the~~
35 ~~child.~~

36 ~~(3) (A) If the court makes a temporary custody order, it shall~~
37 ~~consider any appropriate orders to ensure that the relocating party~~
38 ~~can maintain frequent and continuing contact with the child by~~
39 ~~means that are reasonably available.~~

1 ~~(B) Upon a motion by the relocating party, the court may grant~~
2 ~~reasonable visitation rights to a stepparent, grandparent, or other~~
3 ~~family member if the court does all of the following:~~

4 ~~(i) Finds, except when the family member is the grandparent of~~
5 ~~the minor child, that there is a preexisting relationship between~~
6 ~~the family member and the child that has engendered a bond such~~
7 ~~that visitation is in the best interest of the child. In the case of a~~
8 ~~grandparent of the minor child, finds that visitation with the~~
9 ~~grandparent is in the best interest of the child.~~

10 ~~(ii) Finds that the visitation will facilitate the child's contact~~
11 ~~with the relocating party.~~

12 ~~(iii) Balances the interest of the child in having visitation with~~
13 ~~the family member against the right of the parents to exercise~~
14 ~~parental authority.~~

15 ~~(C) Nothing in this paragraph shall increase the authority of the~~
16 ~~persons described in subparagraph (B) to seek visitation orders~~
17 ~~independently.~~

18 ~~(D) The granting of visitation rights to a nonparent pursuant to~~
19 ~~subparagraph (B) shall not impact the calculation of child support.~~

20 ~~(c) If a party's deployment, mobilization, or temporary duty~~
21 ~~will have a material effect on his or her ability, or anticipated~~
22 ~~ability, to appear in person at a regularly scheduled hearing, the~~
23 ~~court shall do either of the following:~~

24 ~~(1) Upon motion of the party, hold an expedited hearing to~~
25 ~~determine custody and visitation issues prior to the departure of~~
26 ~~the party.~~

27 ~~(2) Upon motion of the party, allow the party to present~~
28 ~~testimony and evidence and participate in court-ordered child~~
29 ~~custody mediation by electronic means, including, but not limited~~
30 ~~to, telephone, video teleconferencing, or the Internet, to the extent~~
31 ~~that this technology is reasonably available to the court and protects~~
32 ~~the due process rights of all parties.~~

33 ~~(d) A relocation by a nondeploying parent during a period of a~~
34 ~~deployed parent's absence while a temporary modification order~~
35 ~~for a parenting plan is in effect shall not, by itself, terminate the~~
36 ~~exclusive and continuing jurisdiction of the court for purposes of~~
37 ~~later determining custody or parenting time under this chapter.~~

38 ~~(e) When a court of this state has issued a custody or visitation~~
39 ~~order, the absence of a child from this state during the deployment~~
40 ~~of a parent shall be considered a "temporary absence" for purposes~~

1 of the Uniform Child Custody Jurisdiction and Enforcement Act
2 (Part 3 (commencing with Section 3400)), and the court shall retain
3 exclusive continuing jurisdiction under Section 3422.

4 (f) ~~The deployment of a parent shall not be used as a basis to~~
5 ~~assert inconvenience of the forum under Section 3247.~~

6 (g) ~~For purposes of this section, the following terms have the~~
7 ~~following meanings:~~

8 (1) ~~“Deployment” means the temporary transfer of a member~~
9 ~~of the Armed Forces in active-duty status in support of combat or~~
10 ~~some other military operation.~~

11 (2) ~~“Mobilization” means the transfer of a member of the~~
12 ~~National Guard or Military Reserve to extended active-duty status;~~
13 ~~but does not include National Guard or Military Reserve annual~~
14 ~~training.~~

15 (3) ~~“Temporary duty” means the transfer of a service member~~
16 ~~from one military base to a different location, usually another base,~~
17 ~~for a limited period of time to accomplish training or to assist in~~
18 ~~the performance of a noncombat mission.~~

19 (h) ~~It is the intent of the Legislature that this section provide a~~
20 ~~fair, efficient, and expeditious process to resolve child custody~~
21 ~~and visitation issues when a party receives temporary duty;~~
22 ~~deployment, or mobilization orders from the military, as well as~~
23 ~~at the time that the party returns from service and files a motion~~
24 ~~to revert back to the custody order in place before the deployment.~~
25 ~~The Legislature intends that family courts shall, to the extent~~
26 ~~feasible within existing resources and court practices, prioritize~~
27 ~~the calendaring of these cases, avoid unnecessary delay or~~
28 ~~continuances, and ensure that parties who serve in the military are~~
29 ~~not penalized for their service by a delay in appropriate access to~~
30 ~~their children.~~

31 SEC. 2. ~~Section 3104 of the Family Code is amended to read:~~

32 3104. (a) ~~On petition to the court by a grandparent of a minor~~
33 ~~child, the court may grant reasonable visitation rights to the~~
34 ~~grandparent if the court does both of the following:~~

35 (1) ~~Finds that visitation with the grandparent is in the best~~
36 ~~interest of the child.~~

37 (2) ~~Balances the interest of the child in having visitation with~~
38 ~~the grandparent against the right of the parents to exercise their~~
39 ~~parental authority.~~

1 ~~(b) A petition for visitation under this section may not be filed~~
2 ~~while the natural or adoptive parents are married, unless one or~~
3 ~~more of the following circumstances exist:~~

4 ~~(1) The parents are currently living separately and apart on a~~
5 ~~permanent or indefinite basis.~~

6 ~~(2) One of the parents has been absent for more than one month~~
7 ~~without the other spouse knowing the whereabouts of the absent~~
8 ~~spouse.~~

9 ~~(3) One of the parents joins in the petition with the grandparents.~~

10 ~~(4) The child is not residing with either parent.~~

11 ~~(5) The child has been adopted by a stepparent.~~

12 ~~At any time that a change of circumstances occurs such that none~~
13 ~~of these circumstances exist, the parent or parents may move the~~
14 ~~court to terminate grandparental visitation and the court shall grant~~
15 ~~the termination.~~

16 ~~(c) The petitioner shall give notice of the petition to each of the~~
17 ~~parents of the child, any stepparent, and any person who has~~
18 ~~physical custody of the child, by personal service pursuant to~~
19 ~~Section 415.10 of the Code of Civil Procedure.~~

20 ~~(d) If a protective order as defined in Section 6218 has been~~
21 ~~directed to the grandparent during the pendency of the proceeding,~~
22 ~~the court shall consider whether the best interest of the child~~
23 ~~requires that any visitation by that grandparent should be denied.~~

24 ~~(e) There is a rebuttable presumption that the visitation of a~~
25 ~~grandparent is not in the best interest of a minor child if the natural~~
26 ~~or adoptive parents agree that the grandparent should not be granted~~
27 ~~visitation rights.~~

28 ~~(f) There is a rebuttable presumption affecting the burden of~~
29 ~~proof that the visitation of a grandparent is not in the best interest~~
30 ~~of a minor child if the parent who has been awarded sole legal and~~
31 ~~physical custody of the child in another proceeding, or the parent~~
32 ~~with whom the child resides if there is currently no operative~~
33 ~~custody order objects to visitation by the grandparent.~~

34 ~~(g) Visitation rights may not be ordered under this section if~~
35 ~~that would conflict with a right of custody or visitation of a birth~~
36 ~~parent who is not a party to the proceeding.~~

37 ~~(h) Visitation ordered pursuant to this section shall not create~~
38 ~~a basis for or against a change of residence of the child, but shall~~
39 ~~be one of the factors for the court to consider in ordering a change~~
40 ~~of residence.~~

1 ~~(i) When a court orders grandparental visitation pursuant to this~~
2 ~~section, the court in its discretion may, based upon the relevant~~
3 ~~circumstances of the case:~~

4 ~~(1) Allocate the percentage of grandparental visitation between~~
5 ~~the parents for purposes of the calculation of child support pursuant~~
6 ~~to the statewide uniform guideline (Article 2 (commencing with~~
7 ~~Section 4050) of Chapter 2 of Part 2 of Division 9):~~

8 ~~(2) Notwithstanding Sections 3930 and 3951, order a parent or~~
9 ~~grandparent to pay to the other, an amount for the support of the~~
10 ~~child or grandchild. For purposes of this paragraph, "support"~~
11 ~~means costs related to visitation such as any of the following:~~

12 ~~(A) Transportation;~~

13 ~~(B) Provision of basic expenses for the child or grandchild, such~~
14 ~~as medical expenses, day care costs, and other necessities.~~

15 ~~(j) As used in this section, "birth parent" means "birth parent"~~
16 ~~as defined in Section 8512.~~

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