

Senate Bill No. 651

CHAPTER 721

An act to amend Sections 297 and 2320 of, and to add Sections 297.1 and 298.7 to, the Family Code, relating to family law.

[Approved by Governor October 9, 2011. Filed with
Secretary of State October 9, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 651, Leno. Family law: domestic partnerships.

Existing law provides that 2 unmarried, unrelated adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring may establish a domestic partnership by filing a declaration with the Secretary of State if certain requirements are met, including that both persons have a common residence and that both persons are at least 18 years of age. Existing law authorizes 2 unmarried persons, not minors, who have been living together as husband and wife to obtain a confidential marriage license, as specified.

This bill would eliminate the requirement that domestic partners have a common residence. This bill would also permit a person who is under 18 years of age who otherwise meets the requirements for establishing a domestic partnership to do so upon obtaining a court order that provides that authority to the underage person. The bill would also provide for the consent of the underage person's parent or guardian, except as specified, and would require that the court order and the written consent be filed with the court clerk and submitted to the Secretary of State with a Declaration of Domestic Partnership. The bill would also require the Secretary of State to establish a process by which 2 persons could enter into a confidential domestic partnership and maintain each confidential Declaration of Domestic Partnership, as specified, and permit the Secretary of State to charge a reasonable fee in this regard.

Existing law prohibits a judgment of dissolution of marriage from being entered unless one of the parties to the marriage has been a resident of this state for 6 months and of the county in which the proceeding is filed for 3 months before the filing of the petition.

This bill would authorize a judgment for dissolution, nullity, or legal separation of a marriage between persons of the same sex to be entered if the marriage was entered in California and neither party to the marriage resides in a jurisdiction that will dissolve the marriage.

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

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

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

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

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

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

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

(4) 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 Section 402(a) of Title 42 of the United States Code for old-age insurance benefits or Title XVI of the Social Security Act as defined in Section 1381 of Title 42 of the United States Code 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 62 years of age.

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

SEC. 2. Section 297.1 is added to the Family Code, to read:

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

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

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

SEC. 3. Section 298.7 is added to the Family Code, to read:

298.7. The Secretary of State shall establish a process by which two persons, who have been living together as domestic partners and who meet the requirements of paragraphs (1) to (5), inclusive, of subdivision (b) of Section 297, may enter into a confidential domestic partnership. This process shall do all of the following:

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

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

SEC. 4. Section 2320 of the Family Code is amended to read:

2320. (a) Except as provided in subdivision (b), a judgment of dissolution of marriage may not be entered unless one of the parties to the marriage has been a resident of this state for six months and of the county in which the proceeding is filed for three months next preceding the filing of the petition.

(b) (1) A judgment for dissolution, nullity, or legal separation of a marriage between persons of the same sex may be entered, even if neither spouse is a resident of, or maintains a domicile in, this state at the time the proceedings are filed, if the following apply:

(A) The marriage was entered in California.

(B) Neither party to the marriage resides in a jurisdiction that will dissolve the marriage. If the jurisdiction does not recognize the marriage, there shall be a rebuttable presumption that the jurisdiction will not dissolve the marriage.

(2) For the purposes of this subdivision, the superior court in the county where the marriage was entered shall be the proper court for the proceeding. The dissolution, nullity, or legal separation shall be adjudicated in accordance with California law.