

AMENDED IN SENATE SEPTEMBER 3, 1999

AMENDED IN SENATE AUGUST 16, 1999

AMENDED IN ASSEMBLY APRIL 8, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

**ASSEMBLY BILL**

**No. 26**

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**Introduced by Assembly Members Migden, Kuehl, and**

**Villaraigosa**

*(Principal coauthor: Assembly Member Knox)*

**(Coauthors: Assembly Members Alquist, Aroner, Calderon,  
Firebaugh, Keeley, ~~Knox~~, Lempert, Longville, Mazzoni,  
Romero, and Steinberg)**

**(Coauthors: Senators Bowen, Solis, Speier, and  
Vasconcellos)**

December 7, 1998

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An act to add Division 2.5 (commencing with Section 297) to the Family Code, to add Article 9 (commencing with Section 22867) to Chapter 1 of Part 5 of Division 5 of Title 2 of the Government Code, and to add Section 1261 to the Health and Safety Code, relating to domestic partners.

LEGISLATIVE COUNSEL'S DIGEST

AB 26, as amended, Migden. Domestic partners.

(1) Existing law sets forth the requirements of a valid marriage, and specifies the rights and obligations of spouses during marriage.

This bill would provide that a domestic partnership shall be established between 2 adults of the same sex who have a

common residence and meet other specified criteria and would provide for the registration of domestic partnerships with the Secretary of State. The bill would also specify procedures for the termination of domestic partnerships. The bill would prohibit a person who has filed a Declaration of Domestic Partnership from filing a new declaration until at least 6 months ~~has~~ *have* elapsed from the date that a Notice of Termination of Domestic Partnership was filed with the Secretary of State in connection with the termination of the most recent domestic partnership, except where the previous domestic partnership ended because one of the partners died or married.

The bill would require the Secretary of State to prepare forms for the registration and termination of domestic partnerships, distribute these forms to each county clerk, and require the Secretary of State to establish, by regulation, and charge fees for processing these forms. The bill would require these forms to be available to the public at the office of the Secretary of State and each county clerk. A Declaration of Domestic Partnership would be required to be accompanied by a specified declaration of veracity. Violation of this requirement would be a misdemeanor. By creating a new crime and by increasing the duties of the county clerk, the bill would impose a state-mandated local program.

This bill would provide that any domestic partnership entered into outside of this state, which would be valid by the laws of the jurisdiction under which the partnership was created, shall be valid in this state.

The bill would also preempt, on and after January 1, 2000, any local ordinance or law that provides for the creation of a domestic partnership, as specified, except that a local jurisdiction may retain or adopt policies or laws that offer rights to domestic partners within the jurisdiction and impose duties that are in addition to the rights and duties established by state law, as specified.

(2) Existing law does not specify requirements concerning patient visitation in all health facilities.

This bill would require a health facility to allow a patient's domestic partner and other specified persons to visit a patient, except under specified conditions.



(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 plan coverage to state and local public employees and annuitants and their family members.

This bill would authorize the state and local employers to offer health care coverage and other benefits to domestic partners, as defined, who have submitted certificates of eligibility or Declarations of Domestic Partnership to the board.

(4) 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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, with regard to certain mandates, no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

1 SECTION 1. Division 2.5 (commencing with Section  
2 297) is added to the Family Code, to read:  
3



DIVISION 2.5. DOMESTIC PARTNER  
REGISTRATION

PART 1. DEFINITIONS

1  
2  
3  
4  
5  
6 297. (a) Domestic partners are two adults who have  
7 chosen to share one another’s lives in an intimate and  
8 committed relationship of mutual caring.

9 (b) A domestic partnership shall be established when  
10 all of the following requirements are met:

11 (1) Both persons have a common residence.

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

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

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

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

21 (6) Both persons are members of the same sex.

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

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

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

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

38 (d) “Basic living expenses” means, shelter, utilities,  
39 and all other costs directly related to the maintenance of  
40 the common household of the common residence of the



1 domestic partners. It also means any other cost, such as  
2 medical care, if some or all of the cost is paid as a benefit  
3 because a person is another person's domestic partner.

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

13  
14 PART 2. REGISTRATION

15  
16 298. (a) The Secretary of State shall prepare forms  
17 entitled "Declaration of Domestic Partnership" and  
18 "Notice of Termination of Domestic Partnership" to  
19 meet the requirements of this division. These forms shall  
20 require the signature and seal of an acknowledgment by  
21 a notary public to be binding and valid.

22 (b) (1) The Secretary of State shall distribute these  
23 forms to each county clerk. These forms shall be available  
24 to the public at the office of the Secretary of State and  
25 each county clerk.

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

30 (c) The Declaration of Domestic Partnership shall  
31 require each person who wants to become a domestic  
32 partner to (1) state that he or she meets the requirements  
33 of Section 297 at the time the form is signed, (2) provide  
34 a mailing address, (3) sign the form with a declaration  
35 that representations made therein are true, correct, and  
36 contain no material omissions of fact to the best  
37 knowledge and belief of the applicant, and (4) have a  
38 notary public acknowledge his or her signature. Both  
39 partners' signatures shall be affixed to one Declaration of  
40 Domestic Partnership form, which form shall then be

1 transmitted to the Secretary of State according to the  
2 instructions provided on the form. Violations of this  
3 subdivision are punishable as a misdemeanor.

4 298.5. (a) Two persons desiring to become domestic  
5 partners may complete and file a Declaration of  
6 Domestic Partnership with the Secretary of State.

7 (b) The Secretary of State shall register the  
8 Declaration of Domestic Partnership in a registry for  
9 those partnerships, and shall return a copy of the  
10 registered form to the domestic partners at the address  
11 provided by the domestic partners as their common  
12 residence.

13 (c) No person who has filed a Declaration of Domestic  
14 Partnership may file a new Declaration of Domestic  
15 Partnership until at least six months after the date that a  
16 Notice of Termination of Domestic Partnership was filed  
17 with the Secretary of State pursuant to subdivision (b) of  
18 Section 299 in connection with the termination of the  
19 most recent domestic partnership. This prohibition does  
20 not apply if the previous domestic partnership ended  
21 because one of the partners died or married.

### 22 23 PART 3. TERMINATION

24  
25 299. (a) A domestic partnership is terminated when  
26 any one of the following occurs:

27 (1) One partner gives or sends to the other partner a  
28 written notice by certified mail that he or she is  
29 terminating the partnership.

30 (2) One of the domestic partners dies.

31 (3) One of the domestic partners marries.

32 (4) The domestic partners no longer have a common  
33 residence.

34 (b) Upon termination of a domestic partnership, at  
35 least one former partner shall file a Notice of Termination  
36 of Domestic Partnership with the Secretary of State by  
37 mailing a completed form to the Secretary of State by  
38 certified mail. The date on which the Notice of  
39 Termination of Domestic Partnership is received by the  
40 Secretary of State shall be deemed the actual termination



1 date of the domestic partnership, unless termination is  
2 caused by the death or marriage of a domestic partner, in  
3 which case the actual termination date shall be the date  
4 indicated on the Notice of Termination of Domestic  
5 Partnership form. The partner who files the Notice of  
6 Termination of Domestic Partnership shall send a copy of  
7 the notice to the last known address of the other partner.

8 (c) A former domestic partner who has given a copy  
9 of a Declaration of Domestic Partnership to any third  
10 party in order to qualify for any benefit or right shall,  
11 within 60 days of termination of the domestic partnership,  
12 give or send to the third party, at the last known address  
13 of the third party, written notification that the domestic  
14 partnership has been terminated. A third party who  
15 suffers a loss as a result of failure by the domestic partner  
16 to send this notice shall be entitled to seek recovery from  
17 the partner who was obligated to send it for any actual loss  
18 resulting thereby.

19 (d) Failure to provide the third-party notice required  
20 in subdivision (c) shall not delay or prevent the  
21 termination of the domestic partnership.

22  
23 PART 4. LEGAL EFFECT  
24

25 299.5. (a) The obligations that two people have to  
26 each other as a result of creating a domestic partnership  
27 are those described in Section 297. Registration as a  
28 domestic partner under this division shall not be evidence  
29 of, or establish, any rights existing under law other than  
30 those expressly provided to domestic partners in this  
31 division and Section 1261 of the Health and Safety Code.

32 The provisions relating to domestic partners provided  
33 in this division and Section 1261 of the Health and Safety  
34 Code shall not diminish any right under any other  
35 provision of law.

36 (b) Upon the termination of a domestic partnership,  
37 the partners, from that time forward, shall incur none of  
38 the obligations to each other as domestic partners that are  
39 created by this division and Section 1261 of the Health and  
40 Safety Code.

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

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

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

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

26 (g) Any domestic partnership entered into outside of  
27 this state, which would be valid by the laws of the  
28 jurisdiction under which the partnership was created,  
29 shall be valid in this state.

30

31 PART 5. PREEMPTION

32

33 299.6. (a) Any local ordinance or law that provides  
34 for the creation of a “domestic partnership” shall be  
35 preempted on and after January 1, 2000, except as  
36 provided in subdivision (c).

37 (b) Domestic partnerships created under any local  
38 domestic partnership ordinance or law before January 1,  
39 2000, shall remain valid. On and after January 1, 2000,  
40 domestic partnerships previously established under a



1 local ordinance or law shall be governed by this division  
2 and the rights and duties of the partners shall be those set  
3 out in this division, except as provided in subdivision (c),  
4 provided a Declaration of Domestic Partnership is filed  
5 by the domestic partners under Section 298.5.

6 (c) Any local jurisdiction may retain or adopt  
7 ordinances, policies, or laws that offer rights within that  
8 jurisdiction to domestic partners as defined by Section  
9 297 or as more broadly defined by the local jurisdiction's  
10 ordinances, policies, or laws, or that impose duties upon  
11 third parties regarding domestic partners as defined by  
12 Section 297 or as more broadly defined by the local  
13 jurisdiction's ordinances, policies, or laws, that are in  
14 addition to the rights and duties set out in this division,  
15 and the local rights may be conditioned upon the  
16 agreement of the domestic partners to assume the  
17 additional obligations set forth in this division.

18 SEC. 2. Article 9 (commencing with Section 22867) is  
19 added to Chapter 1 of Part 5 of Division 5 of Title 2 of the  
20 Government Code, to read:

21

22 Article 9. Domestic Partners

23

24 22867. It is the purpose of this article to provide  
25 employers the ability to offer health care coverage  
26 through this part to the domestic partners of their  
27 employees and annuitants.

28 22868. For this part only, and only for the purposes of  
29 providing health care coverage pursuant to this part, a  
30 domestic partner is an adult in a domestic partnership, as  
31 defined in Section 22869, with a person enrolled as an  
32 employee or annuitant of an employer contracting with  
33 the board for health benefits coverage, who has  
34 submitted to the system a certificate of eligibility  
35 pursuant to Section 22872 or a valid Declaration of  
36 Domestic Partnership filed pursuant to Division 2.5  
37 (commencing with Section 297) of the Family Code.

38 22869. For purposes of this part, a "domestic  
39 partnership" shall be two people who meet all of the  
40 criteria set forth in Section 297 of the Family Code.



1 22871. Notwithstanding any other provision of law, a  
2 domestic partner shall be included in the definition of a  
3 family member for purposes of Sections 22777, 22778,  
4 subdivision (a) of Section 22791, Sections 22811, 22811.5,  
5 22811.6, 22812, 22813, 22815, subdivision (c) of Section  
6 22816, Sections 22816.3, 22816.35, 22817, 22819, 22823,  
7 subdivision (a) of Section 22825, subdivision (a) of  
8 Section 22825.1, Section 22825.7, paragraph (1) of  
9 subdivision (b) of Section 22840.2, subdivision (f) of  
10 Section 22840.2, subdivision (b) of Section 22856, and  
11 Section 22859.

12 22871.1. Notwithstanding Section 22871 or any other  
13 provision of law, a domestic partner shall not be included  
14 in the definition of a family member for purposes of  
15 subdivisions (e) and (f) of Section 22754, subdivision (a)  
16 of Section 22811.6, and Section 22821.

17 22871.2. Notwithstanding subdivision (f) of Section  
18 22754 or any other provision of law, a domestic partner  
19 shall be considered to be a family member for purposes  
20 of Section 22810, except that a domestic partner shall not  
21 be considered a family member for purposes of continued  
22 health coverage eligibility upon the death of the  
23 employee or annuitant.

24 22872. (a) In order to receive any benefit provided  
25 by this article, an employee or annuitant and his or her  
26 domestic partner shall complete, have notarized, and file  
27 on a form designated by the board, a certificate of  
28 eligibility or a valid Declaration of Domestic Partnership  
29 filed pursuant to Division 2.5 (commencing with Section  
30 297) of the Family Code.

31 (b) The employee or annuitant shall also provide a  
32 signed statement indicating that the employee or  
33 annuitant agrees that he or she may be required to  
34 reimburse the employer, their designated health services  
35 plan, and the system, for any expenditures made by the  
36 employer, their designated health services plan, and the  
37 system, for medical claims, processing fees,  
38 administrative charges, costs, and attorney's fees on  
39 behalf of the domestic partner if any of the submitted



1 documentation is found to be incomplete, inaccurate, or  
2 fraudulent.

3 22873. (a) Any employer may, at its option, offer  
4 health benefits pursuant to this article, to the domestic  
5 partners of its employees and annuitants.

6 (b) The employer shall notify the board, in a manner  
7 prescribed by the board, that it is electing to provide  
8 health care coverage through this article to the domestic  
9 partners of its employees and annuitants.

10 (c) The employer shall provide to the system any  
11 information deemed necessary by the board to determine  
12 eligibility under this article.

13 22874. Notwithstanding any other provision of law,  
14 this article shall not be construed to extend any vested  
15 rights to any person nor be construed to limit the right of  
16 the Legislature to subsequently modify or repeal any  
17 provision of this article.

18 22875. This article shall apply to (a) employees who  
19 are members of bargaining units only if those units have  
20 signed a memorandum of understanding between their  
21 employer and the recognized employee organization to  
22 adopt the benefits accorded under this article, and (b)  
23 the members of the Public Employees' Retirement  
24 System who are employed by the Assembly, the Senate,  
25 the Judicial Council, and the California State University  
26 only if the Assembly Rules Committee, the Senate Rules  
27 Committee, the Judicial Council, and the Board of  
28 Trustees of the California State University, respectively,  
29 make this section applicable to their employees.

30 SEC. 3. Section 1261 is added to the Health and Safety  
31 Code, to read:

32 1261. (a) A health facility shall allow a patient's  
33 domestic partner, the children of the patient's domestic  
34 partner, and the domestic partner of the patient's parent  
35 or child to visit, unless one of the following is met:

36 (1) No visitors are allowed.

37 (2) The facility reasonably determines that the  
38 presence of a particular visitor would endanger the  
39 health or safety of a patient, member of the health facility



1 staff, or other visitor to the health facility, or would  
2 significantly disrupt the operations of a facility.

3 (3) The patient has indicated to health facility staff  
4 that the patient does not want this person to visit.

5 (b) This section may not be construed to prohibit a  
6 health facility from otherwise establishing reasonable  
7 restrictions upon visitation, including restrictions upon  
8 the hours of visitation and number of visitors.

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

12 SEC. 4. No reimbursement is required by this act  
13 pursuant to Section 6 of Article XIII B of the California  
14 Constitution for certain costs that may be incurred by a  
15 local agency or school district because in that regard this  
16 act creates a new crime or infraction, eliminates a crime  
17 or infraction, or changes the penalty for a crime or  
18 infraction, within the meaning of Section 17556 of the  
19 Government Code, or changes the definition of a crime  
20 within the meaning of Section 6 of Article XIII B of the  
21 California Constitution.

22 However, notwithstanding Section 17610 of the  
23 Government Code, if the Commission on State Mandates  
24 determines that this act contains other costs mandated by  
25 the state, reimbursement to local agencies and school  
26 districts for those costs shall be made pursuant to Part 7  
27 (commencing with Section 17500) of Division 4 of Title  
28 2 of the Government Code. If the statewide cost of the  
29 claim for reimbursement does not exceed one million  
30 dollars (\$1,000,000), reimbursement shall be made from  
31 the State Mandates Claims Fund.

