

Assembly Bill No. 25

CHAPTER 893

An act to add Section 1714.01 to the Civil Code, to amend Section 377.60 of the Code of Civil Procedure, to amend Sections 297, 299.5, 9000, 9002, 9004, and 9005 of the Family Code, to amend Section 22871.2 of, and to add Section 31780.2 to, the Government Code, to add Section 1374.58 to the Health and Safety Code, to add Section 10121.7 to the Insurance Code, to amend Section 233 of the Labor Code, to amend Sections 1460, 1811, 1812, 1820, 1821, 1822, 1829, 1861, 1863, 1871, 1873, 1874, 1891, 1895, 2111.5, 2212, 2213, 2357, 2359, 2403, 2423, 2430, 2504, 2572, 2580, 2614.5, 2622, 2651, 2653, 2681, 2682, 2687, 2700, 2803, 2805, 6122, 6240, 8461, 8462, and 8465 of, and to add Sections 37, 1813.1, 4716, and 6122.1 to, the Probate Code, to add Section 17021.7 to the Revenue and Taxation Code, and to amend Sections 1030, 1032, 1256, and 2705.1 of the Unemployment Insurance Code, relating to domestic partnerships.

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LEGISLATIVE COUNSEL'S DIGEST

AB 25, Migden. Domestic partnerships.

(1) Existing law establishes a cause of action for negligence, including the negligent infliction of emotional distress and a cause of action for wrongful death.

This bill would make these provisions applicable to a domestic partner as well as a surviving spouse.

(2) Existing law provides for the registration of domestic partnerships, as defined, and limits the legal effect of the registration of the domestic partnership to specified provisions of law. Existing law provides that persons of opposite sexes may not establish a domestic partnership unless they are both over the age of 62 and both persons meet specified eligibility criteria under the Social Security Act.

This bill would expand the legal effect of the registration of a domestic partnership to any provision of law specifically referring to domestic partners. This bill would also expand the class of persons who may establish and register a domestic partnership by providing that persons of opposite sexes may establish a domestic partnership if one or both of them are over the age of 62 and one or both of them meet the specified eligibility criteria under the Social Security Act.

(3) Existing law provides that a stepparent desiring to adopt a child of the stepparent's spouse may for that purpose file a petition in the county in which the petitioner resides and prescribes the procedure for such an adoption.

This bill would authorize the employment of the procedures applicable to stepparent adoption to the adoption by a domestic partner, as defined, of the child of his or her domestic partner.

(4) Under the Public Employees' Medical and Hospital Care Act, state and local employers may elect to offer health care coverage and other benefits to domestic partners of employees and annuitants, as defined; however, a domestic partner is not eligible for continued health coverage upon the death of the employee or annuitant.

This bill would provide that a domestic partner, and a child of a domestic partner, shall be eligible for continued health coverage upon the death of the employee or annuitant if the domestic partner is receiving a beneficiary allowance, as specified. The bill would also prohibit a surviving domestic partner from enrolling additional family members in a health benefits plan.

(5) Under the existing County Employees Retirement Law of 1937, death benefits and survivor's allowances are payable to the surviving spouse or children of a deceased member, as specified.

This bill would provide that in San Mateo County, subject to the approval of the board of supervisors, death benefits and survivor's allowances may be payable to a member's surviving domestic partner, as specified.

(6) Existing law, the Uniform Health Care Decisions Act, allows an individual to give instructions about personal health care decisions or authorize someone else to act as a surrogate to make these decisions.

This bill would authorize a domestic partner to make health care decisions on behalf of a patient in certain circumstances.

(7) Existing law provides for the licensure and regulation of health care service plans administered by the Department of Managed Care. Under existing law, a willful violation of any of these provisions is punishable as either a felony or a misdemeanor. Existing law also provides for the regulation of policies of disability insurance administered by the Insurance Commissioner.

Existing law requires that health care service plans and disability insurers provide coverage for certain benefits and services.

This bill would require a group health care service plan and a policy of disability insurance that provides hospital, medical, or surgical expense benefits to offer coverage to employers and guaranteed associations for a domestic partner of an employee, subscriber, insured, or policyholder to the same extent, and subject to the same terms and



conditions, as provided to a dependent of an employee, subscriber, insured, or policyholder. The bill would also require that if an employer or guaranteed association has purchased coverage for domestic partners, a health care service plan or a policy of group disability insurance that provides hospital, medical, or surgical expense benefits for employees, subscribers, insureds, or policyholders and their dependents shall enroll as a dependent, upon application by the employer or group administrator, a domestic partner of the employee, subscriber, insured, or policyholder when that employee, subscriber, insured, or policyholder in accordance with the terms and conditions of the group contract, as specified. The bill would also provide that a health care service plan or policy of group disability insurance may require a copy of a valid Declaration of Domestic Partnership and notification of termination of the domestic partnership.

Since a willful violation of the provisions applicable to health care service plans is a crime, this bill would impose a state-mandated local program.

(8) Existing law requires any employer who provides sick leave to employees, as specified, to allow the employees to use the sick leave to attend to the illness of a sick child, parent, or spouse.

This bill would require the employer described above to allow the employee to use sick leave to attend to an ill domestic partner or child of a domestic partner, and would make other conforming changes.

(9) Existing law provides for the creation of conservatorships and trusts, and for the management of the estates of decedents.

This bill would define domestic partner and surviving domestic partner for the purposes of the Probate Code. The bill would revise the provisions regarding conservatorships to provide for the participation of a domestic partner of the conservatee or proposed conservatee in these proceedings. The bill would require preference for selection of a conservator be given to the domestic partner and a person nominated by the domestic partner. The bill would require that a petition for conservatorship set forth the names and addresses of the domestic partner of the proposed conservatee or the names and addresses of any children of a predeceased domestic partner. The bill would require notice of a conservatorship hearing to be sent to the domestic partner of the proposed conservatee and would authorize the domestic partner to appear at the hearing in support or opposition to the petition. The bill would prohibit a domestic partner from petitioning for the appointment of a conservatorship of his or her domestic partner under specified conditions. This bill would also include a domestic partner within the definition of a family member for the purposes of requiring a domestic partner, when acting as a conservator or a guardian, to reveal his or her



relationship to a ward or conservatee when petitioning a court for approval of certain property transactions. This bill also would make conforming changes.

(10) Existing law prohibits a court official, employee, or a person related by blood or marriage, as defined, who is involved in the appointment of a conservator or guardian, or the processing of any document relating to a conservator or guardian, from purchasing, leasing, or renting the personal or real property from the estate of a conservatee or a ward whom the conservator or guardian represents.

This bill would include a domestic partner within the definition of a person related by blood or marriage for the purposes of the provisions described above.

(11) Existing law provides for the transfer of the property of a deceased person by will, and prescribes a statutory will form. Existing law provides that dissolution of a marriage revokes a bequest of property made in a will to a former spouse, among other things.

This bill would provide that termination of a domestic partnership revokes a bequest of property made in a will to a former domestic partner, among other things. The bill would also revise the statutory will form to, among other things, provide for the inclusion of a domestic partner among the beneficiaries to whom the testator may indicate a desire to leave his or her principal residence, automobiles, household, and personal effects, or residuary estate.

(12) Existing law provides that the surviving spouse is entitled to be appointed administrator of the decedent's estate and shall be given priority over other persons in relation to the decedent.

This bill would expand the right to be appointed as administrator of a decedent's estate to children of a domestic partner and to the parents of a predeceased domestic partner and their issue.

(13) The Personal Income Tax Law provides, in specified conformity to federal law, an exclusion from gross income for certain amounts expended for medical care and for certain employer-provided coverage under an accident or health plan. That law also allows a deduction for certain health insurance costs of self-employed individuals and with respect to certain group health plans.

This bill would make those tax benefits available to domestic partners.

(14) Existing law provides that an individual who leaves his or her work voluntarily or without good cause is disqualified from receiving unemployment benefits. Existing law further defines good cause for these purposes, and establishes procedures and presumptions for the administration of benefits.

This bill would include in the definition of good cause the act of accompanying one's domestic partner to a place from which it is



impractical to commute and to which a transfer by the employer is not available. This bill would also make related changes.

(15) Existing law provides that if a person is eligible to receive disability benefits, but is mentally unable to make a claim, the claim may be made by the spouse of the individual, and the payment shall be executed upon the affidavit of the spouse, or other qualified person, as specified.

This bill would allow a domestic partner to make the claim and execute the affidavit in the capacity described above.

(16) 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 no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 1714.01 is added to the Civil Code, to read:

1714.01. (a) Domestic partners shall be entitled to recover damages for negligent infliction of emotional distress to the same extent that spouses are entitled to do so under California law.

(b) For the purpose of this section, “domestic partners” has the meaning provided in Section 297 of the Family Code.

SEC. 2. Section 377.60 of the Code of Civil Procedure is amended to read:

377.60. A cause of action for the death of a person caused by the wrongful act or neglect of another may be asserted by any of the following persons or by the decedent’s personal representative on their behalf:

(a) The decedent’s surviving spouse, domestic partner, children, and issue of deceased children, or, if there is no surviving issue of the decedent, the persons, including the surviving spouse or domestic partner, who would be entitled to the property of the decedent by intestate succession.

(b) Whether or not qualified under subdivision (a), if they were dependent on the decedent, the putative spouse, children of the putative spouse, stepchildren, or parents. As used in this subdivision, “putative spouse” means the surviving spouse of a void or voidable marriage who is found by the court to have believed in good faith that the marriage to the decedent was valid.

(c) A minor, whether or not qualified under subdivision (a) or (b), if, at the time of the decedent’s death, the minor resided for the previous 180



days in the decedent's household and was dependent on the decedent for one-half or more of the minor's support.

(d) This section applies to any cause of action arising on or after January 1, 1993.

(e) The addition of this section by Chapter 178 of the Statutes of 1992 was not intended to adversely affect the standing of any party having standing under prior law, and the standing of parties governed by that version of this section as added by Chapter 178 of the Statutes of 1992 shall be the same as specified herein as amended by Chapter 563 of the Statutes of 1996.

(f) For the purpose of this section, "domestic partners" has the meaning provided in Section 297 of the Family Code.

SEC. 3. 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 all of the following requirements are met:

(1) Both persons have a common residence.

(2) Both persons agree to be jointly responsible for each other's basic living expenses incurred during the domestic partnership.

(3) Neither person is married or a member of another domestic partnership.

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

(5) Both persons are at least 18 years of age.

(6) Either of the following:

(A) Both persons are members of the same sex.

(B) One or both of the persons meet the eligibility criteria under Title II of the Social Security Act as defined in 42 U.S.C. Section 402(a) for old-age insurance benefits or Title XVI of the Social Security Act as defined in 42 U.S.C. Section 1381 for aged individuals. Notwithstanding any other provision of this section, persons of opposite sexes may not constitute a domestic partnership unless one or both of the persons are over the age of 62.

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

(8) Neither person has previously filed a Declaration of Domestic Partnership with the Secretary of State pursuant to this division that has not been terminated under Section 299.

(9) Both file a Declaration of Domestic Partnership with the Secretary of State pursuant to this division.



(c) “Have a common residence” means that both domestic partners share the same residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return.

(d) “Basic living expenses” means shelter, utilities, and all other costs directly related to the maintenance of the common household of the common residence of the domestic partners. It also means any other cost, such as medical care, if some or all of the cost is paid as a benefit because a person is another person’s domestic partner.

(e) “Joint responsibility” means that each partner agrees to provide for the other partner’s basic living expenses if the partner is unable to provide for herself or himself. Persons to whom these expenses are owed may enforce this responsibility if, in extending credit or providing goods or services, they relied on the existence of the domestic partnership and the agreement of both partners to be jointly responsible for those specific expenses.

SEC. 4. Section 299.5 of the Family Code is amended to read:

299.5. (a) The obligations that two people have to each other as a result of creating a domestic partnership are those described in Section 297. Registration as a domestic partner under this division shall not be evidence of, or establish, any rights existing under law other than those expressly provided to domestic partners in this division and any provision of law specifically referring to domestic partners.

The provisions relating to domestic partners provided in this division and any provision of law specifically referring to domestic partners shall not diminish any right under any other provision of law.

(b) Upon the termination of a domestic partnership, the partners, from that time forward, shall incur none of the obligations to each other as domestic partners that are created by this division and any other provision of law specifically referring to domestic partners.

(c) The filing of a Declaration of Domestic Partnership pursuant to this division shall not, in and of itself, change the character of property, real or personal, or any interest in any real or personal property owned by either domestic partner or both of them prior to the date of filing of the declaration.

(d) The filing of a Declaration of Domestic Partnership pursuant to this division shall not, in and of itself, create any interest in, or rights to, any property, real or personal, owned by one partner in the other partner, including, but not limited to, rights similar to community property or quasi-community property.



(e) Any property or interest acquired by the partners during the domestic partnership where title is shared shall be held by the partners in proportion of interest assigned to each partner at the time the property or interest was acquired unless otherwise expressly agreed in writing by both parties. Upon termination of the domestic partnership, this subdivision shall govern the division of any property jointly acquired by the partners.

(f) The formation of a domestic partnership under this division shall not change the individual income or estate tax liability of each domestic partner prior to and during the partnership, unless otherwise provided under another state or federal law or regulation.

SEC. 5. Section 9000 of the Family Code is amended to read:

9000. (a) A stepparent desiring to adopt a child of the stepparent's spouse may for that purpose file a petition in the county in which the petitioner resides.

(b) A domestic partner, as defined in Section 297, desiring to adopt a child of his or her domestic partner may for that purpose file a petition in the county in which the petitioner resides.

(c) The caption of the adoption petition shall contain the names of the petitioners, but not the child's name. The petition shall state the child's sex and date of birth and the name the child had before adoption.

(d) If the child is the subject of a guardianship petition, the adoption petition shall so state and shall include the caption and docket number or have attached a copy of the letters of the guardianship or temporary guardianship. The petitioners shall notify the court of any petition for guardianship or temporary guardianship filed after the adoption petition. The guardianship proceeding shall be consolidated with the adoption proceeding.

(e) The order of adoption shall contain the child's adopted name, but not the name the child had before adoption.

(f) For the purposes of this chapter, stepparent adoption includes adoption by a domestic partner, as defined in Section 297.

SEC. 6. Section 9002 of the Family Code is amended to read:

9002. In a stepparent adoption, the prospective adoptive parent is liable for all reasonable costs incurred in connection with the stepparent adoption, including, but not limited to, costs incurred for the investigation required by Section 9001, up to a maximum of seven hundred dollars (\$700). The court, probation officer, qualified court investigator, or county welfare department may defer, waive, or reduce the fee if its payment would cause economic hardship to the prospective adoptive parent detrimental to the welfare of the adopted child.

SEC. 7. Section 9004 of the Family Code is amended to read:



9004. In a stepparent adoption, the form prescribed by the department for the consent of the birth parent shall contain substantially the following notice:

“Notice to the parent who gives the child for adoption: If you and your child lived together at any time as parent and child, the adoption of your child through a stepparent adoption does not affect the child’s right to inherit your property or the property of other blood relatives.”

SEC. 8. Section 9005 of the Family Code is amended to read:

9005. (a) Consent of the birth parent to the adoption of the child through a stepparent adoption may not be withdrawn except with court approval. Request for that approval may be made by motion, or a birth parent seeking to withdraw consent may file with the clerk of the court where the adoption petition is pending, a petition for approval of withdrawal of consent, without the necessity of paying a fee for filing the petition. The petition or motion shall be in writing, and shall set forth the reasons for withdrawal of consent, but otherwise may be in any form.

(b) The court clerk shall set the matter for hearing and shall give notice thereof to the probation officer, qualified court investigator, or county welfare department, to the prospective adoptive parent, and to the birth parent or parents by certified mail, return receipt requested, to the address of each as shown in the proceeding, at least 10 days before the time set for hearing.

(c) The probation officer, qualified court investigator, or county welfare department shall, before the hearing of the motion or petition for withdrawal, file a full report with the court and shall appear at the hearing to represent the interests of the child.

(d) At the hearing, the parties may appear in person or with counsel. The hearing shall be held in chambers, but the court reporter shall report the proceedings and, on court order, the fee therefor shall be paid from the county treasury. If the court finds that withdrawal of the consent to adoption is reasonable in view of all the circumstances and that withdrawal of the consent is in the child’s best interest, the court shall approve the withdrawal of the consent. Otherwise the court shall withhold its approval. Consideration of the child’s best interest shall include, but is not limited to, an assessment of the child’s age, the extent of bonding with the prospective adoptive parent, the extent of bonding or the potential to bond with the birth parent, and the ability of the birth parent to provide adequate and proper care and guidance to the child. If the court approves the withdrawal of consent, the adoption proceeding shall be dismissed.

(e) A court order granting or withholding approval of a withdrawal of consent to an adoption may be appealed in the same manner as an



order of the juvenile court declaring a person to be a ward of the juvenile court.

SEC. 9. Section 22871.2 of the Government Code is amended to read:

22871.2. (a) Notwithstanding subdivision (f) of Section 22754 or any other provision of law, a domestic partner shall be considered to be a family member for purposes of Section 22810, except that a domestic partner shall not be considered a family member for purposes of continued health coverage eligibility upon the death of the employee or annuitant unless the domestic partner is a recipient of a retirement allowance as a surviving beneficiary of the deceased employee or annuitant.

(b) A child of the domestic partner who is enrolled in a health benefits plan as a family member at the time of the death of the employee or annuitant shall be eligible for continued health coverage under this part if the domestic partner is eligible for that continued coverage as provided in subdivision (a).

(c) A surviving domestic partner of a deceased employee or annuitant may not enroll additional family members in a health benefits plan.

SEC. 9.5. Section 31780.2 is added to the Government Code, to read:

31780.2. (a) In a county of the 10th class, as defined in Sections 28020 and 28031, any benefits accorded to a spouse pursuant to this article and Article 11 (commencing with Section 31760), Article 15.5 (commencing with Section 31841), Article 15.6 (commencing with Section 31855), and Article 16 (commencing with Section 31861), or any of them, may be accorded to a domestic partner, as defined in Section 297 of the Family Code, and registered pursuant to Division 2.5 (commencing with Section 297) of the Family Code, provided that the member and the member's domestic partner have a current Affidavit of Domestic Partnership, in the form adopted by the county board of supervisors, on file with the county for at least one year prior to the member's retirement or death prior to retirement.

(b) In the event a member described in subdivision (a) has a surviving dependent child, the surviving dependent child shall receive the death and survivor's allowance until age 19 years or until married, whichever occurs earlier, or until age 22 years if attending an educational institution. When the member's surviving dependent child reaches age 19 years or is no longer a dependent, whichever occurs earlier, or reaches age 22 years if attending an educational institution, then the benefits accorded to a spouse, as specified in subdivision (a), may be accorded to a domestic partner pursuant to this section. However, if a surviving dependent child elects to receive a lump sum payment, the lump sum



payment shall be shared among any surviving dependent children and the domestic partner, pursuant to this section, in a proportional manner.

(c) This section shall not be operative unless and until the county board of supervisors, by resolution adopted by a majority vote, makes this section operative in the county.

SEC. 10. Section 1374.58 is added to the Health and Safety Code, to read:

1374.58. (a) A group health care service plan that provides hospital, medical, or surgical expense benefits shall offer coverage to employers or guaranteed associations, as defined in Section 1357, for the domestic partner of an employee or subscriber to the same extent, and subject to the same terms and conditions, as provided to a dependent of the employee or subscriber, and shall inform employers and guaranteed associations of the availability of this coverage.

(b) If an employer or guaranteed association has purchased coverage for domestic partners pursuant to subdivision (a), a health care service plan that provides hospital, medical, or surgical expense benefits for employees or subscribers and their dependents shall enroll as a dependent, upon application by the employer or group administrator, a domestic partner of an employee or subscriber in accordance with the terms and conditions of the group contract that apply generally to all dependents under the plan, including coordination of benefits.

(c) For purposes of this section, the term “domestic partner” shall have the same meaning as that term is used in Section 297 of the Family Code.

(d) A health care service plan may require that the employee or subscriber verify the status of the domestic partnership by providing to the plan a copy of a valid Declaration of Domestic Partnership filed with the Secretary of State pursuant to Section 298 of the Family Code or an equivalent document issued by a local agency of this state, another state, or a local agency of another state under which the partnership is created. The plan may also require that the employee or subscriber notify the plan upon the termination of the domestic partnership.

(e) Nothing in this section shall be construed to expand the requirements of Section 4980B of Title 26 of the United States Code, Section 1161, and following, of Title 29 of the United States Code, or Section 300bb-1, and following, of Title 42 of the United States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and as those provisions may be later amended.

SEC. 11. Section 10121.7 is added to the Insurance Code, to read:

10121.7. (a) A policy of group disability insurance that provides hospital, medical, or surgical expense benefits shall offer coverage to



employers or guaranteed associations, as defined in Section 10700, for the domestic partner of an employee, insured, or policyholder to the same extent, and subject to the same terms and conditions, as provided to a dependent of the employee, insured, or policyholder, and shall inform employers and guaranteed associations of the availability of this coverage.

(b) If an employer or guaranteed association has purchased coverage for domestic partners pursuant to subdivision (a), a disability insurer that provides hospital, medical, or surgical expense benefits for employees, insureds, or policyholders and their dependents shall enroll as a dependent, upon application by the employer or group administrator, a domestic partner of the employee, insured, or policyholder in accordance with the terms and conditions of the group contract that apply generally to all dependents under the policy, including coordination of benefits.

(c) For purposes of this section, the term “domestic partner” shall have the same meaning as that term is used in Section 297 of the Family Code.

(d) A policy of group disability insurance may require that the employee, insured, or policyholder verify the status of the domestic partnership by providing to the insurer a copy of a valid Declaration of Domestic Partnership filed with the Secretary of State pursuant to Section 298 of the Family Code or an equivalent document issued by a local agency of this state, another state, or a local agency of another state under which the partnership is created. The policy may also require that the employee, insured, or policyholder notify the insurer upon the termination of the domestic partnership.

(e) Nothing in this section shall be construed to expand the requirements of Section 4980B of Title 26 of the United States Code, Section 1161, and following, of Title 29 of the United States Code, or Section 300bb-1, and following, of Title 42 of the United States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and as those provisions may be later amended.

SEC. 12. Section 233 of the Labor Code is amended to read:

233. (a) Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee’s accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee’s then current rate of entitlement, to attend to an illness of a child, parent, spouse, or domestic partner of the employee. All conditions and restrictions placed by the employer upon the use by an employee of sick leave also shall apply to the use by an employee of sick leave to attend



to an illness of his or her child, parent, spouse, or domestic partner. This section does not extend the maximum period of leave to which an employee is entitled under Section 12945.2 of the Government Code or under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2606 et seq.), regardless of whether the employee receives sick leave compensation during that leave.

(b) As used in this section:

(1) “Child” means a biological, foster, or adopted child, a stepchild, a legal ward, a child of a domestic partner, or a child of a person standing in loco parentis.

(2) “Employer” means any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities.

(3) “Parent” means a biological, foster, or adoptive parent, a stepparent, or a legal guardian.

(4) “Sick leave” means accrued increments of compensated leave provided by an employer to an employee as a benefit of the employment for use by the employee during an absence from the employment for any of the following reasons:

(A) The employee is physically or mentally unable to perform his or her duties due to illness, injury, or a medical condition of the employee.

(B) The absence is for the purpose of obtaining professional diagnosis or treatment for a medical condition of the employee.

(C) The absence is for other medical reasons of the employee, such as pregnancy or obtaining a physical examination.

“Sick leave” does not include any benefit provided under an employee welfare benefit plan subject to the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406, as amended) and does not include any insurance benefit, workers’ compensation benefit, unemployment compensation disability benefit, or benefit not payable from the employer’s general assets.

(c) No employer shall deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness of a child, parent, spouse, or domestic partner of the employee.

(d) Any employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief.

(e) Upon the filing of a complaint by an employee, the Labor Commissioner shall enforce the provisions of this section in accordance with the provisions of Chapter 4 (commencing with Section 79) of Division 1, including, but not limited to, Sections 92, 96.7, 98, and 98.1



to 98.8, inclusive. Alternatively, an employee may bring a civil action for the remedies provided by this section in a court of competent jurisdiction. If the employee prevails, the court may award reasonable attorney's fees.

(f) The rights and remedies specified in this section are cumulative and nonexclusive and are in addition to any other rights or remedies afforded by contract or under other provisions of law.

SEC. 13. Section 37 is added to the Probate Code, to read:

37. (a) "Domestic partner" means one of two persons who have filed a Declaration of Domestic Partnership with the Secretary of State pursuant to Division 2.5 (commencing with Section 297) of the Family Code, provided that the domestic partnership has not been terminated pursuant to Section 299 of the Family Code.

(b) Notwithstanding Section 299 of the Family Code, if a domestic partnership is terminated by the death of one of the parties and Notice of Termination was not filed by either party prior to the date of death of the decedent, the domestic partner who survives the deceased is a surviving domestic partner, and shall be entitled to the rights of a surviving domestic partner as provided in this code.

SEC. 14. Section 1460 of the Probate Code is amended to read:

1460. (a) Subject to Sections 1202 and 1203, if notice of hearing is required under this division but the applicable provision does not fix the manner of giving notice of hearing, the notice of the time and place of the hearing shall be given at least 15 days before the day of the hearing as provided in this section.

(b) Subject to subdivision (e), the petitioner, who includes for the purposes of this section a person filing a petition, report, or account, shall cause the notice of hearing to be mailed to each of the following persons:

- (1) The guardian or conservator.
- (2) The ward or the conservatee.
- (3) The spouse of the ward or conservatee, if the ward or conservatee has a spouse, or the domestic partner of the conservatee, if the conservatee has a domestic partner.
- (4) Any person who has requested special notice of the matter, as provided in Section 2700.
- (5) For any hearing on a petition to terminate a guardianship, to accept the resignation of, or to remove the guardian, the persons described in subdivision (c) of Section 1510.
- (6) For any hearing on a petition to terminate a conservatorship, to accept the resignation of, or to remove the conservator, the persons described in subdivision (b) of Section 1821.



(c) The clerk of the court shall cause the notice of the hearing to be posted as provided in Section 1230 if the posting is required by subdivision (c) of Section 2543.

(d) Except as provided in subdivision (e), nothing in this section excuses compliance with the requirements for notice to a person who has requested special notice pursuant to Chapter 10 (commencing with Section 2700) of Part 4.

(e) The court for good cause may dispense with the notice otherwise required to be given to a person as provided in this section.

SEC. 15. Section 1811 of the Probate Code is amended to read:

1811. (a) Subject to Section 1813, the spouse, domestic partner, or an adult child, parent, brother, or sister of the proposed conservatee may nominate a conservator in the petition or at the hearing on the petition.

(b) Subject to Section 1813, the spouse, domestic partner, or a parent of the proposed conservatee may nominate a conservator in a writing signed either before or after the petition is filed and that nomination remains effective notwithstanding the subsequent legal incapacity or death of the spouse, domestic partner, or parent.

SEC. 16. Section 1812 of the Probate Code is amended to read:

1812. (a) Subject to Sections 1810 and 1813, the selection of a conservator of the person or estate, or both, is solely in the discretion of the court and, in making the selection, the court is to be guided by what appears to be for the best interests of the proposed conservatee.

(b) Subject to Sections 1810 and 1813, of persons equally qualified in the opinion of the court to appointment as conservator of the person or estate or both, preference is to be given in the following order:

(1) The spouse or domestic partner of the proposed conservatee or the person nominated by the spouse or domestic partner pursuant to Section 1811.

(2) An adult child of the proposed conservatee or the person nominated by the child pursuant to Section 1811.

(3) A parent of the proposed conservatee or the person nominated by the parent pursuant to Section 1811.

(4) A brother or sister of the proposed conservatee or the person nominated by the brother or sister pursuant to Section 1811.

(5) Any other person or entity eligible for appointment as a conservator under this code or, if there is no person or entity willing to act as a conservator, under the Welfare and Institutions Code.

(c) The preference for any nominee for appointment under paragraphs (2), (3), and (4) of subdivision (b) is subordinate to the preference for any other parent, child, brother, or sister in that class.

SEC. 16.5. Section 1813.1 is added to the Probate Code, to read:



1813.1. (a) (1) The domestic partner of a proposed conservatee may not petition for the appointment of a conservator for a domestic partner or be appointed as conservator of the person or estate of the proposed conservatee unless the petitioner alleges in the petition for appointment as conservator, and the court finds, that the domestic partner has not terminated and is not intending to terminate the domestic partnership as provided in Section 299 of the Family Code. However, if the court finds by clear and convincing evidence that the appointment of a domestic partner who has terminated or is intending to terminate the domestic partnership is in the best interests of the proposed conservatee, the court may appoint the domestic partner.

(2) Prior to making this appointment, the court shall appoint counsel to consult with and advise the conservatee, and to report to the court his or her findings concerning the suitability of appointing the domestic partner as conservator.

(b) The domestic partner of a conservatee shall disclose to the conservator, or if the domestic partner is the conservator, shall notify the court, of the termination of a domestic partnership as provided in Section 299 of the Family Code within 10 days of its occurrence. The court may, upon receipt of the notice, set the matter for hearing on an order to show cause why the appointment of the domestic partner as conservator, if the domestic partner is the conservator, should not be terminated and a new conservator appointed by the court.

SEC. 17. Section 1820 of the Probate Code is amended to read:

1820. (a) A petition for the appointment of a conservator may be filed by any of the following:

- (1) The proposed conservatee.
- (2) The spouse or domestic partner of the proposed conservatee.
- (3) A relative of the proposed conservatee.
- (4) Any interested state or local entity or agency of this state or any interested public officer or employee of this state or of a local public entity of this state.

(5) Any other interested person or friend of the proposed conservatee.

(b) If the proposed conservatee is a minor, the petition may be filed during his or her minority so that the appointment of a conservator may be made effective immediately upon the minor's attaining the age of majority. An existing guardian of the minor may be appointed as conservator under this part upon the minor's attaining the age of majority, whether or not the guardian's accounts have been settled.

(c) A creditor of the proposed conservatee may not file a petition for appointment of a conservator unless the creditor is a person described in paragraph (2), (3), or (4) of subdivision (a).

SEC. 18. Section 1821 of the Probate Code is amended to read:



1821. (a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the name, address, and telephone number of the proposed conservator and the name, address, and telephone number of the proposed conservatee, and state the reasons why a conservatorship is necessary. Unless the petitioner is a bank or other entity authorized to conduct the business of a trust company, the petitioner shall also file supplemental information as to why the appointment of a conservator is required. The supplemental information to be submitted shall include a brief statement of facts addressed to each of the following categories:

(1) The inability of the proposed conservatee to properly provide for his or her needs for physical health, food, clothing, and shelter.

(2) The location of the proposed conservatee's residence and the ability of the proposed conservatee to live in the residence while under conservatorship.

(3) Alternatives to conservatorship considered by the petitioner and reasons why those alternatives are not available.

(4) Health or social services provided to the proposed conservatee during the year preceding the filing of the petition, when the petitioner has information as to those services.

(5) The inability of the proposed conservatee to substantially manage his or her own financial resources, or to resist fraud or undue influence.

The facts required to address the categories set forth in paragraphs (1) to (5), inclusive, shall be set forth by the petitioner when he or she has knowledge of the facts or by the declarations or affidavits of other persons having knowledge of those facts.

Where any of the categories set forth in paragraphs (1) to (5), inclusive, are not applicable to the proposed conservatorship, the petitioner shall so indicate and state on the supplemental information form the reasons therefor.

The Judicial Council shall develop a supplemental information form for the information required pursuant to paragraphs (1) to (5), inclusive, after consultation with individuals or organizations approved by the Judicial Council, who represent public conservators, court investigators, the State Bar, specialists with experience in performing assessments and coordinating community-based services, and legal services for the elderly and disabled.

The supplemental information form shall be separate and distinct from the form for the petition. The supplemental information shall be confidential and shall be made available only to parties, persons given notice of the petition who have requested this supplemental information or who have appeared in the proceedings, their attorneys, and the court. The court shall have discretion at any other time to release the



supplemental information to other persons if it would serve the interests of the conservatee. The county clerk shall make provision for limiting disclosure of the supplemental information exclusively to persons entitled thereto under this section.

(b) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse or domestic partner, and of the relatives of the proposed conservatee within the second degree. If no spouse or domestic partner of the proposed conservatee or relatives of the proposed conservatee within the second degree are known to the petitioner, the petition shall set forth, so far as they are known to the petitioner, the names and addresses of the following persons who, for the purposes of Section 1822, shall all be deemed to be relatives:

(1) A spouse or domestic partner of a predeceased parent of a proposed conservatee.

(2) The children of a predeceased spouse or domestic partner of a proposed conservatee.

(3) The siblings of the proposed conservatee's parents, if any, but if none, then the natural and adoptive children of the proposed conservatee's parents' siblings.

(4) The natural and adoptive children of the proposed conservatee's siblings.

(c) If the petition is filed by a person other than the proposed conservatee, the petition shall state whether or not the petitioner is a creditor or debtor, or the agent of a creditor or debtor, of the proposed conservatee.

(d) If the proposed conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed conservatee.

(f) The petition may include an application for any order or orders authorized under this division, including, but not limited to, orders under Chapter 4 (commencing with Section 1870).

(g) The petition may include a further statement that the proposed conservatee is not willing to attend the hearing on the petition, does not wish to contest the establishment of the conservatorship, and does not



object to the proposed conservator or prefer that another person act as conservator.

(h) In the case of an allegedly developmentally disabled adult, the petition shall set forth the following:

(1) The nature and degree of the alleged disability, the specific duties and powers requested by or for the limited conservator, and the limitations of civil and legal rights requested to be included in the court's order of appointment.

(2) Whether or not the proposed limited conservatee is or is alleged to be developmentally disabled.

Reports submitted pursuant to Section 416.8 of the Health and Safety Code meet the requirements of this section, and conservatorships filed pursuant to Article 7.5 (commencing with Section 416) of Part 1 of Division 1 of the Health and Safety Code are exempt from providing the supplemental information required by this section, so long as the guidelines adopted by the State Department of Developmental Services for regional centers require the same information that is required pursuant to this section.

SEC. 19. Section 1822 of the Probate Code is amended to read:

1822. (a) At least 15 days before the hearing on the petition for appointment of a conservator, notice of the time and place of the hearing shall be given as provided in this section. The notice shall be accompanied by a copy of the petition. The court may not shorten the time for giving the notice of hearing under this section.

(b) Notice shall be mailed to the following persons:

(1) The spouse, if any, or domestic partner, if any, of the proposed conservatee at the address stated in the petition.

(2) The relatives named in the petition at their addresses stated in the petition.

(c) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed as so required.

(d) If the petition states that the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the office of the Veterans Administration referred to in Section 1461.5.

(e) If the proposed conservatee is a person with developmental disabilities, at least 30 days before the day of the hearing on the petition, the petitioner shall mail a notice of the hearing and a copy of the petition to the regional center identified in Section 1827.5.

SEC. 20. Section 1829 of the Probate Code is amended to read:

1829. Any of the following persons may appear at the hearing to support or oppose the petition:



- (a) The proposed conservatee.
- (b) The spouse or domestic partner of the proposed conservatee.
- (c) A relative of the proposed conservatee.
- (d) Any interested person or friend of the proposed conservatee.

SEC. 21. Section 1861 of the Probate Code is amended to read:

1861. (a) A petition for the termination of the conservatorship may be filed by any of the following:

- (1) The conservator.
- (2) The conservatee.
- (3) The spouse, or domestic partner, or any relative or friend of the conservatee or other interested person.

(b) The petition shall state facts showing that the conservatorship is no longer required.

SEC. 22. Section 1863 of the Probate Code is amended to read:

1863. (a) The court shall hear and determine the matter according to the law and procedure relating to the trial of civil actions, including trial by jury if demanded by the conservatee. The conservator, the conservatee, or the spouse, or domestic partner, or any relative or friend of the conservatee or other interested person may appear and support or oppose the petition.

(b) If the court determines that the conservatorship is no longer required or that grounds for establishment of a conservatorship of the person or estate, or both, no longer exist, the court shall make this finding and shall enter judgment terminating the conservatorship accordingly.

(c) At the hearing, or thereafter on further notice and hearing, the conservator may be discharged and the bond given by the conservator may be exonerated upon the settlement and approval of the conservator's final account by the court.

(d) Termination of conservatorship does not preclude a new proceeding for appointment of a conservator on the same or other grounds.

SEC. 23. Section 1871 of the Probate Code is amended to read:

1871. Nothing in this article shall be construed to deny a conservatee any of the following:

- (a) The right to control an allowance provided under Section 2421.
- (b) The right to control wages or salary to the extent provided in Section 2601.
- (c) The right to make a will.

(d) The right to enter into transactions to the extent reasonable to provide the necessities of life to the conservatee and the spouse and minor children of the conservatee and to provide the basic living expenses, as defined in Section 297 of the Family Code, to the domestic partner of the conservatee.



SEC. 24. Section 1873 of the Probate Code is amended to read:

1873. (a) In the order appointing the conservator or upon a petition filed under Section 1874, the court may, by order, authorize the conservatee, subject to Section 1876, to enter into transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate. The court, by order, may modify the legal capacity a conservatee would otherwise have under Section 1872 by broadening or restricting the power of the conservatee to enter into transactions or types of transactions as may be appropriate in the circumstances of the particular conservatee and conservatorship estate.

(b) In an order made under this section, the court may include limitations or conditions on the exercise of the authority granted to the conservatee as the court determines to be appropriate including, but not limited to, the following:

(1) A requirement that for specific types of transactions or for all transactions authorized by the order, the conservatee obtain prior approval of the transaction by the court or conservator before exercising the authority granted by the order.

(2) A provision that the conservator has the right to avoid any transaction made by the conservatee pursuant to the authority of the order if the transaction is not one into which a reasonably prudent person might enter.

(c) The court, in its discretion, may provide in the order that, unless extended by subsequent order of the court, the order or specific provisions of the order terminate at a time specified in the order.

(d) An order under this section continues in effect until the earliest of the following times:

- (1) The time specified in the order, if any.
- (2) The time the order is modified or revoked.
- (3) The time the conservatorship of the estate is terminated.

(e) An order under this section may be modified or revoked upon petition filed by the conservator, conservatee, the spouse or domestic partner of the conservatee, or any relative or friend of the conservatee, or any interested person. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

SEC. 25. Section 1874 of the Probate Code is amended to read:

1874. (a) After a conservator has been appointed, a petition requesting an order under Section 1873 may be filed by any of the following:

- (1) The conservator.
- (2) The conservatee.



(3) The spouse, domestic partner, or any relative or friend of the conservatee.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

SEC. 26. Section 1891 of the Probate Code is amended to read:

1891. (a) A petition may be filed under this article requesting that the court make an order under Section 1880 or that the court modify or revoke an order made under Section 1880. The petition shall state facts showing that the order requested is appropriate.

(b) The petition may be filed by any of the following:

(1) The conservator.

(2) The conservatee.

(3) The spouse, domestic partner, or any relative or friend of the conservatee.

(c) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse or domestic partner and of the relatives of the conservatee within the second degree.

SEC. 27. Section 1895 of the Probate Code is amended to read:

1895. (a) The conservatee, the spouse, the domestic partner, any relative, or any friend of the conservatee, the conservator, or any other interested person may appear at the hearing to support or oppose the petition.

(b) Except where the conservatee is absent from the hearing and is not required to attend the hearing under the provisions of Section 1893 and any showing required by Section 1893 has been made, the court shall, prior to granting the petition, inform the conservatee of all of the following:

(1) The nature and purpose of the proceeding.

(2) The nature and effect on the conservatee's basic rights of the order requested.

(3) The conservatee has the right to oppose the petition, to be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) After the court informs the conservatee of the matters listed in subdivision (b) and prior to granting the petition, the court shall consult the conservatee to determine the conservatee's opinion concerning the order requested in the petition.

SEC. 28. Section 2111.5 of the Probate Code is amended to read:

2111.5. (a) Except as provided in subdivision (b), every court official or employee who has duties or responsibilities related to the appointment of a guardian or conservator, or the processing of any document related to a guardian or conservator, and every person who is



related by blood or marriage to a court official or employee who has these duties, is prohibited from purchasing, leasing, or renting any real or personal property from the estate of the ward or conservatee whom the guardian or conservator represents. For purposes of this subdivision, a “person related by blood or marriage” means any of the following:

- (1) A person’s spouse or domestic partner.
- (2) Relatives within the second degree of lineal or collateral consanguinity of a person or a person’s spouse.

(b) A person described in subdivision (a) is not prohibited from purchasing real or personal property from the estate of the ward or conservatee whom the guardian or conservator represents where the purchase is made under terms and conditions of a public sale of the property.

(c) A violation of this section shall result in the rescission of the purchase, lease, or rental of the property. Any losses incurred by the estate of the ward or conservatee because the property was sold or leased at less than fair market value shall be deemed as charges against the guardian or conservator under the provisions of Sections 2401.3 and 2401.5. The court shall assess a civil penalty equal to three times the charges against the guardian, conservator, or other person in violation of this section, and may assess punitive damages as it deems proper. If the estate does not incur losses as a result of the violation, the court shall order the guardian, conservator, or other person in violation of this section to pay a fine of up to five thousand dollars (\$5,000) for each violation. The fines and penalties provided in this section are in addition to any other rights and remedies provided by law.

SEC. 29. Section 2212 of the Probate Code is amended to read:

2212. The petition for transfer may be filed only by one or more of the following:

- (a) The guardian or conservator.
- (b) The ward or conservatee.
- (c) The spouse of the ward or the spouse or domestic partner of the conservatee.
- (d) A relative or friend of the ward or conservatee.
- (e) Any other interested person.

SEC. 30. Section 2213 of the Probate Code is amended to read:

2213. The petition for transfer shall set forth all of the following:

- (a) The county to which the proceeding is to be transferred.
- (b) The name and address of the ward or conservatee.
- (c) A brief description of the character, value, and location of the property of the ward or conservatee.
- (d) The reasons for the transfer.



(e) The names and addresses, so far as they are known to the petitioner, of the spouse and of the relatives of the ward within the second degree, or of the spouse or domestic partner and of the relatives of the conservatee within the second degree.

(f) The name and address of the guardian or conservator if other than the petitioner.

SEC. 31. Section 2357 of the Probate Code is amended to read:

2357. (a) As used in this section:

(1) “Guardian or conservator” includes a temporary guardian of the person or a temporary conservator of the person.

(2) “Ward or conservatee” includes a person for whom a temporary guardian of the person or temporary conservator of the person has been appointed.

(b) If the ward or conservatee requires medical treatment for an existing or continuing medical condition which is not authorized to be performed upon the ward or conservatee under Section 2252, 2353, 2354, or 2355, and the ward or conservatee is unable to give an informed consent to this medical treatment, the guardian or conservator may petition the court under this section for an order authorizing the medical treatment and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to the medical treatment.

(c) The petition shall state, or set forth by medical affidavit attached thereto, all of the following so far as is known to the petitioner at the time the petition is filed:

(1) The nature of the medical condition of the ward or conservatee which requires treatment.

(2) The recommended course of medical treatment which is considered to be medically appropriate.

(3) The threat to the health of the ward or conservatee if authorization to consent to the recommended course of treatment is delayed or denied by the court.

(4) The predictable or probable outcome of the recommended course of treatment.

(5) The medically available alternatives, if any, to the course of treatment recommended.

(6) The efforts made to obtain an informed consent from the ward or conservatee.

(7) The name and addresses, so far as they are known to the petitioner, of the persons specified in subdivision (c) of Section 1510 in a guardianship proceeding or subdivision (b) of Section 1821 in a conservatorship proceeding.

(d) Upon the filing of the petition, unless an attorney is already appointed the court shall appoint the public defender or private counsel



under Section 1471, to consult with and represent the ward or conservatee at the hearing on the petition and, if that appointment is made, Section 1472 applies.

(e) Notice of the petition shall be given as follows:

(1) Not less than 15 days before the hearing, notice of the time and place of the hearing, and a copy of the petition shall be personally served on the ward, if 12 years of age or older, or the conservatee, and on the attorney for the ward or conservatee.

(2) Not less than 15 days before the hearing, notice of the time and place of the hearing, and a copy of the petition shall be mailed to the following persons:

(A) The spouse or domestic partner, if any, of the proposed conservatee at the address stated in the petition.

(B) The relatives named in the petition at their addresses stated in the petition.

(f) For good cause, the court may shorten or waive notice of the hearing as provided by this section. In determining the period of notice to be required, the court shall take into account both of the following:

(1) The existing medical facts and circumstances set forth in the petition or in a medical affidavit attached to the petition or in a medical affidavit presented to the court.

(2) The desirability, where the condition of the ward or conservatee permits, of giving adequate notice to all interested persons.

(g) Notwithstanding subdivisions (e) and (f), the matter may be submitted for the determination of the court upon proper and sufficient medical affidavits or declarations if the attorney for the petitioner and the attorney for the ward or conservatee so stipulate and further stipulate that there remains no issue of fact to be determined.

(h) The court may make an order authorizing the recommended course of medical treatment of the ward or conservatee and authorizing the guardian or conservator to consent on behalf of the ward or conservatee to the recommended course of medical treatment for the ward or conservatee if the court determines from the evidence all of the following:

(1) The existing or continuing medical condition of the ward or conservatee requires the recommended course of medical treatment.

(2) If untreated, there is a probability that the condition will become life-endangering or result in a serious threat to the physical or mental health of the ward or conservatee.

(3) The ward or conservatee is unable to give an informed consent to the recommended course of treatment.

(i) Upon petition of the ward or conservatee or other interested person, the court may order that the guardian or conservator obtain or



consent to, or obtain and consent to, specified medical treatment to be performed upon the ward or conservatee. Notice of the hearing on the petition under this subdivision shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

SEC. 32. Section 2359 of the Probate Code is amended to read:

2359. (a) Upon petition of the guardian or conservator or ward or conservatee or other interested person, the court may authorize and instruct the guardian or conservator or approve and confirm the acts of the guardian or conservator.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) (1) When a guardian or conservator petitions for the approval of a purchase, lease, or rental of real or personal property from the estate of a ward or conservatee, the guardian or conservator shall provide a statement disclosing the family or affiliate relationship between the guardian and conservator and the purchaser, lessee, or renter of the property, and the family or affiliate relationship between the guardian or conservator and any agent hired by the guardian or conservator.

(2) For the purposes of this subdivision, “family” means a person’s spouse, domestic partner, or relatives within the second degree of lineal or collateral consanguinity of a person or a person’s spouse. For the purposes of this subdivision, “affiliate” means an entity that is under the direct control, indirect control, or common control of the guardian or conservator.

(3) A violation of this section shall result in the rescission of the purchase, lease, or rental of the property. Any losses incurred by the estate of the ward or conservatee because the property was sold or leased at less than fair market value shall be deemed as charges against the guardian or conservator under the provisions of Sections 2401.3 and 2401.5. The court shall assess a civil penalty equal to three times the charges against the guardian, conservator, or other person in violation of this section, and may assess punitive damages as it deems proper. If the estate does not incur losses as a result of the violation, the court shall order the guardian, conservator, or other person in violation of this section to pay a fine of up to five thousand dollars (\$5,000) for each violation. The fines and penalties provided in this section are in addition to any other rights and remedies provided by law.

SEC. 33. Section 2403 of the Probate Code is amended to read:

2403. (a) Upon petition of the guardian or conservator, the ward or conservatee, a creditor, or other interested person, the court may authorize and instruct the guardian or conservator, or approve and



confirm the acts of the guardian or conservator, in the administration, management, investment, disposition, care, protection, operation, or preservation of the estate, or the incurring or payment of costs, fees, or expenses in connection therewith.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(c) (1) When a guardian or conservator petitions for the approval of a purchase, lease, or rental of real or personal property from the estate of a ward or conservatee, the guardian or conservator shall provide a statement disclosing the family or affiliate relationship between the guardian and conservator and the purchaser, lessee, or renter of the property, and the family or affiliate relationship between the guardian or conservator and any agent hired by the guardian or conservator.

(2) For the purposes of this subdivision, “family” means a person’s spouse, domestic partner, or relatives within the second degree of lineal or collateral consanguinity of a person or a person’s spouse. For the purposes of this subdivision, “affiliate” means an entity that is under the direct control, indirect control, or common control of the guardian or conservator.

(3) A violation of this section shall result in the rescission of the purchase, lease, or rental of the property. Any losses incurred by the estate of the ward or conservatee because the property was sold or leased at less than fair market value shall be deemed as charges against the guardian or conservator under the provisions of Sections 2401.3 and 2401.5. The court shall assess a civil penalty equal to three times the charges against the guardian, conservator, or other person in violation of this section, and may assess punitive damages as it deems proper. If the estate does not incur losses as a result of the violation, the court shall order the guardian, conservator, or other person in violation of this section to pay a fine of up to five thousand dollars (\$5,000) for each violation. The fines and penalties provided in this section are in addition to any other rights and remedies provided by law.

SEC. 34. Section 2423 of the Probate Code is amended to read:

2423. (a) Upon petition of the conservator, the conservatee, the spouse or domestic partner of the conservatee, or a relative within the second degree of the conservatee, the court may by order authorize or direct the conservator to pay and distribute surplus income of the estate or any part of the surplus income (not used for the support, maintenance, and education of the conservatee and of those legally entitled to support, maintenance, or education from the conservatee) to the spouse or domestic partner of the conservatee and to relatives within the second degree of the conservatee whom the conservatee would, in the judgment



of the court, have aided but for the existence of the conservatorship. The court in ordering payments under this section may impose conditions if the court determines that the conservatee would have imposed the conditions if the conservatee had the capacity to act.

(b) The granting of the order and the amounts and proportions of the payments are discretionary with the court, but the court shall consider all of the following:

(1) The amount of surplus income available after adequate provision has been made for the comfortable and suitable support, maintenance, and education of the conservatee and of those legally entitled to support, maintenance, or education from the conservatee.

(2) The circumstances and condition of life to which the conservatee and the spouse or domestic partner and relatives have been accustomed.

(3) The amount that the conservatee would in the judgment of the court have allowed the spouse or domestic partner and relatives but for the existence of the conservatorship.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

SEC. 35. Section 2430 of the Probate Code is amended to read:

2430. (a) Subject to subdivisions (b) and (c), the guardian or conservator shall pay the following from any principal and income of the estate:

(1) The debts incurred by the ward or conservatee before creation of the guardianship or conservatorship, giving priority to the debts described in Section 2431 to the extent required by that section.

(2) The debts incurred by the ward or conservatee during the guardianship or conservatorship to provide the necessities of life to the ward or conservatee, and to the spouse and minor children of the ward or conservatee, to the extent the debt is reasonable. Also, the debts reasonably incurred by the conservatee during the conservatorship to provide the basic living expenses, as defined in Section 297 of the Family Code, to the domestic partner of the conservatee. The guardian or conservator may deduct the amount of any payments for these debts from any allowance otherwise payable to the ward or conservatee.

(3) In the case of a conservatorship, any other debt incurred by the conservatee during the conservatorship only if the debt satisfies the requirements of any order made under Chapter 4 (commencing with Section 1870) of Part 3.

(4) The reasonable expenses incurred in the collection, care, and administration of the estate, but court authorization is required for payment of compensation to any of the following:

(A) The guardian or conservator of the person or estate or both.



(B) An attorney for the guardian or conservator of the person or estate or both.

(C) An attorney for the ward or conservatee.

(D) An attorney for the estate.

(E) The public guardian for the costs and fee under Section 2902.

(b) The payments provided for by paragraph (3) of subdivision (a) are not required to be made to the extent the payments would impair the ability to provide the necessities of life to the conservatee and the spouse and minor children of the conservatee and to provide the basic living expenses, as defined in Section 297 of the Family Code, of the domestic partner of the conservatee.

(c) The guardian or conservator may petition the court under Section 2403 for instructions when there is doubt whether a debt should be paid under this section.

SEC. 36. Section 2504 of the Probate Code is amended to read:

2504. Court approval is required for the compromise or settlement of any of the following:

(a) A claim for the support, maintenance, or education of (1) the ward or conservatee, or (2) a person whom the ward or conservatee is legally obligated to support, maintain, or educate, against any other person (including, but not limited to, the spouse or parent of the ward or the spouse, domestic partner, parent, or adult child of the conservatee).

(b) A claim of the ward or conservatee for wrongful death.

(c) A claim of the ward or conservatee for physical or nonphysical harm to the person.

SEC. 37. Section 2572 of the Probate Code is amended to read:

2572. An order authorizing the guardian or conservator to purchase real property may authorize the guardian or conservator to join with the spouse of the ward or the spouse or domestic partner of the conservatee or with any other person or persons in the purchase of the real property, or an interest, equity, or estate therein, in severalty, in common, in community, or in joint tenancy, for cash or upon a credit or for part cash and part credit. When the court authorizes the purchase of real property, the court may order the guardian or conservator to execute all necessary instruments and commitments to complete the transaction.

SEC. 38. Section 2580 of the Probate Code is amended to read:

2580. (a) The conservator or other interested person may file a petition under this article for an order of the court authorizing or requiring the conservator to take a proposed action for any one or more of the following purposes:

(1) Benefiting the conservatee or the estate.



(2) Minimizing current or prospective taxes or expenses of administration of the conservatorship estate or of the estate upon the death of the conservatee.

(3) Providing gifts for any purposes, and to any charities, relatives (including the other spouse or domestic partner), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the conservatee.

(b) The action proposed in the petition may include, but is not limited to, the following:

(1) Making gifts of principal or income, or both, of the estate, outright or in trust.

(2) Conveying or releasing the conservatee's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.

(3) Exercising or releasing the conservatee's powers as donee of a power of appointment.

(4) Entering into contracts.

(5) Creating for the benefit of the conservatee or others, revocable or irrevocable trusts of the property of the estate, which trusts may extend beyond the conservatee's disability or life. A special needs trust for money paid pursuant to a compromise or judgment for a conservatee may be established only under Chapter 4 (commencing with Section 3600) of Part 8, and not under this article.

(6) Transferring to a trust created by the conservator or conservatee any property unintentionally omitted from the trust.

(7) Exercising options of the conservatee to purchase or exchange securities or other property.

(8) Exercising the rights of the conservatee to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under any of the following:

(A) Life insurance policies, plans, or benefits.

(B) Annuity policies, plans, or benefits.

(C) Mutual fund and other dividend investment plans.

(D) Retirement, profit sharing, and employee welfare plans and benefits.

(9) Exercising the right of the conservatee to elect to take under or against a will.

(10) Exercising the right of the conservatee to disclaim any interest that may be disclaimed under Part 8 (commencing with Section 260) of Division 2.

(11) Exercising the right of the conservatee (A) to revoke or modify a revocable trust or (B) to surrender the right to revoke or modify a revocable trust, but the court shall not authorize or require the



conservator to exercise the right to revoke or modify a revocable trust if the instrument governing the trust (A) evidences an intent to reserve the right of revocation or modification exclusively to the conservatee, (B) provides expressly that a conservator may not revoke or modify the trust, or (C) otherwise evidences an intent that would be inconsistent with authorizing or requiring the conservator to exercise the right to revoke or modify the trust.

(12) Making an election referred to in Section 13502 or an election and agreement referred to in Section 13503.

(13) Making a will.

SEC. 39. Section 2614.5 of the Probate Code is amended to read:

2614.5. (a) If the guardian or conservator fails to file an inventory and appraisal within the time allowed by law or by court order, upon request of the ward or conservatee, the spouse of the ward or the spouse or domestic partner of the conservatee, any relative or friend of the ward or conservatee, or any interested person, the court shall order the guardian or conservator to file the inventory and appraisal within the time prescribed in the order or to show cause why the guardian or conservator should not be removed. The person who requested the order shall serve it upon the guardian or conservator in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in a manner as is ordered by the court.

(b) If the guardian or conservator fails to file the inventory and appraisal as required by the order within the time prescribed in the order, unless good cause is shown for not doing so, the court, on its own motion or on petition, may remove the guardian or conservator, revoke the letters of guardianship or conservatorship, and enter judgment accordingly, and order the guardian or conservator to file an account and to surrender the estate to the person legally entitled thereto.

(c) The procedure provided in this section is optional and does not preclude the use of any other remedy or sanction when an inventory and appraisal is not timely filed.

SEC. 40. Section 2622 of the Probate Code is amended to read:

2622. The ward or conservatee, the spouse of the ward or the spouse or domestic partner of the conservatee, any relative or friend of the ward or conservatee, or any creditor or other interested person may file written objections to the account of the guardian or conservator, stating the items of the account to which objection is made and the basis for the objection.

SEC. 41. Section 2651 of the Probate Code is amended to read:

2651. The ward or conservatee, the spouse of the ward or the spouse or domestic partner of the conservatee, any relative or friend of the ward or conservatee, or any interested person may apply by petition to the



court to have the guardian or conservator removed. The petition shall state facts showing cause for removal.

SEC. 42. Section 2653 of the Probate Code is amended to read:

2653. (a) The guardian or conservator, the ward or conservatee, the spouse of the ward or the spouse or domestic partner of the conservatee, any relative or friend of the ward or conservatee, and any interested person may appear at the hearing and support or oppose the petition.

(b) If the court determines that cause for removal of the guardian or conservator exists, the court may remove the guardian or conservator, revoke the letters of guardianship or conservatorship, and enter judgment accordingly and, in the case of a guardianship or conservatorship of the estate, order the guardian or conservator to file an account and to surrender the estate to the person legally entitled thereto. If the guardian or conservator fails to file the account as ordered, the court may compel the account pursuant to Section 2629.

SEC. 43. Section 2681 of the Probate Code is amended to read:

2681. A petition for appointment of a successor conservator may be filed by any of the following:

(a) The conservatee.

(b) The spouse or domestic partner of the conservatee.

(c) A relative of the conservatee.

(d) Any interested state or local entity or agency of this state or any interested public officer or employee of this state or of a local public entity of this state.

(e) Any other interested person or friend of the conservatee.

SEC. 44. Section 2682 of the Probate Code is amended to read:

2682. (a) The petition shall request that a successor conservator be appointed for the person or estate, or both, and shall specify the name and address of the proposed successor conservator and the name and address of the conservatee.

(b) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse or domestic partner and of the relatives of the conservatee within the second degree.

(c) If the petition is filed by one other than the conservatee, the petition shall state whether or not the petitioner is a creditor or debtor of the conservatee.

(d) If the conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the petitioner, whether or not the conservatee is receiving or is entitled to receive



benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the conservatee.

(f) The petition shall state whether or not the conservatee will be present at the hearing.

SEC. 45. Section 2687 of the Probate Code is amended to read:

2687. The conservatee, the spouse, the domestic partner, or any relative or friend of the conservatee, or any other interested person may appear at the hearing to support or oppose the petition.

SEC. 46. Section 2700 of the Probate Code is amended to read:

2700. (a) At any time after the issuance of letters of guardianship or conservatorship, the ward, if over 14 years of age or the conservatee, the spouse of the ward or the spouse or domestic partner of the conservatee, any relative or creditor of the ward or conservatee, or any other interested person, in person or by attorney, may file with the court clerk a written request for special notice.

(b) The request for special notice shall be so entitled and shall set forth the name of the person and the address to which notices shall be sent.

(c) Special notice may be requested of any one or more of the following matters:

- (1) Petitions filed in the guardianship or conservatorship proceeding.
- (2) Inventories and appraisals of property in the estate, including any supplemental inventories and appraisals.
- (3) Accounts of the guardian or conservator.
- (4) Proceedings for the final termination of the guardianship or conservatorship proceeding.

(d) Special notice may be requested of:

- (1) Any one or more of the matters in subdivision (c) by describing the matter or matters.
- (2) All the matters in subdivision (c) by referring generally to “the matters described in subdivision (c) of Section 2700 of the Probate Code” or by using words of similar meaning.

(e) A copy of the request shall be personally delivered or mailed to the guardian or conservator or to the attorney for the guardian or conservator. If personally delivered, the request is effective when it is delivered. If mailed, the request is effective when it is received.

(f) When the original of the request is filed with the court clerk, it shall be accompanied by a written admission or proof of service.

SEC. 47. Section 2803 of the Probate Code is amended to read:

2803. The petition shall set forth all of the following:

- (a) The name and address of:



(1) The foreign guardian or conservator, who may but need not be the guardian or conservator appointed in this state.

(2) The ward or conservatee.

(3) The guardian or conservator, so far as is known to the petitioner.

(b) The names, ages, and addresses, so far as they are known to the petitioner, of the spouse of the ward or the spouse or domestic partner of the conservatee and of relatives of the ward or conservatee within the second degree.

(c) A brief description of the character, condition, value, and location of the personal property sought to be transferred.

(d) A statement whether the foreign guardian or conservator has agreed to accept the transfer of the property. If the foreign guardian or conservator has so agreed, the acceptance shall be attached as an exhibit to the petition or otherwise filed with the court.

(e) A statement of the manner in which and by whom the foreign guardian or conservator was appointed.

(f) A general statement of the qualifications of the foreign guardian or conservator.

(g) The amount of bond, if any, of the foreign guardian or conservator.

(h) A general statement of the nature and value of the property of the ward or conservatee already under the management or control of the foreign guardian or conservator.

(i) The name of the court having jurisdiction of the foreign guardian or conservator or of the accounts of the foreign guardian or conservator or, if none, the court in which a proceeding may be had with respect to the guardianship or conservatorship if the property is transferred.

(j) Whether there is any pending civil action in this state against the guardian or conservator, the ward or conservatee, or the estate.

(k) A statement of the reasons for the transfer.

SEC. 48. Section 2805 of the Probate Code is amended to read:

2805. Any of the following may appear and file written objections to the petition:

(a) Any person required to be listed in the petition.

(b) Any creditor of the ward or conservatee or of the estate.

(c) The spouse of the ward or the spouse or domestic partner of the conservatee or any relative or friend of the ward or conservatee.

(d) Any other interested person.

SEC. 49. Section 4716 is added to the Probate Code, to read:

4716. (a) If a patient lacks the capacity to make a health care decision, the patient's domestic partner shall have the same authority as a spouse has to make a health care decision for his or her incapacitated spouse. This section may not be construed to expand or restrict the



ability of a spouse to make a health care decision for an incapacitated spouse.

(b) For the purposes of this section, the following definitions shall apply:

- (1) “Capacity” has the same meaning as defined in Section 4609.
- (2) “Health care” has the same meaning as defined in Section 4615.
- (3) “Health care decision” has the same meaning as defined in Section 4617.

(4) “Domestic partner” has the same meaning as that term is used in Section 297 of the Family Code.

SEC. 50. Section 6122 of the Probate Code is amended to read:

6122. (a) Unless the will expressly provides otherwise, if after executing a will the testator’s marriage is dissolved or annulled, the dissolution or annulment revokes all of the following:

- (1) Any disposition or appointment of property made by the will to the former spouse.
- (2) Any provision of the will conferring a general or special power of appointment on the former spouse.
- (3) Any provision of the will nominating the former spouse as executor, trustee, conservator, or guardian.

(b) If any disposition or other provision of a will is revoked solely by this section, it is revived by the testator’s remarriage to the former spouse.

(c) In case of revocation by dissolution or annulment:

- (1) Property prevented from passing to a former spouse because of the revocation passes as if the former spouse failed to survive the testator.
- (2) Other provisions of the will conferring some power or office on the former spouse shall be interpreted as if the former spouse failed to survive the testator.

(d) For purposes of this section, dissolution or annulment means any dissolution or annulment which would exclude the spouse as a surviving spouse within the meaning of Section 78. A decree of legal separation which does not terminate the status of husband and wife is not a dissolution for purposes of this section.

(e) Except as provided in Section 6122.1, no change of circumstances other than as described in this section revokes a will.

(f) Subdivisions (a) to (d), inclusive, do not apply to any case where the final judgment of dissolution or annulment of marriage occurs before January 1, 1985. Such case is governed by the law in effect prior to January 1, 1985.

SEC. 51. Section 6122.1 is added to the Probate Code, to read:



6122.1. (a) Unless the will expressly provides otherwise, if after executing a will the testator's domestic partnership is terminated, the termination revokes all of the following:

(1) Any disposition or appointment of property made by the will to the former domestic partner.

(2) Any provision of the will conferring a general or special power of appointment on the former domestic partner.

(3) Any provision of the will nominating the former domestic partner as executor, trustee, conservator, or guardian.

(b) If any disposition or other provision of a will is revoked solely by this section, it is revived by the testator establishing another domestic partnership with the former domestic partner.

(c) In case of revocation by termination of a domestic partnership:

(1) Property prevented from passing to a former domestic partner because of the revocation passes as if the former domestic partner failed to survive the testator.

(2) Other provisions of the will conferring some power or office on the former domestic partner shall be interpreted as if the former domestic partner failed to survive the testator.

(d) This section shall apply only to wills executed on or after January 1, 2002.

SEC. 52. Section 6240 of the Probate Code is amended to read:
6240. The following is the California Statutory Will form:

QUESTIONS AND ANSWERS ABOUT THIS CALIFORNIA STATUTORY WILL

The following information, in question and answer form, is not a part of the California Statutory Will. It is designed to help you understand about Wills and to decide if this Will meets your needs. This Will is in a simple form. The complete text of each paragraph of this Will is printed at the end of the Will.

1. *What happens if I die without a Will?* If you die without a Will, what you own (your "assets") in your name alone will be divided among your spouse, domestic partner, children, or other relatives according to state law. The court will appoint a relative to collect and distribute your assets.

2. *What can a Will do for me?* In a Will you may designate who will receive your assets at your death. You may designate someone (called an "executor") to appear before the court, collect your assets, pay your debts and taxes, and distribute your assets as you specify. You may nominate someone (called a "guardian") to raise your children who are



under age 18. You may designate someone (called a “custodian”) to manage assets for your children until they reach any age between 18 and 25.

3. *Does a Will avoid probate?* No. With or without a Will, assets in your name alone usually go through the court probate process. The court’s first job is to determine if your Will is valid.

4. *What is community property?* Can I give away my share in my Will? If you are married and you or your spouse earned money during your marriage from work and wages, that money (and the assets bought with it) is community property. Your Will can only give away your one-half of community property. Your Will cannot give away your spouse’s one-half of community property.

5. *Does my Will give away all of my assets?* Do all assets go through probate? No. Money in a joint tenancy bank account automatically belongs to the other named owner without probate. If your spouse, domestic partner, or child is on the deed to your house as a joint tenant, the house automatically passes to him or her. Life insurance and retirement plan benefits may pass directly to the named beneficiary. A Will does not necessarily control how these types of “nonprobate” assets pass at your death.

6. *Are there different kinds of Wills?* Yes. There are handwritten Wills, typewritten Wills, attorney-prepared Wills, and statutory Wills. All are valid if done precisely as the law requires. You should see a lawyer if you do not want to use this statutory Will or if you do not understand this form.

7. *Who may use this Will?* This Will is based on California law. It is designed only for California residents. You may use this form if you are single, married, a member of a domestic partnership, or divorced. You must be age 18 or older and of sound mind.

8. *Are there any reasons why I should NOT use this statutory Will?* Yes. This is a simple Will. It is not designed to reduce death taxes or other taxes. Talk to a lawyer to do tax planning, especially if (i) your assets will be worth more than \$600,000 or the current amount excluded from estate tax under federal law at your death, (ii) you own business-related assets, (iii) you want to create a trust fund for your children’s education or other purposes, (iv) you own assets in some other state, (v) you want to disinherit your spouse, domestic partner, or descendants, or (vi) you have valuable interests in pension or profit-sharing plans. You should talk to a lawyer who knows about estate planning if this Will does not meet your needs. This Will treats most adopted children like natural children. You should talk to a lawyer if you have stepchildren or foster children whom you have not adopted.



9. *May I add or cross out any words on this Will?* No. If you do, the Will may be invalid or the court may ignore the crossed out or added words. You may only fill in the blanks. You may amend this Will by a separate document (called a codicil). Talk to a lawyer if you want to do something with your assets which is not allowed in this form.

10. *May I change my Will?* Yes. A Will is not effective until you die. You may make and sign a new Will. You may change your Will at any time, but only by an amendment (called a codicil). You can give away or sell your assets before your death. Your Will only acts on what you own at death.

11. *Where should I keep my Will?* After you and the witnesses sign the Will, keep your Will in your safe deposit box or other safe place. You should tell trusted family members where your Will is kept.

12. *When should I change my Will?* You should make and sign a new Will if you marry, divorce, or terminate your domestic partnership after you sign this Will. Divorce, annulment, or termination of a domestic partnership automatically cancels all property stated to pass to a former husband, wife, or domestic partner under this Will, and revokes the designation of a former spouse or domestic partner as executor, custodian, or guardian. You should sign a new Will when you have more children, or if your spouse or a child dies, or a domestic partner dies or marries. You may want to change your Will if there is a large change in the value of your assets. You may also want to change your Will if you enter a domestic partnership or your domestic partnership has been terminated after you sign this Will.

13. *What can I do if I do not understand something in this Will?* If there is anything in this Will you do not understand, ask a lawyer to explain it to you.

14. *What is an executor?* An “executor” is the person you name to collect your assets, pay your debts and taxes, and distribute your assets as the court directs. It may be a person or it may be a qualified bank or trust company.

15. *Should I require a bond?* You may require that an executor post a “bond.” A bond is a form of insurance to replace assets that may be mismanaged or stolen by the executor. The cost of the bond is paid from the estate’s assets.

16. *What is a guardian?* Do I need to designate one? If you have children under age 18, you should designate a guardian of their “persons” to raise them.

17. *What is a custodian?* Do I need to designate one? A “custodian” is a person you may designate to manage assets for someone (including a child) who is between ages 18 and 25 and who receives assets under your Will. The custodian manages the assets and pays as much as the



custodian determines is proper for health, support, maintenance, and education. The custodian delivers what is left to the person when the person reaches the age you choose (between 18 and 25). No bond is required of a custodian.

18. *Should I ask people if they are willing to serve before I designate them as executor, guardian, or custodian?* Probably yes. Some people and banks and trust companies may not consent to serve or may not be qualified to act.

19. *What happens if I make a gift in this Will to someone and they die before I do?* A person must survive you by 120 hours to take a gift under this Will. If they do not, then the gift fails and goes with the rest of your assets. If the person who does not survive you is a relative of you or your spouse, then certain assets may go to the relative's descendants.

20. *What is a trust?* There are many kinds of trusts, including trusts created by Wills (called "testamentary trusts") and trusts created during your lifetime (called "revocable living trusts"). Both kinds of trusts are long-term arrangements where a manager (called a "trustee") invests and manages assets for someone (called a "beneficiary") on the terms you specify. Trusts are too complicated to be used in this statutory Will. You should see a lawyer if you want to create a trust.

21. *What is a domestic partner?* You have a domestic partner if you have met certain legal requirements and filed a form entitled "Declaration of Domestic Partnership" with the Secretary of State. Notwithstanding Section 299.6 of the Family Code, if you have not filed a Declaration of Domestic Partnership with the Secretary of State, you do not meet the required definition and should not use the section of the Statutory Will form that refers to domestic partners even if you have registered your domestic partnership with another governmental entity. If you are unsure if you have a domestic partner or if your domestic partnership meets the required definition, please contact the Secretary of State's office.

INSTRUCTIONS

1. **READ THE WILL.** Read the whole Will first. If you do not understand something, ask a lawyer to explain it to you.

2. **FILL IN THE BLANKS.** Fill in the blanks. Follow the instructions in the form carefully. Do not add any words to the Will (except for filling in blanks) or cross out any words.

3. **DATE AND SIGN THE WILL AND HAVE TWO WITNESSES SIGN IT.** Date and sign the Will and have two witnesses sign it. You and the witnesses should read and follow the Notice to Witnesses found at the end of this Will.



NOTE TO PRINTING OFFICE: INSERT CAMERA-READY COPY
HERE

for California Statutory Will

as printed on pages 17 to 22 of Chapter 1055, 1991 Statutes.













SEC. 53. Section 8461 of the Probate Code is amended to read:

8461. Subject to the provisions of this article, a person in the following relation to the decedent is entitled to appointment as administrator in the following order of priority:

- (a) Surviving spouse or domestic partner as defined in Section 37.
- (b) Children.
- (c) Grandchildren.
- (d) Other issue.
- (e) Parents.
- (f) Brothers and sisters.
- (g) Issue of brothers and sisters.
- (h) Grandparents.
- (i) Issue of grandparents.
- (j) Children of a predeceased spouse or domestic partner.
- (k) Other issue of a predeceased spouse or domestic partner.
- (l) Other next of kin.
- (m) Parents of a predeceased spouse or domestic partner.
- (n) Issue of parents of a predeceased spouse or domestic partner.
- (o) Conservator or guardian of the estate acting in that capacity at the time of death who has filed a first account and is not acting as conservator or guardian for any other person.
- (p) Public administrator.
- (q) Creditors.
- (r) Any other person.

SEC. 54. Section 8462 of the Probate Code is amended to read:

8462. The surviving spouse or domestic partner of the decedent, a relative of the decedent, or a relative of a predeceased spouse or domestic partner of the decedent, has priority under Section 8461 only if one of the following conditions is satisfied:

- (a) The surviving spouse, domestic partner, or relative is entitled to succeed to all or part of the estate.
- (b) The surviving spouse, domestic partner, or relative either takes under the will of, or is entitled to succeed to all or part of the estate of, another deceased person who is entitled to succeed to all or part of the estate of the decedent.

SEC. 55. Section 8465 of the Probate Code is amended to read:

8465. (a) The court may appoint as administrator a person nominated by a person otherwise entitled to appointment or by the guardian or conservator of the estate of a person otherwise entitled to appointment. The nomination shall be made in writing and filed with the court.

(b) If a person making a nomination for appointment of an administrator is the surviving spouse or domestic partner, child,



grandchild, other issue, parent, brother or sister, or grandparent of the decedent, the nominee has priority next after those in the class of the person making the nomination.

(c) If a person making a nomination for appointment of an administrator is other than a person described in subdivision (b), the court in its discretion may appoint either the nominee or a person of a class lower in priority to that of the person making the nomination, but other persons of the class of the person making the nomination have priority over the nominee.

SEC. 56. Section 17021.7 is added to the Revenue and Taxation Code, to read:

17021.7. (a) For purposes of this part, the domestic partner of the taxpayer shall be treated as the spouse of the taxpayer for purposes of applying only Sections 105(b), 106(a), 162(l), 162(n), and 213(a) of the Internal Revenue Code and for purposes of determining whether an individual is the taxpayer's "dependent" or "member of their family" as these terms are used in those sections.

(b) For purposes of this section, the term "domestic partner" means an individual partner in a domestic partner relationship within the meaning of Section 297 of the Family Code.

SEC. 57. Section 1030 of the Unemployment Insurance Code is amended to read:

1030. (a) Any employer who is entitled under Section 1327 to receive notice of the filing of a new or additional claim may, within 10 days after mailing of the notice, submit to the department any facts within its possession disclosing whether the claimant left the employer's employ voluntarily and without good cause or left under one of the following circumstances:

(1) The claimant was discharged from the employment for misconduct connected with his or her work.

(2) The claimant's discharge or quitting from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages.

(3) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(4) The claimant left the employer's employ to accompany his or her spouse or domestic partner to or join her or him at a place from which it is impractical to commute to the employment, to which a transfer of the claimant by the employer is not available.

(5) The claimant left the employer's employ to protect his or her children or himself or herself from domestic violence abuse.



The period during which the employer may submit these facts may be extended by the director for good cause.

(b) Any base period employer that is not entitled under Section 1327 to receive notice of the filing of a new or additional claim and is entitled under Section 1329 to receive notice of computation may, within 15 days after mailing of the notice of computation, submit to the department any facts within its possession disclosing whether the claimant left the employer's employ voluntarily and without good cause or left under one of the following circumstances:

(1) The claimant was discharged from the employment for misconduct connected with his or her work.

(2) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(3) The claimant left the employer's employ to accompany his or her spouse or domestic partner to or join her or him at a place from which it is impractical to commute to the employment, to which a transfer of the claimant by the employer is not available.

(4) The claimant left the employer's employ to protect his or her children or himself or herself from domestic violence abuse.

The period during which the employer may submit these facts may be extended by the director for good cause.

(c) The department shall consider these facts together with any information in its possession. If the employer is entitled to a ruling under subdivision (b) or to a determination under Section 1328, the department shall promptly notify the employer of its ruling as to the cause of the termination of the claimant's employment. The employer may appeal from a ruling or reconsidered ruling to an administrative law judge within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. The 20-day period may be extended for good cause, which includes, but is not limited to, mistake, inadvertence, surprise, or excusable neglect. The director is an interested party to any appeal. The department may for good cause reconsider any ruling or reconsidered ruling within either five days after the date an appeal to an administrative law judge is filed or, if no appeal is filed, within 20 days after mailing or personal service of notice of the ruling or reconsidered ruling. However, a ruling or reconsidered ruling that relates to a determination that is reconsidered pursuant to subdivision (a) of Section 1332 may also be reconsidered by the department within the time provided for reconsideration of that determination.

(d) For purposes of this section only, if the claimant voluntarily leaves the employer's employ without notification to the employer of the reasons for the leaving, and if the employer submits all of the facts within



its possession concerning the leaving within the applicable time period referred to in this section, the leaving is presumed to be without good cause.

(e) An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party shall not be deemed to have voluntarily left his or her employment without good cause.

SEC. 58. Section 1032 of the Unemployment Insurance Code is amended to read:

1032. If it is ruled under Section 1030 or 1328 that the claimant left the employer's employ voluntarily and without good cause, or left under one of the following circumstances, benefits paid to the claimant subsequent to the termination of employment that are based upon wages earned from the employer prior to the date of the termination of employment shall not be charged to the account of the employer, except as provided by Section 1026, unless the employer failed to furnish the information specified in Section 1030 within the time limit prescribed in that section or unless that ruling is reversed by a reconsidered ruling:

(a) The claimant was discharged by reason of misconduct connected with his or her work.

(b) The claimant was a student employed on a temporary basis and whose employment began within, and ended with his or her leaving to return to school at the close of, his or her vacation period.

(c) The claimant left the employer's employ to accompany his or her spouse or domestic partner to or join her or him at a place from which it is impractical to commute to the employment, to which a transfer of the claimant by the employer is not available.

(d) The claimant left the employer's employ to protect his or her children or himself or herself from domestic violence abuse.

(e) The claimant left the employer's employ to take a substantially better job.

(f) The claimant's discharge or quitting from his or her most recent employer was the result of an irresistible compulsion to use or consume intoxicants including alcoholic beverages.

For purposes of this section and Section 1030 "spouse" includes a person to whom marriage is imminent.

SEC. 59. Section 1256 of the Unemployment Insurance Code is amended to read:

1256. An individual is disqualified for unemployment compensation benefits if the director finds that he or she left his or her most recent work voluntarily without good cause or that he or she has been discharged for misconduct connected with his or her most recent work.



An individual is presumed to have been discharged for reasons other than misconduct in connection with his or her work and not to have voluntarily left his or her work without good cause unless his or her employer has given written notice to the contrary to the department as provided in Section 1327, setting forth facts sufficient to overcome the presumption. The presumption provided by this section is rebuttable.

An individual whose employment is terminated under the compulsory retirement provisions of a collective bargaining agreement to which the employer is a party, shall not be deemed to have left his or her work without good cause.

An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to accompany his or her spouse or domestic partner to a place from which it is impractical to commute to the employment. For purposes of this section “spouse” includes a person to whom marriage is imminent.

An individual may be deemed to have left his or her most recent work with good cause if he or she leaves employment to protect his or her children, or himself or herself, from domestic violence abuse.

An individual shall be deemed to have left his or her most recent work with good cause if he or she elects to be laid off in place of an employee with less seniority pursuant to a provision in a collective bargaining agreement that provides that an employee with more seniority may elect to be laid off in place of an employee with less seniority when the employer has decided to lay off employees.

SEC. 60. Section 2705.1 of the Unemployment Insurance Code is amended to read:

2705.1. Where an individual who would be eligible to receive disability benefits is mentally unable to make a claim therefor, the director shall, in accordance with authorized regulations, allow the filing of a claim for these benefits by the spouse or domestic partner of the individual, in the absence of any other legally authorized representative of the individual. A payment shall be made upon affidavit executed by the spouse or domestic partner or person or persons claiming to be entitled to the benefits and the receipt of the affidavit or affidavits shall fully discharge the Director of Employment Development from any further liability with reference to the payments, without the necessity of inquiring into the truth of any of the facts stated in the affidavit.

For the purposes of this section “mentally unable to make a claim” shall be limited to those cases in which the individual is certified by a healing arts practitioner specified in Sections 2708 and 2709 to be mentally unable to make a claim pursuant to this part.

SEC. 61. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the



only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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