

AMENDED IN SENATE SEPTEMBER 7, 1999

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

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

(Principal coauthor: Assembly Member Knox)

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

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

December 7, 1998

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 *or, if both persons are over the age of 62 and meet specified eligibility criteria, opposite sexes*, 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 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~~ July 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. *It is the intent of the Legislature to*
2 *retain the right of hospitals and other health care facilities*
3 *to establish visitation policies in reasonable and*
4 *appropriate circumstances. In enacting this legislation, it*
5 *is the intent of the Legislature to provide hospitals and*
6 *other health facilities with the authority to administer*



1 *those policies in a manner that applies equally to spouses,*
2 *registered domestic partners, and other immediate*
3 *family members.*

4 SEC. 2. Division 2.5 (commencing with Section 297)
5 is added to the Family Code, to read:

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DIVISION 2.5. DOMESTIC PARTNER
REGISTRATION

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PART 1. DEFINITIONS

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

15 (b) A domestic partnership shall be established *in*
16 *California* when all of the following requirements are
17 met:

- 18 (1) Both persons have a common residence.
- 19 (2) Both persons agree to be jointly responsible for
20 each other's basic living expenses incurred during the
21 domestic partnership.
- 22 (3) Neither person is married or a member of another
23 domestic partnership.
- 24 (4) The two persons are not related by blood in a way
25 that would prevent them from being married to each
26 other in this state.

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

28 (6) *Either of the following:*

- 29 (A) Both persons are members of the same sex.
- 30 (B) *Both persons meet the eligibility criteria under*
31 *Title II of the Social Security Act as defined in 42 U.S.C.*
32 *Section 402(a) for old-age insurance benefits or Title XVI*
33 *of the Social Security Act as defined in 42 U.S.C. Section*
34 *1381 for aged individuals. Notwithstanding any other*
35 *provision of this section, persons of opposite sexes may not*
36 *constitute a domestic partnership unless both persons are*
37 *over the age of 62.*

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



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

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

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

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

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

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PART 2. REGISTRATION

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33 298. (a) The Secretary of State shall prepare forms
34 entitled “Declaration of Domestic Partnership” and
35 “Notice of Termination of Domestic Partnership” to
36 meet the requirements of this division. These forms shall
37 require the signature and seal of an acknowledgment by
38 a notary public to be binding and valid.

39 (b) (1) The Secretary of State shall distribute these
40 forms to each county clerk. These forms shall be available



1 to the public at the office of the Secretary of State and
2 each county clerk.

3 (2) The Secretary of State shall, by regulation,
4 establish fees for the actual costs of processing each of
5 these forms, and shall charge these fees to persons filing
6 the forms.

7 (c) The Declaration of Domestic Partnership shall
8 require each person who wants to become a domestic
9 partner to (1) state that he or she meets the requirements
10 of Section 297 at the time the form is signed, (2) provide
11 a mailing address, (3) sign the form with a declaration
12 that representations made therein are true, correct, and
13 contain no material omissions of fact to the best
14 knowledge and belief of the applicant, and (4) have a
15 notary public acknowledge his or her signature. Both
16 partners' signatures shall be affixed to one Declaration of
17 Domestic Partnership form, which form shall then be
18 transmitted to the Secretary of State according to the
19 instructions provided on the form. Violations of this
20 subdivision are punishable as a misdemeanor.

21 298.5. (a) Two persons desiring to become domestic
22 partners may complete and file a Declaration of
23 Domestic Partnership with the Secretary of State.

24 (b) The Secretary of State shall register the
25 Declaration of Domestic Partnership in a registry for
26 those partnerships, and shall return a copy of the
27 registered form to the domestic partners at the address
28 provided by the domestic partners as their common
29 residence.

30 (c) No person who has filed a Declaration of Domestic
31 Partnership may file a new Declaration of Domestic
32 Partnership until at least six months after the date that a
33 Notice of Termination of Domestic Partnership was filed
34 with the Secretary of State pursuant to subdivision (b) of
35 Section 299 in connection with the termination of the
36 most recent domestic partnership. This prohibition does
37 not apply if the previous domestic partnership ended
38 because one of the partners died or married.

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PART 3. TERMINATION

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

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

(2) One of the domestic partners dies.

(3) One of the domestic partners marries.

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

(b) Upon termination of a domestic partnership, at least one former partner shall file a Notice of Termination of Domestic Partnership with the Secretary of State by mailing a completed form to the Secretary of State by certified mail. The date on which the Notice of Termination of Domestic Partnership is received by the Secretary of State shall be deemed the actual termination date of the domestic partnership, unless termination is caused by the death or marriage of a domestic partner, in which case the actual termination date shall be the date indicated on the Notice of Termination of Domestic Partnership form. The partner who files the Notice of Termination of Domestic Partnership shall send a copy of the notice to the last known address of the other partner.

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

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



PART 4. LEGAL EFFECT

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3 299.5. (a) The obligations that two people have to
4 each other as a result of creating a domestic partnership
5 are those described in Section 297. Registration as a
6 domestic partner under this division shall not be evidence
7 of, or establish, any rights existing under law other than
8 those expressly provided to domestic partners in this
9 division and Section 1261 of the Health and Safety Code.

10 The provisions relating to domestic partners provided
11 in this division and Section 1261 of the Health and Safety
12 Code shall not diminish any right under any other
13 provision of law.

14 (b) Upon the termination of a domestic partnership,
15 the partners, from that time forward, shall incur none of
16 the obligations to each other as domestic partners that are
17 created by this division and Section 1261 of the Health and
18 Safety Code.

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

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

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

39 (f) The formation of a domestic partnership under this
40 division shall not change the individual income or estate



1 tax liability of each domestic partner prior to and during
2 the partnership, unless otherwise provided under
3 another state or federal law or regulation.

4 ~~(g) Any domestic partnership entered into outside of
5 this state, which would be valid by the laws of the
6 jurisdiction under which the partnership was created,
7 shall be valid in this state.~~

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9 PART 5. PREEMPTION

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11 299.6. (a) Any local ordinance or law that provides
12 for the creation of a “domestic partnership” shall be
13 preempted on and after ~~January~~ July 1, 2000, except as
14 provided in subdivision (c).

15 (b) Domestic partnerships created under any local
16 domestic partnership ordinance or law before ~~January~~
17 July 1, 2000, shall remain valid. On and after ~~January~~ July
18 1, 2000, domestic partnerships previously established
19 under a local ordinance or law shall be governed by this
20 division and the rights and duties of the partners shall be
21 those set out in this division, except as provided in
22 subdivision (c), provided a Declaration of Domestic
23 Partnership is filed by the domestic partners under
24 Section 298.5.

25 (c) Any local jurisdiction may retain or adopt
26 ordinances, policies, or laws that offer rights within that
27 jurisdiction to domestic partners as defined by Section
28 297 or as more broadly defined by the local jurisdiction’s
29 ordinances, policies, or laws, or that impose duties upon
30 third parties regarding domestic partners as defined by
31 Section 297 or as more broadly defined by the local
32 jurisdiction’s ordinances, policies, or laws, that are in
33 addition to the rights and duties set out in this division,
34 and the local rights may be conditioned upon the
35 agreement of the domestic partners to assume the
36 additional obligations set forth in this division.

37 ~~SEC. 2.~~

38 SEC. 3. Article 9 (commencing with Section 22867) is
39 added to Chapter 1 of Part 5 of Division 5 of Title 2 of the
40 Government Code, to read:



Article 9. Domestic Partners

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

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

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

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

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

22871.2. 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



1 health coverage eligibility upon the death of the
2 employee or annuitant.

3 *22871.3. If an employee or annuitant has a domestic*
4 *partner who is an employee or annuitant, each domestic*
5 *partner may enroll as an individual. No person may be*
6 *enrolled both as an employee or annuitant and as a family*
7 *member. A family member may be enrolled with respect*
8 *to only one employee or annuitant.*

9 *22872. (a) In order to receive any benefit provided*
10 *by this article, an employee or annuitant ~~and his or her~~*
11 *~~domestic partner shall complete, have notarized, and file~~*
12 *~~on a form designated by the board, a certificate of~~*
13 *~~eligibility or shall present the board with proof in a~~*
14 *manner designated by the board that the employee or*
15 *annuitant and his or her domestic partner have filed a*
16 *valid Declaration of Domestic Partnership ~~filed~~ pursuant*
17 *to Division 2.5 (commencing with Section 297) of the*
18 *Family Code.*

19 (b) The employee or annuitant shall also provide a
20 signed statement indicating that the employee or
21 annuitant agrees that he or she may be required to
22 reimburse the employer, their designated health services
23 plan, and the system, for any expenditures made by the
24 employer, their designated health services plan, and the
25 system, for medical claims, processing fees,
26 administrative charges, costs, and attorney's fees on
27 behalf of the domestic partner if any of the submitted
28 documentation is found to be incomplete, inaccurate, or
29 fraudulent.

30 (c) *The employee or annuitant shall notify the*
31 *employer or CalPERS when a domestic partnership has*
32 *terminated, as required by subdivision (c) of Section 299*
33 *of the Family Code.*

34 *22873. (a) Any employer or contracting agency may,*
35 *at its option, offer health benefits pursuant to this article,*
36 *to the domestic partners of its employees and annuitants.*

37 (b) The employer or contracting agency shall notify
38 the board, in a manner prescribed by the board, that it is
39 electing to provide health care coverage through this



1 article to the domestic partners of its employees and
2 annuitants.

3 (c) The employer *or contracting agency* shall provide
4 to the system any information deemed necessary by the
5 board to determine eligibility under this article.

6 22874. Notwithstanding any other provision of law,
7 this article shall not be construed to extend any vested
8 rights to any person nor be construed to limit the right of
9 the Legislature to subsequently modify or repeal any
10 provision of this article.

11 22875. This article shall apply to ~~(a) employees any of~~
12 *the following:*

13 (a) *Represented state employees* who are members of
14 ~~a bargaining units only if those units have unit or who~~
15 *retired from a bargaining unit only if (1) there is a signed*
16 ~~a~~ memorandum of understanding between ~~their~~
17 ~~employer~~ *the state* and the recognized employee
18 organization to adopt the benefits accorded under this
19 article, ~~and (b) the members~~ *and (2) the Department of*
20 *Personnel Administration makes this article*
21 *simultaneously applicable to all eligible annuitants*
22 *retired from the bargaining unit. This article shall not*
23 *apply to active state employees who are members of a*
24 *state bargaining unit unless it also applies to eligible*
25 *annuitants retired from that bargaining unit.*

26 (b) *Members of the Public Employees' Retirement*
27 *System who are employed by the Assembly, the Senate,*
28 ~~the Judicial Council,~~ *and the California State University*
29 *only if the Assembly Rules Committee, the Senate Rules*
30 *Committee,* ~~the Judicial Council,~~ *and the Board of*
31 *Trustees of the California State University, respectively,*
32 *make this section applicable to their employees.*

33 (c) *Members of the Public Employees' Retirement*
34 *System who are state employees of the judicial branch,*
35 *and judges and justices who are members of the Judges'*
36 *Retirement System or the Judges' Retirement System II,*
37 *if the Judicial Council makes this section applicable to*
38 *them.*

39 (d) *Employees excluded from the Ralph C. Dills Act*
40 *(Chapter 10.3 (commencing with Section 3512) of*



1 *Division 4 of Title 1) upon adoption by the Department*
2 *of Personnel Administration of regulations to implement*
3 *employee benefits under this article for those state*
4 *officers and employees excluded from, or not otherwise*
5 *subject to the Ralph C. Dills Act. Regulations adopted or*
6 *amended pursuant to this section shall not be subject to*
7 *review and approval of the Office of Administrative Law*
8 *pursuant to the Administrative Procedure Act (Chapter*
9 *3.5 (commencing with Section 11340) of Part 1 of Division*
10 *3 of Title 2). These regulations shall become effective*
11 *immediately upon filing with the Secretary of State.*

12 22876. *The board may establish a one-time special*
13 *enrollment period to permit currently enrolled*
14 *employees and annuitants whose domestic partners will*
15 *be eligible for family member status pursuant to this*
16 *article to enroll those domestic partners.*

17 22877. *An employer may require an employee or*
18 *annuitant or his or her domestic partner to be financially*
19 *responsible for any increased cost of covering the*
20 *domestic partner that exceeds the normal employer*
21 *contribution rate resulting from the decision of that*
22 *employer to offer health coverage to domestic partners*
23 *of employees and annuitants pursuant to this article.*

24 ~~SEC. 3.~~

25 SEC. 4. Section 1261 is added to the Health and Safety
26 Code, to read:

27 1261. (a) A health facility shall allow a patient's
28 domestic partner, the children of the patient's domestic
29 partner, and the domestic partner of the patient's parent
30 or child to visit, unless one of the following is met:

31 (1) No visitors are allowed.

32 (2) The facility reasonably determines that the
33 presence of a particular visitor would endanger the
34 health or safety of a patient, member of the health facility
35 staff, or other visitor to the health facility, or would
36 significantly disrupt the operations of a facility.

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

39 (b) This section may not be construed to prohibit a
40 health facility from otherwise establishing reasonable



1 restrictions upon visitation, including restrictions upon
2 the hours of visitation and number of visitors.

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

6 ~~SEC. 4.~~

7 *SEC. 5.* No reimbursement is required by this act
8 pursuant to Section 6 of Article XIII B of the California
9 Constitution for certain costs that may be incurred by a
10 local agency or school district because in that regard this
11 act creates a new crime or infraction, eliminates a crime
12 or infraction, or changes the penalty for a crime or
13 infraction, within the meaning of Section 17556 of the
14 Government Code, or changes the definition of a crime
15 within the meaning of Section 6 of Article XIII B of the
16 California Constitution.

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

