

AMENDED IN ASSEMBLY MAY 1, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2862

Introduced by Assembly Member Migden

February 25, 2002

An act to amend Section 377.60 of the Code of Civil Procedure, to amend Section 1374.58 of the Health and Safety Code, to amend Section 10121.7 of the Insurance Code, to amend Sections 6240 and 8462 of the Probate Code, relating to ~~wrongful death~~ domestic partnership.

LEGISLATIVE COUNSEL'S DIGEST

AB 2862, as amended, Migden. ~~Wrongful death: actions~~ Domestic partnership.

(1) Existing law provides that a cause of action for the death of a person caused by the wrongful act or neglect of another may be brought by specified parties, including the decedent's surviving spouse, domestic partner, children, and the issue of deceased children.

This bill would make technical and clarifying changes to these provisions.

(2) Existing law requires 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 or guaranteed associations for the 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 the employee, subscriber, insured, or policyholder.

This bill would make clarifying changes in these provisions.

(3) Existing law provides for the transfer of the property of a deceased person by will, and prescribes a statutory will form.

This bill would make technical changes in these provisions. This bill would add a specified statement regarding interstate concession by domestic partners.

(4) Existing law provides that the domestic partner of a decedent is entitled to be appointed administrator of the decedent’s estate and gives the domestic partner priority over other persons in relation to the decedent. Existing law conditions the right of the domestic partner to be appointed administrator of the decedent’s estate on specified factors, including the right of the domestic partner to succeed to all or part of the estate.

This bill would remove the above-described conditions on the right of the domestic partner to serve as administrator of the decedent’s estate.

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

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

- 1 SECTION 1. Section 377.60 of the Code of Civil Procedure
- 2 is amended to read:
- 3 377.60. (a) A cause of action for the death of a person caused
- 4 by the wrongful act or neglect of another may be asserted by any
- 5 of the following persons or by the decedent’s personal
- 6 representative on their behalf:
- 7 (1) The decedent’s surviving spouse.
- 8 (2) The decedent’s domestic partner.
- 9 (3) The decedent’s children and the issue of deceased children.
- 10 (4) If there are no surviving children or issue of the decedent
- 11 under paragraph (3), the persons who would be entitled to the
- 12 property of the decedent by intestate succession.
- 13 (5) The putative spouse, children of the putative spouse,
- 14 stepchildren, or parents, if they were dependent on the decedent.
- 15 As used in this subdivision, “putative spouse” means the
- 16 surviving spouse of a void or voidable marriage who is found by
- 17 the court to have believed in good faith that the marriage to the
- 18 decedent was valid.
- 19 (6) A minor if, at the time of the decedent’s death, the minor
- 20 resided for the previous 180 days in the decedent’s household and



1 was dependent on the decedent for one-half or more of the minor's
2 support.

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

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

11 (d) For the purpose of this section, "domestic partner" has the
12 meaning provided in Section 297 of the Family Code.

13 *SEC. 2. Section 1374.58 of the Health and Safety Code is*
14 *amended to read:*

15 1374.58. (a) A group health care service plan that provides
16 hospital, medical, or surgical expense benefits shall offer coverage
17 to ~~employers or~~ guaranteed associations, as defined in Section
18 1357, *or to employers*, for the domestic partner of an employee or
19 subscriber to the same extent, and subject to the same terms and
20 conditions, as provided to a dependent of the employee or
21 subscriber, and shall inform employers and guaranteed
22 associations of the availability of this coverage.

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

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

35 (d) A health care service plan may require that the employee or
36 subscriber verify the status of the domestic partnership by
37 providing to the plan a copy of a valid Declaration of Domestic
38 Partnership filed with the Secretary of State pursuant to Section
39 298 of the Family Code or an equivalent document issued by a
40 local agency of this state, another state, or a local agency of another



1 state under which the partnership is created. The plan may also
2 require that the employee or subscriber notify the plan upon the
3 termination of the domestic partnership.

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

11 *SEC. 3. Section 10121.7 of the Insurance Code is amended to*
12 *read:*

13 10121.7. (a) A policy of group disability insurance that
14 provides hospital, medical, or surgical expense benefits shall offer
15 coverage to ~~employers or~~ guaranteed associations, as defined in
16 Section 10700, *or to employers*, for the domestic partner of an
17 employee, insured, or policyholder to the same extent, and subject
18 to the same terms and conditions, as provided to a dependent of the
19 employee, insured, or policyholder, and shall inform employers
20 and guaranteed associations of the availability of this coverage.

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

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

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



1 or policyholder notify the insurer upon the termination of the
2 domestic partnership.

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

10 *SEC. 4. Section 6240 of the Probate Code is amended to read:*
11 6240. The following is the California Statutory Will form:

12

13 QUESTIONS AND ANSWERS ABOUT THIS CALIFORNIA
14 STATUTORY WILL

15

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

21

22 1. *What happens if I die without a Will?* If you die without a
23 Will, what you own (your “assets”) in your name alone will be
24 divided among your spouse, ~~domestic partner~~, children, or other
25 relatives according to state law. The court will appoint a relative
26 to collect and distribute your assets. *A domestic partner will not*
27 *have a right to inherit your property without a will.*

28 2. *What can a Will do for me?* In a Will you may designate who
29 will receive your assets at your death. You may designate someone
30 (called an “executor”) to appear before the court, collect your
31 assets, pay your debts and taxes, and distribute your assets as you
32 specify. You may nominate someone (called a “guardian”) to raise
33 your children who are under age 18. You may designate someone
34 (called a “custodian”) to manage assets for your children until
35 they reach any age between 18 and 25.

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

39 4. *What is community property?* Can I give away my share in
40 my Will? If you are married and you or your spouse earned money



1 during your marriage from work and wages, that money (and the
2 assets bought with it) is community property. Your Will can only
3 give away your one-half of community property. Your Will cannot
4 give away your spouse's one-half of community property.

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

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

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

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

36 9. *May I add or cross out any words on this Will?* No. If you do,
37 the Will may be invalid or the court may ignore the crossed out or
38 added words. You may only fill in the blanks. You may amend this
39 Will by a separate document (called a codicil). Talk to a lawyer if



1 you want to do something with your assets which is not allowed
2 in this form.

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

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

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

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

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

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

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

39 17. *What is a custodian?* Do I need to designate one? A
40 “custodian” is a person you may designate to manage assets for



1 someone (including a child) who is between ages 18 and 25 and
2 who receives assets under your Will. The custodian manages the
3 assets and pays as much as the custodian determines is proper for
4 health, support, maintenance, and education. The custodian
5 delivers what is left to the person when the person reaches the age
6 you choose (between 18 and 25). No bond is required of a
7 custodian.

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

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

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

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

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INSTRUCTIONS

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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.



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NOTE TO PRINTING OFFICE: INSERT CAMERA-READY
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for California Statutory Will

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



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1 *SEC. 5. Section 8462 of the Probate Code is amended to read:*
2 8462. The surviving spouse ~~or domestic partner~~ of the
3 decedent, a relative of the decedent, or a relative of a predeceased
4 spouse ~~or domestic partner~~ of the decedent, has priority under
5 Section 8461 only if one of the following conditions is satisfied:
6 (a) The surviving spouse, ~~domestic partner~~, or relative is
7 entitled to succeed to all or part of the estate.
8 (b) The surviving spouse, ~~domestic partner~~, or relative either
9 takes under the will of, or is entitled to succeed to all or part of the
10 estate of, another deceased person who is entitled to succeed to all
11 or part of the estate of the decedent.

