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SB-273 Marriage and domestic partnership: minors. (2017-2018)

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Senate Bill No. 273

CHAPTER 660

An act to amend Sections 297.1, 302, 303, 304, 423, 1501, 2210, and 7002 of, and to add Section 298.8 to, the Family Code, and to add Sections 102233 and 102356 to the Health and Safety Code, relating to marriage and domestic partnership.

[Approved by Governor September 21, 2018. Filed with Secretary of State September 21, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 273, Hill. Marriage and domestic partnership: minors.

Existing law authorizes an unmarried person who is under 18 years of age to marry upon obtaining a court order granting permission and the written consent of at least one of the parents or the guardian of each underage party to the marriage, as specified. Existing law requires the court, if it considers it necessary, as part of the court order granting permission to marry, to require the parties to the prospective marriage of a minor to participate in premarital counseling, as specified.

Existing law provides that 2 unmarried, unrelated adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring may establish a domestic partnership by filing a declaration with the Secretary of State if certain requirements are met. Existing law provides that a person under 18 years of age who, together with the person with whom he or she proposes to establish a domestic partnership, meets the requirements for a domestic partnership other than the requirement of being at least 18 years of age, is capable of consenting to and establishing a domestic partnership upon obtaining a court order granting permission to the underage person or persons to establish a domestic partnership. Under existing law, registered domestic partners have the same rights, protections, and benefits as spouses.

This bill would require the court, in determining whether to issue an order granting permission for a person under 18 years of age to marry or establish a domestic partnership, to require Family Court Services to separately interview the parties intending to marry or establish a domestic partnership and at least one of the parents or the guardian, as specified, and to require Family Court Services to prepare and submit to the court a written report containing, among other things, recommendations for either granting or denying the parties permission to marry or establish a domestic partnership. If Family Court Services knows or reasonably suspects that either party is a victim of child abuse or neglect, the bill would require Family Court Services to submit a report of the known or suspected child abuse or neglect to the county child protective services agency. The bill would also require the court to consider whether there is evidence of coercion or undue influence on the minor. The bill would require the court to separately interview each of the parties, as specified, prior to making a final determination regarding the court order.

If the court issues an order granting the parties permission to marry or establish a domestic partnership, and if one or both of the parties are 17 years of age or younger, the bill would make the parties eligible to request a marriage license or to file a Declaration of Domestic Partnership no earlier than 30 days from the time the court order was issued.

The bill would exempt from the above-described requirements a minor who is 17 years of age and who has achieved a high school diploma or a high school equivalency certificate. The bill would exempt from the above-described 30-day waiting requirement a minor who is 16 or 17 years of age and who is pregnant or whose prospective spouse or domestic partner is pregnant.

The bill would require that a minor granted permission to marry or establish a domestic partnership be provided with specified information, including the procedures for legal separation or dissolution of marriage or termination of a domestic partnership, and the rights of a minor to enter into contracts.

The bill would require the court, if it considers it necessary, as part of the court order granting permission to establish a domestic partnership, to require the parties to the domestic partnership of a minor to participate in counseling before the domestic partnership is established, as specified.

Existing law requires the person solemnizing the marriage to return the marriage license, as specified, to the county recorder of the county in which the license was issued within 10 days after the ceremony.

This bill would also require the person solemnizing the marriage to include with the marriage license a copy of the court order granting permission to marry, if one or both of the parties to the marriage were minors at the time of solemnization of the marriage.

Existing law requires the local registrar of marriages, who is the county recorder, to transmit to the State Registrar of Vital Statistics all marriage certificates accepted for registration, as specified.

This bill would also require the local registrar to submit to the State Registrar, at least annually, the total number of marriage certificates and the age and gender of each party, as specified, concerning marriage certificates in which one or both of the parties were minors at the time of solemnization of the marriage. The bill would authorize the local registrar to dispose of this information no earlier than 2 years after the local registrar submits the information to the State Registrar, and to immediately dispose of the copy of the court order after that submission. The bill would authorize the State Department of Public Health to implement these provisions through an all-county letter or similar instruction from the State Registrar without taking regulatory action. By creating new duties for county officials relating to certain marriage certificates, the bill would impose a state-mandated local program.

The bill would require the State Registrar and the Secretary of State to each create a document, no later than March 1, 2020, with annual updates, disaggregated by county, containing only the total number of marriage certificates or registered domestic partnerships, respectively, and the age and gender of each party, concerning marriage certificates or registered domestic partnerships in which one or both of the parties were minors, as specified. The bill would require the State Registrar and the Secretary of State to make the document available to the public upon request. The bill would require, only for purposes of completing the document, the documentation of the gender of each party, if provided, on the above-described court order granting permission to marry or establish a domestic partnership. The bill would also require the documentation of the date of birth of each party on the court order.

This bill would also make conforming changes to related provisions.

Existing law requires a certified copy of a court order granting a minor permission to establish a domestic partnership to be filed with the Secretary of State with the Declaration of Domestic Partnership.

This bill would authorize the Secretary of State to dispose of a certified copy of a court order immediately after the Secretary of State uses the court order to create or update the document reflecting the total number of domestic partnerships and the age and gender of the parties.

Existing law, the Emancipation of Minors Law, provides that a minor is emancipated if he or she meets one of certain conditions, including if he or she has entered into a valid marriage. Under existing law, an emancipated minor is generally considered to be an adult, as specified.

This bill would make a minor emancipated if he or she has established a domestic partnership.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 297.1 of the Family Code is amended to read:

297.1. (a) A person under 18 years of age who, together with the person with whom he or she proposes to establish a domestic partnership, otherwise meets the requirements for a domestic partnership other than the requirement of being at least 18 years of age, may establish a domestic partnership upon obtaining a court order granting permission to the underage person or persons to establish a domestic partnership.

(b) (1) The court order and written consent of the parents of each person under 18 years of age or of one of the parents or the guardian of each person under 18 years of age, except as provided in paragraph (2), shall be filed with the clerk of the court, and a certified copy of the order shall be filed with the Secretary of State with the Declaration of Domestic Partnership.

(2) If it appears to the satisfaction of the court by application of a person under 18 years of age that the person requires a written consent to establish a domestic partnership and that the minor has no parent or guardian, or has no parent or guardian capable of consenting, the court may make an order consenting to establishing the domestic partnership. The order shall be filed with the clerk of the court and a certified copy of the order shall be filed with the Secretary of State with the Declaration of Domestic Partnership.

(3) Notwithstanding any other law, immediately after the Secretary of State creates or updates the document described in Section 298.8 using the information required for the document and that is contained in a certified copy of a court order filed with the Secretary of State with the Declaration of Domestic Partnership pursuant to this subdivision, the Secretary of State may dispose of the certified copy of the court order.

(c) In determining whether to issue a court order granting permission to establish a domestic partnership, the court shall do all of the following:

(1) Require Family Court Services to separately interview the parties intending to establish a domestic partnership and, if applicable, at least one of the parents or the guardian of each party who is a minor. If more than one parent or guardian is interviewed, the parents or guardians shall be interviewed separately.

(2) Require Family Court Services to prepare and submit to the court a written report, containing any finding of potential force, threat, persuasion, fraud, coercion, or duress by either of the parties or their family members relating to the intended domestic partnership. The report shall also contain recommendations of Family Court Services for either granting or denying the parties permission to establish a domestic partnership. If Family Court Services knows or reasonably suspects that either party is a victim of child abuse or neglect, Family Court Services shall submit a report of the known or suspected child abuse or neglect to the county child protective services agency.

(3) After receiving the report of the findings and recommendations of Family Court Services, as described in paragraph (2), separately interview in camera each of the parties prior to making a final determination regarding the court order.

(4) Consider whether there is evidence of coercion or undue influence on the minor.

(d) If the court issues an order granting the parties permission to establish a domestic partnership, and if one or both of the parties are 17 years of age or younger, the parties shall be eligible to file a Declaration of Domestic Partnership with the Secretary of State no earlier than 30 days from the time the court order was issued.

(e) As part of the court order granting permission to establish a domestic partnership, the court shall, if it considers it necessary, require the parties to the prospective domestic partnership of a minor to participate, before the domestic partnership is established, in counseling concerning social, economic, and personal responsibilities incident to the domestic partnership. The parties shall not be required to confer with counselors provided by religious organizations of any denomination. In determining whether to order the parties to participate in the counseling, the court shall consider, among other factors, the ability of the parties to pay for the counseling. The court may impose a reasonable fee to cover the cost of any counseling provided by the county or the court. The fees shall be used exclusively to cover the cost of the counseling services authorized by this section.

(f) (1) Only for purposes of completing the document described in Section 298.8, and not for purposes of making a determination regarding the court order, the gender of each party intending to establish a domestic partnership, if provided, shall be documented on the court order granting permission to establish the domestic partnership.

(2) The date of birth of each party intending to establish a domestic partnership shall also be documented on the court order granting permission to establish the domestic partnership.

(g) Upon issuance of the order granting permission to establish a domestic partnership, the minor shall be provided with the following information:

(1) The rights and responsibilities of an emancipated minor, including, but not limited to, the effects of emancipation as described in Sections 7050 to 7052, inclusive.

(2) (A) The circumstances under which a domestic partnership may be determined by a court to be void or voidable and adjudged a nullity and the procedure for obtaining that judicial determination.

(B) The procedures for termination of a domestic partnership.

(3) Telephone numbers for the National Domestic Violence Hotline and the National Sexual Assault Hotline.

(4) The conditions under which an unemancipated minor may leave home and seek to remain in a shelter or otherwise live separately from his or her parent or guardian, and whether the consent or acquiescence of a parent or guardian is required to remain away from the home of the parent or guardian, the rights of an unemancipated minor to apply for a protective or restraining order to prevent abuse, and the rights of a minor to enter into contracts, including contracts for legal services and mental health counseling.

(h) (1) Subdivisions (c) and (d) shall not apply to a minor who is 17 years of age and who has achieved a high school diploma or a high school equivalency certificate.

(2) Subdivision (d) shall not apply to a minor who is 16 or 17 years of age and who is pregnant or whose prospective domestic partner is pregnant.

SEC. 2. Section 298.8 is added to the Family Code, to read:

298.8. (a) The Secretary of State shall create a document no later than March 1, 2020, with annual updates no later than March 1 of each year thereafter, disaggregated by county, containing only the following information concerning domestic partnerships that were registered during the preceding calendar year and in which one or both of the parties were minors at the time the domestic partnership was established:

(1) The total number of those registered domestic partnerships.

(2) Itemized for each of those registered domestic partnerships, the age of each party at the time the domestic partnership was established.

(3) Itemized for each of those registered domestic partnerships, the gender of each party as documented on the court order pursuant to Section 297.1, unless the court order does not include the gender.

(b) The document shall not contain the names, addresses, or other personal identifying information of parties to a registered domestic partnership, or any information identifying a registered domestic partnership. The document shall not contain a registered domestic partnership or a copy of the court order described in Section 297.1.

(c) The Secretary of State shall make the document available to the public upon request.

SEC. 3. Section 302 of the Family Code is amended to read:

302. (a) An unmarried person under 18 years of age may be issued a marriage license upon obtaining a court order granting permission to the underage person or persons to marry, in accordance with the requirements described in Section 304.

(b) The court order and written consent of at least one of the parents or the guardian of each underage person shall be filed with the clerk of the court, and a certified copy of the order shall be presented to the county clerk at the time the marriage license is issued.

SEC. 4. Section 303 of the Family Code is amended to read:

303. If it appears to the satisfaction of the court by application of a minor that the minor requires a written consent to marry and that the minor has no parent or has no parent capable of consenting, the court may make an order consenting to the issuance of a marriage license and granting permission to the minor to marry, in accordance with the requirements described in Section 304. The order shall be filed with the clerk of the court and a certified copy of the order shall be presented to the county clerk at the time the marriage license is issued.

SEC. 5. Section 304 of the Family Code is amended to read:

304. (a) In determining whether to issue a court order granting permission to marry pursuant to Section 302 or 303, the court shall do all of the following:

(1) Require Family Court Services to separately interview the parties intending to marry and, if applicable, at least one of the parents or the guardian of each party who is a minor. If more than one parent or guardian is interviewed, the parents or guardians shall be interviewed separately.

(2) Require Family Court Services to prepare and submit to the court a written report, containing any finding of potential force, threat, persuasion, fraud, coercion, or duress by either of the parties or their family members relating to the intended marriage. The report shall also contain recommendations of Family Court Services for either granting or denying the parties permission to marry. If Family Court Services knows or reasonably suspects that either party is a victim of child abuse or neglect, Family Court Services shall submit a report of the known or suspected child abuse or neglect to the county child protective services agency.

(3) After receiving the report of the findings and recommendations of Family Court Services, as described in paragraph (2), separately interview in camera each of the parties prior to making a final determination regarding the court order.

(4) Consider whether there is evidence of coercion or undue influence on the minor.

(b) If the court issues an order granting the parties permission to marry pursuant to Section 302 or 303, and if one or both of the parties are 17 years of age or younger, the parties shall be eligible to request a marriage license no earlier than 30 days from the time the court order was issued.

(c) As part of the court order granting permission to marry under Section 302 or 303, the court shall, if it considers it necessary, require the parties to the prospective marriage of a minor to participate in premarital counseling concerning social, economic, and personal responsibilities incident to marriage. The parties shall not be required to confer with counselors provided by religious organizations of any denomination. In determining whether to order the parties to participate in the premarital counseling, the court shall consider, among other factors, the ability of the parties to pay for the counseling. The court may impose a reasonable fee to cover the cost of any premarital counseling provided by the county or the court. The fees shall be used exclusively to cover the cost of the counseling services authorized by this section.

(d) (1) Only for purposes of completing the document described in Section 102233 of the Health and Safety Code, and not for purposes of making a determination regarding the court order, the gender of each party intending to marry, if provided, shall be documented on the court order granting permission to marry.

(2) The date of birth of each party intending to marry shall also be documented on the court order granting permission to marry.

(3) For purposes of the requirements on the person solemnizing the marriage under subdivision (b) of Section 423, and the requirements on the local registrar under subdivision (a) of Section 102356 of the Health and Safety Code, the court shall provide parties who are granted permission to marry with a copy of the court order granting permission to marry.

(e) Upon issuance of the order granting permission to marry, the minor shall be provided with the following information:

(1) The rights and responsibilities of an emancipated minor, including, but not limited to, the effects of emancipation as described in Sections 7050 to 7052, inclusive.

(2) (A) The circumstances under which a marriage may be determined by a court to be void or voidable and adjudged a nullity and the procedure for obtaining that judicial determination.

(B) The procedures for legal separation or dissolution of marriage.

(3) Telephone numbers for the National Domestic Violence Hotline and the National Sexual Assault Hotline.

(4) The conditions under which an unemancipated minor may leave home and seek to remain in a shelter or otherwise live separately from his or her parent or guardian, and whether the consent or acquiescence of a parent or guardian is required to remain away from the home of the parent or guardian, the rights of an unemancipated minor to apply for a protective or restraining order to prevent abuse, and the rights of a minor to enter into contracts, including contracts for legal services and mental health counseling.

(f) (1) Subdivisions (a) and (b) shall not apply to a minor who is 17 years of age and who has achieved a high school diploma or a high school equivalency certificate.

(2) Subdivision (b) shall not apply to a minor who is 16 or 17 years of age and who is pregnant or whose prospective spouse is pregnant.

SEC. 6. Section 423 of the Family Code is amended to read:

423. (a) The person solemnizing the marriage shall return the marriage license, endorsed as required in Section 422, to the county recorder of the county in which the license was issued within 10 days after the ceremony.

(b) For purposes of Section 102356 of the Health and Safety Code, the person solemnizing the marriage shall include with the marriage license described in subdivision (a) a copy of the court order granting permission to marry described in Section 304, if one or both of the parties to the marriage were minors at the time of solemnization of the marriage.

SEC. 7. Section 1501 of the Family Code is amended to read:

1501. A minor may make a valid premarital agreement or other marital property agreement if the minor is emancipated, is otherwise capable of contracting marriage pursuant to Section 302 or 303, or has entered or is entering a marriage that is valid in the jurisdiction where the marriage is solemnized.

SEC. 8. Section 2210 of the Family Code is amended to read:

2210. A marriage is voidable and may be adjudged a nullity if any of the following conditions existed at the time of the marriage:

(a) The party who commences the proceeding or on whose behalf the proceeding is commenced was under 18 years of age, unless the party entered into the marriage pursuant to Section 302 or 303.

(b) The spouse of either party was living and the marriage with that spouse was then in force and that spouse (1) was absent and not known to the party commencing the proceeding to be living for a period of five successive years immediately preceding the subsequent marriage for which the judgment of nullity is sought or (2) was generally reputed or believed by the party commencing the proceeding to be dead at the time the subsequent marriage was contracted.

(c) Either party was of unsound mind, unless the party of unsound mind, after coming to reason, freely cohabited with the other as his or her spouse.

(d) The consent of either party was obtained by fraud, unless the party whose consent was obtained by fraud afterwards, with full knowledge of the facts constituting the fraud, freely cohabited with the other as his or her spouse.

(e) The consent of either party was obtained by force, unless the party whose consent was obtained by force afterwards freely cohabited with the other as his or her spouse.

(f) Either party was, at the time of marriage, physically incapable of entering into the marriage state, and that incapacity continues, and appears to be incurable.

SEC. 9. Section 7002 of the Family Code is amended to read:

7002. A person under the age of 18 years is an emancipated minor if any of the following conditions is satisfied:

(a) The person has entered into a valid marriage, or has established a valid domestic partnership, regardless of whether the marriage or the domestic partnership has been dissolved.

(b) The person is on active duty with the Armed Forces of the United States.

(c) The person has received a declaration of emancipation pursuant to Section 7122.

SEC. 10. Section 102233 is added to the Health and Safety Code, to read:

102233. (a) The State Registrar shall create a document no later than March 1, 2020, with annual updates no later than March 1 of each year thereafter, disaggregated by county, containing only the information received by a local registrar during the preceding calendar year pursuant to subdivision (a) of Section 102356, concerning marriage certificates in which one or both of the parties were minors at the time of solemnization of the marriage.

(b) The document shall not contain the names, addresses, or other personal identifying information of parties to a marriage certificate, or any information identifying a marriage certificate. The document shall not contain a marriage certificate or a copy of the court order described in Section 304 of the Family Code.

(c) The State Registrar shall make the document available to the public upon request.

SEC. 11. Section 102356 is added to the Health and Safety Code, to read:

102356. (a) For purposes of Section 102233, the local registrar of marriages shall submit to the State Registrar, at least annually, all of the following information concerning marriage certificates that are accepted for registration by him or her during the same calendar year and in which one or both of the parties were minors at the time of solemnization of the marriage:

(1) The total number of those marriage certificates.

(2) Itemized for each of those marriage certificates, the age of each party at the time of solemnization of the marriage.

(3) Itemized for each of those marriage certificates, the gender of each party as documented on the court order pursuant to Section 304 of the Family Code, unless the court order does not include the gender.

(b) The information submitted to the State Registrar pursuant to subdivision (a) shall not contain the names, addresses, or other personal identifying information of parties to a marriage certificate, or any information identifying a marriage certificate. The information shall not contain a marriage certificate or a copy of the court order described in Section 304 of the Family Code.

(c) (1) The local registrar of marriages shall not submit any information described in paragraphs (1) to (3), inclusive, of subdivision (a) if no marriage certificate described in subdivision (a) is accepted for registration by him or her during the same calendar year.

(2) For any marriage certificate described in subdivision (a), the local registrar of marriages is not required to submit any information described in paragraphs (1) to (3), inclusive, of subdivision (a) if the local registrar of marriages did not receive a copy of the court order from the person solemnizing the marriage pursuant to Section 423 of the Family Code. The local registrar of marriages may elect to submit any of that information, if otherwise available, even if he or she did not receive the copy of the court order.

(d) (1) Notwithstanding any other law, no earlier than two years after the local registrar of marriages submits the information described in subdivision (a) to the State Registrar, the local registrar may dispose of that information.

(2) Notwithstanding any other law, immediately after the local registrar of marriages submits the information described in subdivision (a) to the State Registrar, the local registrar may dispose of the copy of the court order received from the person solemnizing the marriage pursuant to Section 423 of the Family Code.

(e) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the State Department of Public Health may implement this section through an all-county letter or similar instruction from the State Registrar without taking regulatory action.

SEC. 12. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.