

AMENDED IN SENATE AUGUST 13, 2002

AMENDED IN SENATE AUGUST 8, 2002

AMENDED IN SENATE JUNE 29, 2002

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 Sections 21464 and 22873 of, and to repeal and add Section 22875 of, the Government Code, to amend Section 1374.58 of the Health and Safety Code, to amend Section 10121.7 of the Insurance Code, and to amend Section 6240 of the Probate Code, relating to domestic partnership.

LEGISLATIVE COUNSEL'S DIGEST

AB 2862, as amended, Migden. 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) The existing Public Employees' Retirement System permits a retired member who chooses a specified optional settlement, or does not chose any optional settlement, to elect to have the actuarial equivalent,

as of the date of the election, of the allowance payable for the remainder of the member's lifetime applied to a lesser allowance, as specified, and name the member's spouse as beneficiary. Existing law provides that this election is irrevocable and must be made within 12 months following a member's marriage, if the spouse is named as a beneficiary. Existing law provides that specified members who fail to make the election retain the right to do so, but provides that the election becomes effective no earlier than 12 months after the date it is filed with the board, provided that neither the member nor the designated beneficiary die prior to the effective date of the election.

This bill would permit a member, under the circumstances described above, to designate his or her registered domestic partner as beneficiary. The bill would require that the designation be made within 12 months of the filing of a Declaration of Domestic Partnership, as specified. The bill would provide that a member who files a Declaration of Domestic Partnership prior to January 1, 2003, would retain the right to make an election if the election is made on or before December 31, 2003. The bill would provide that an election made on or after January 1, 2004, would become effective no earlier than 12 months after the date it is filed with the board, as specified.

(3) The existing Public Employees' Medical and Hospital Care Act authorizes the Board of Administration of the Public Employees' Retirement System to provide health benefits coverage to the domestic partners of state and local public employees and annuitants if they have submitted a certificate of eligibility or a valid Declaration of Domestic Partnership, as specified. These benefits are provided at the option of employers, pursuant to contractual agreements, as specified. Contributions and premiums paid under the act are deposited in the Public Employees' Contingency Reserve Fund and the Public Employee's Health Care Fund, continuously appropriated special funds.

This bill would provide that the act would apply to state employees, including those who are employed by the Assembly, the Senate, or the California State University, state employees of the judicial branch, and annuitants receiving an employer contribution from the state, including judges and justices who are members of the Judges' Retirement System of the Judges' Retirement System II. The bill would require the Department of Personnel Administration to adopt regulations to implement under this article. By expanding the eligibility for benefits



under the act, the bill would increase contributions to continuously appropriated special funds, thereby making an appropriation.

(4) 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.

(5) 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 intestate succession by domestic partners.

(6) This bill would provide that certain of its provisions would not become operative if AB 2216 is enacted and becomes effective on or before January 1, ~~2002~~ 2003, and amends specified sections of the Probate Code.

Vote: majority. Appropriation: yes. Fiscal committee: yes. 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 surviving domestic partner, as defined in
- 9 Section 37 of the Probate Code.
- 10 (3) The decedent’s children and the issue of deceased children.
- 11 (4) If there are no surviving children or issue of the decedent
- 12 under paragraph (3), the persons who would be entitled to the
- 13 property of the decedent by intestate succession.
- 14 (5) The putative spouse, children of the putative spouse,
- 15 stepchildren, or parents, if they were dependent on the decedent.
- 16 As used in this subdivision, “putative spouse” means the



1 surviving spouse of a void or voidable marriage who is found by
2 the court to have believed in good faith that the marriage to the
3 decedent was valid.

4 (6) A minor if, at the time of the decedent's death, the minor
5 resided for the previous 180 days in the decedent's household and
6 was dependent on the decedent for one-half or more of the minor's
7 support.

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

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

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

18 SEC. 2. Section 21464 of the Government Code is amended
19 to read:

20 21464. (a) Notwithstanding any provision of this part, a
21 retired member who chose no optional settlement or optional
22 settlement 1 at retirement may elect to have the actuarial
23 equivalent, as of the date of the election, of the allowance payable
24 for the remainder of his or her lifetime applied to a lesser
25 allowance during his or her remaining lifetime under one of the
26 optional settlements specified in this article and name his or her
27 spouse or registered domestic partner as beneficiary.

28 (b) The election provided by this section is irrevocable and
29 shall be made within 12 months following a member's marriage
30 if the spouse is named as beneficiary, or within 12 months of the
31 filing of a Declaration of Domestic Partnership, as provided in
32 Section 297 of the Family Code, if the registered domestic partner
33 is named as beneficiary. The election shall become effective on the
34 date specified on the election, provided that this date is not earlier
35 than the day following receipt of the election in this system
36 pursuant to this section.

37 (c) A member who married prior to or after January 1, 1988,
38 who fails to elect within 12 months, shall retain the right to make
39 an election under this section. However, the election shall become
40 effective no earlier than 12 months after the date it is filed with the



1 board, provided that neither the member nor the designated
2 beneficiary die prior to the effective date of the election.

3 (d) A member who files a Declaration of Domestic Partnership
4 prior to January 1, 2003, shall retain the right to make an election
5 under this section, provided the election is made on or before
6 December 31, 2003. An election made on or after January 1, 2004,
7 shall become effective no earlier than 12 months after the date it
8 is filed with the board, provided that neither the member nor the
9 designated beneficiary die prior to the effective date of the
10 election.

11 (e) This section shall not be construed to mean that designation
12 of a new beneficiary causes the selection of an optional settlement.
13 An optional settlement shall be selected by a member in a writing
14 filed by the member with the board.

15 SEC. 3. Section 22873 of the Government Code is amended
16 to read:

17 22873. (a) A contracting agency may, at its option, offer
18 health benefits pursuant to this article, to the domestic partners of
19 its employees and annuitants.

20 (b) The contracting agency shall notify the board, in a manner
21 prescribed by the board, that it is electing to provide health care
22 coverage through this article to the domestic partners of its
23 employees and annuitants.

24 (c) The contracting agency shall provide to the system any
25 information deemed necessary by the board to determine
26 eligibility under this article.

27 SEC. 4. Section 22875 of the Government Code is repealed.

28 SEC. 5. Section 22875 is added to the Government Code, to
29 read:

30 22875. This article shall apply to state employees, including
31 those who are employed by the Assembly, the Senate, or the
32 California State University, and state employees of the judicial
33 branch. This article shall also apply to annuitants receiving an
34 employer contribution from the state, including judges and
35 justices who are members of the Judges' Retirement System of the
36 Judges' Retirement System II. The Department of Personnel
37 Administration shall adopt regulations to implement under this
38 article.

39 SEC. 6. Section 1374.58 of the Health and Safety Code is
40 amended to read:



1 1374.58. (a) A group health care service plan that provides
2 hospital, medical, or surgical expense benefits shall offer coverage
3 to guaranteed associations, as defined in Section 1357, or to
4 employers, for the domestic partner of an employee or subscriber
5 to the same extent, and subject to the same terms and conditions,
6 as provided to a dependent of the employee or subscriber, and shall
7 inform employers and guaranteed associations of the availability
8 of this coverage.

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

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

21 (d) A health care service plan may require that the employee or
22 subscriber verify the status of the domestic partnership by
23 providing to the plan a copy of a valid Declaration of Domestic
24 Partnership filed with the Secretary of State pursuant to Section
25 298 of the Family Code or an equivalent document issued by a
26 local agency of this state, another state, or a local agency of another
27 state under which the partnership is created. The plan may also
28 require that the employee or subscriber notify the plan upon the
29 termination of the domestic partnership.

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

37 SEC. 7. Section 10121.7 of the Insurance Code is amended to
38 read:

39 10121.7. (a) A policy of group disability insurance that
40 provides hospital, medical, or surgical expense benefits shall offer



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

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

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

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

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

36 SEC. 8. Section 6240 of the Probate Code is amended to read:
37 6240. The following is the California Statutory Will form:
38



1 QUESTIONS AND ANSWERS ABOUT THIS CALIFORNIA
2 STATUTORY WILL

3
4 The following information, in question and answer form, is not
5 a part of the California Statutory Will. It is designed to help you
6 understand about Wills and to decide if this Will meets your needs.
7 This Will is in a simple form. The complete text of each paragraph
8 of this Will is printed at the end of the Will.

9
10 1. *What happens if I die without a Will?* If you die without a
11 Will, what you own (your “assets”) in your name alone will be
12 divided among your spouse, children, or other relatives according
13 to state law. The court will appoint a relative to collect and
14 distribute your assets. A domestic partner will not have a right to
15 inherit your property without a will.

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

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

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

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



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

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

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

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

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

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

39 12. *When should I change my Will?* You should make and sign
40 a new Will if you marry, divorce, or terminate your domestic



1 partnership after you sign this Will. Divorce, annulment, or
2 termination of a domestic partnership automatically cancels all
3 property stated to pass to a former husband, wife, or domestic
4 partner under this Will, and revokes the designation of a former
5 spouse or domestic partner as executor, custodian, or guardian.
6 You should sign a new Will when you have more children, or if
7 your spouse or a child dies, or a domestic partner dies or marries.
8 You may want to change your Will if there is a large change in the
9 value of your assets. You may also want to change your Will if you
10 enter a domestic partnership or your domestic partnership has been
11 terminated after you sign this Will.

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

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

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

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

26 17. *What is a custodian?* Do I need to designate one? A
27 “custodian” is a person you may designate to manage assets for
28 someone (including a child) who is between ages 18 and 25 and
29 who receives assets under your Will. The custodian manages the
30 assets and pays as much as the custodian determines is proper for
31 health, support, maintenance, and education. The custodian
32 delivers what is left to the person when the person reaches the age
33 you choose (between 18 and 25). No bond is required of a
34 custodian.

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

39 19. *What happens if I make a gift in this Will to someone and*
40 *that person dies before I do?* A person must survive you by 120



1 hours to take a gift under this Will. If that person does not, then the
2 gift fails and goes with the rest of your assets. If the person who
3 does not survive you is a relative of you or your spouse, then
4 certain assets may go to the relative’s descendants.

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

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

25
26 INSTRUCTIONS
27

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

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

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

37 ~~SEC. 9.—The amendments to Section 6420 of the Probate Code~~
38 ~~in Section 8 of this bill shall not become operative if Assembly Bill~~
39 ~~2216 of the 2001–02 Regular Session is enacted and becomes~~



1 ~~effective on or before January 1, 2002, and amends Sections 6401~~
2 ~~and 6402 of the Probate Code.~~



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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. 9. The amendments to Section 6420 of the Probate Code*
2 *in Section 8 of this bill shall not become operative if Assembly Bill*
3 *2216 of the 2001–02 Regular Session is enacted and becomes*
4 *effective on or before January 1, 2003, and amends Sections 6401*
5 *and 6402 of the Probate Code.*

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