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SB-30 Domestic partnership. (2019-2020)

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Senate Bill No. 30

CHAPTER 135

An act to amend Sections 297, 297.1, 298, 298.5, 298.6, 298.7, and 299.2 of, and to repeal Section 299.3 of, the Family Code, relating to domestic partnership.

[Approved by Governor July 30, 2019. Filed with Secretary of State July 30, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 30, Wiener. Domestic partnership.

Existing law defines domestic partnership as two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring. Existing law specifies requirements for entering into a domestic partnership, including that the domestic partners be either of the same sex or of the opposite sex and over 62 years of age.

This bill would remove the requirement that persons be of the same sex or of the opposite sex and over 62 years of age in order to enter into a domestic partnership.

Existing law imposes a \$23 charge on persons filing domestic partner registrations to fund the development and support of a lesbian, gay, bisexual, and transgender curriculum for training workshops on domestic violence and for the support of a grant program to promote healthy nonviolent relationships in the lesbian, gay, bisexual, and transgender community. Existing law exempts from this charge persons of opposite sexes filing a domestic partnership registration when one or both of the persons meet the eligibility criteria for federal old-age insurance benefits.

This bill would expand the exemption from paying the charge to all persons filing a domestic partner registration when one or both of the domestic partners is 62 years of age or older.

Existing law requires the Secretary of State to prepare forms entitled "Declaration of Domestic Partnership" and "Notice of Termination of Domestic Partnership" and to distribute those forms to each county clerk and make them available to the public at the office of the Secretary of State and each county clerk.

This bill would delete the requirement that the forms be available at the office of each county clerk and, instead, require that the Secretary of State make the forms available at the office of the Secretary of State or on the Secretary of State's internet website. The bill would require the instructions to the "Declaration of Domestic Partnership" form and the internet website to include an explanation that registered domestic partners have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties under law as are granted to and imposed upon spouses and an explanation of how to terminate a registered domestic partnership.

This bill would also make various technical and conforming changes.

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

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

SECTION 1. Section 297 of the Family Code is amended to read:

297. (a) Domestic partners are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring.

(b) A domestic partnership shall be established in California when both persons file a Declaration of Domestic Partnership with the Secretary of State pursuant to this division, and, at the time of filing, all of the following requirements are met:

(1) Neither person is married to someone else or is a member of another domestic partnership with someone else that has not been terminated, dissolved, or adjudged a nullity.

(2) The two persons are not related by blood in a way that would prevent them from being married to each other in this state.

(3) Both persons are at least 18 years of age, except as provided in Section 297.1.

(4) Both persons are capable of consenting to the domestic partnership.

SEC. 2. 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 other proposed domestic partner, 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 assessment 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 assessments 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 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 Chapter 2 (commencing with Section 7050) of Part 6 of Division 11.

(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 the minor's 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) do 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) does 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. 3. Section 298 of the Family Code is amended to read:

298. (a) (1) The Secretary of State shall prepare forms entitled "Declaration of Domestic Partnership" and "Notice of Termination of Domestic Partnership" to meet the requirements of this division. These forms shall require the signature and seal of an acknowledgment by a notary public to be binding and valid.

(2) The instructions on the "Declaration of Domestic Partnership" form shall include both of the following:

(A) An explanation that registered domestic partners have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties under law as are granted to and imposed upon spouses.

(B) An explanation of how to terminate a registered domestic partnership.

(3) When funding allows, the Secretary of State shall include on the form notice that a lesbian, gay, bisexual, and transgender specific domestic abuse brochure is available upon request.

(b) (1) These forms shall be available to the public at the office of the Secretary of State or on the Secretary of State's internet website. The Secretary of State's internet website shall include all of the information required in paragraph (2) of subdivision (a).

(2) The Secretary of State shall, by regulation, establish fees for the actual costs of processing each of these forms and shall charge these fees to persons filing the forms.

(3) There is hereby established a fee of twenty-three dollars (\$23) to be charged in addition to the existing fees established by regulation to persons filing domestic partner registrations pursuant to Section 297 for development and support of a lesbian, gay, bisexual, and transgender curriculum for training workshops on domestic violence, conducted pursuant to Section 13823.15 of the Penal Code, and for the support of a grant program to promote healthy nonviolent relationships in the lesbian,

gay, bisexual, and transgender community. This paragraph does not apply to persons filing a domestic partner registration when one or both of the domestic partners are 62 years of age or older.

(4) The fee established by paragraph (3) shall be deposited in the Equality in Prevention and Services for Domestic Abuse Fund, which is hereby established. The fund shall be administered by the Office of Emergency Services, and expenditures from the fund shall be used to support the purposes of paragraph (3).

(c) The Declaration of Domestic Partnership shall require each person who wants to become a domestic partner to (1) state that the person meets the requirements of Section 297 at the time the form is signed, (2) provide a mailing address, (3) state that the person consents to the jurisdiction of the Superior Courts of California for the purpose of a proceeding to obtain a judgment of dissolution or nullity of the domestic partnership or for legal separation of partners in the domestic partnership, or for any other proceeding related to the partners' rights and obligations, even if one or both partners ceases to be a resident of, or to maintain a domicile in, this state, (4) sign the form with a declaration that representations made therein are true, correct, and contain no material omissions of fact to the best knowledge and belief of the applicant, and (5) have a notary public acknowledge the signature. Both partners' signatures shall be affixed to one Declaration of Domestic Partnership form, which shall then be transmitted to the Secretary of State according to the instructions provided on the form. Filing an intentionally and materially false Declaration of Domestic Partnership shall be punishable as a misdemeanor.

(d) The Declaration of Domestic Partnership form shall contain an optional section for either party or both parties to indicate a change in name pursuant to Section 298.6. The optional section shall require a party indicating a change in name to provide the person's date of birth.

SEC. 4. Section 298.5 of the Family Code is amended to read:

298.5. (a) Two persons desiring to become domestic partners may complete and file a Declaration of Domestic Partnership with the Secretary of State.

(b) The Secretary of State shall register the Declaration of Domestic Partnership in a registry for those partnerships, and shall return a copy of the registered form, a Certificate of Registered Domestic Partnership, and a copy of the brochure that is made available to county clerks and the Secretary of State by the State Department of Public Health pursuant to Section 358 and distributed to individuals receiving a confidential marriage license pursuant to Section 503, to the domestic partners at the mailing address provided by the domestic partners.

(c) A person who has filed a Declaration of Domestic Partnership may not file a new Declaration of Domestic Partnership or enter a civil marriage with someone other than their registered domestic partner unless the most recent domestic partnership has been terminated or a final judgment of dissolution or nullity of the most recent domestic partnership has been entered. This prohibition does not apply if the previous domestic partnership ended because one of the partners died.

(d) When funding allows, the Secretary of State shall print and make available upon request, pursuant to Section 358, a lesbian, gay, bisexual, and transgender specific domestic abuse brochure developed by the State Department of Public Health and made available to the Secretary of State to domestic partners who qualify pursuant to Section 297.

(e) The Certificate of Registered Domestic Partnership shall include the name used by each party before registration of the domestic partnership and the new name, if any, selected by each party upon registration of the domestic partnership.

SEC. 5. Section 298.6 of the Family Code is amended to read:

298.6. (a) Parties to a registered domestic partnership shall not be required to have the same name. Neither party shall be required to change their name. A person's name shall not change upon registration as a domestic partner unless that person elects to change their name pursuant to subdivision (b).

(b) (1) One party or both parties to a registered domestic partnership may elect to change the middle or last names by which that party wishes to be known after registration of the domestic partnership by entering the new name in the space provided on the Declaration of Domestic Partnership form without intent to defraud.

(2) A person may adopt any of the following middle or last names pursuant to paragraph (1):

(A) The current last name of the other domestic partner.

(B) The last name of either domestic partner given at birth.

(C) A name combining into a single last name all or a segment of the current last name or the last name of either domestic partner given at birth.

(D) A hyphenated combination of last names.

(3) (A) An election by a person to change the person's name pursuant to paragraph (1) shall serve as a record of the name change. A certified copy of the Declaration of Domestic Partnership containing the new name, or retaining the former name, shall constitute proof that the use of the new name or retention of the former name is lawful.

(B) A certified copy of a Declaration of Domestic Partnership shall be accepted as identification establishing a true, full name for purposes of Section 12800.7 of the Vehicle Code.

(C) This section does not prohibit the Department of Motor Vehicles from accepting as identification other documents establishing a true, full name for purposes of Section 12800.7 of the Vehicle Code. Those documents may include, without limitation, a certified copy of a document that is substantially equivalent to a Certificate of Registered Domestic Partnership that records either of the following:

(i) A legal union of two persons that was validly formed in another jurisdiction and is recognized as a valid domestic partnership in this state pursuant to Section 299.2.

(ii) A legal union of domestic partners as defined by a local jurisdiction pursuant to Section 299.6.

(D) This section shall be applied in a manner consistent with the requirements of Sections 1653.5 and 12801 of the Vehicle Code.

(4) The adoption of a new name, or the choice not to adopt a new name, by means of a Declaration of Domestic Partnership pursuant to paragraph (1) shall not abrogate the right of either party to adopt a different name through usage at a future date, or to petition the superior court for a change of name pursuant to Title 8 (commencing with Section 1275) of Part 3 of the Code of Civil Procedure.

(c) This section does not abrogate the common law right of a person to change the person's name, or the right of a person to petition the superior court for a change of name pursuant to Title 8 (commencing with Section 1275) of Part 3 of the Code of Civil Procedure.

SEC. 6. Section 298.7 of the Family Code is amended to read:

298.7. The Secretary of State shall establish a process by which two persons, who have been living together as domestic partners and who meet the requirements of paragraphs (1) to (4), inclusive, of subdivision (b) of Section 297, may enter into a confidential domestic partnership. This process shall do all of the following:

(a) Maintain each confidential Declaration of Domestic Partnership as a permanent record that is not open to public inspection except upon order of the court issued upon a showing of good cause.

(b) Authorize the Secretary of State to charge a reasonable fee to offset costs directly connected with maintaining confidentiality of a Declaration of Domestic Partnership.

SEC. 7. Section 299.2 of the Family Code is amended to read:

299.2. A legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership as defined in this part, shall be recognized as a valid domestic partnership in this state regardless of whether it bears the name domestic partnership.

SEC. 8. Section 299.3 of the Family Code is repealed.