

ASSEMBLY BILL

No. 2047

Introduced by Assembly Member Steinberg

February 18, 2000

An act to amend Section 299.5 of the Family Code, and to amend Sections 6401 and 6402 of, and to add Section 37 to, the Probate Code, relating to intestate succession.

LEGISLATIVE COUNSEL'S DIGEST

AB 2047, as introduced, Steinberg. Intestate succession: domestic partners.

Under the existing law of intestate succession, the surviving spouse is entitled to a specified share of the decedent's separate property that is not effectively disposed of by will.

This bill would extend that entitlement to a decedent's domestic partner, as defined.

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 299.5 of the Family Code is
2 amended to read:
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

1 division ~~and~~, Section 1261 of the Health and Safety Code,
2 *and Section 6401 of the Probate Code.*

3 The provisions relating to domestic partners provided
4 in this division ~~and~~, Section 1261 of the Health and Safety
5 Code, *and Section 6401 of the Probate Code* shall not
6 diminish any right under any other provision of law.

7 (b) Upon the termination of a domestic partnership,
8 the partners, from that time forward, shall incur none of
9 the obligations to each other as domestic partners that are
10 created by this division and Section 1261 of the Health and
11 Safety Code.

12 (c) The filing of a Declaration of Domestic
13 Partnership pursuant to this division shall not change the
14 character of property, real or personal, or any interest in
15 any real or personal property owned by either domestic
16 partner or both of them prior to the date of filing of the
17 declaration.

18 (d) The filing of a Declaration of Domestic
19 Partnership pursuant to this division shall not, in and of
20 itself, create any interest in, or rights to, any property,
21 real or personal, owned by one partner in the other
22 partner, including, but not limited to, rights similar to
23 community property or quasi-community property.

24 (e) Any property or interest acquired by the partners
25 during the domestic partnership where title is shared
26 shall be held by the partners in proportion of interest
27 assigned to each partner at the time the property or
28 interest was acquired unless otherwise expressly agreed
29 in writing by both parties. Upon termination of the
30 domestic partnership, this subdivision shall govern the
31 division of any property jointly acquired by the partners.

32 (f) The formation of a domestic partnership under this
33 division shall not change the individual income or estate
34 tax liability of each domestic partner prior to and during
35 the partnership, unless otherwise provided under
36 another state or federal law or regulation.

37 SEC. 2. Section 37 is added to the Probate Code, to
38 read:

39 37. "Domestic partner" means one of two persons
40 who have filed a Declaration of Domestic Partnership



1 with the Secretary of State pursuant to Division 2.5
2 (commencing with Section 297) of the Family Code,
3 provided that the domestic partnership has not been
4 terminated pursuant to Section 299 of the Family Code.

5 SEC. 3. Section 6401 of the Probate Code is amended
6 to read:

7 6401. (a) As to community property, the intestate
8 share of the surviving spouse is the one-half of the
9 community property that belongs to the decedent under
10 Section 100.

11 (b) As to quasi-community property, the intestate
12 share of the surviving spouse is the one-half of the
13 quasi-community property that belongs to the decedent
14 under Section 101.

15 (c) As to separate property, the intestate share of the
16 surviving spouse *or domestic partner* is as follows:

17 (1) The entire intestate estate if the decedent did not
18 leave any surviving issue, parent, brother, sister, or issue
19 of a deceased brother or sister.

20 (2) One-half of the intestate estate in the following
21 cases:

22 (A) Where the decedent leaves only one child or the
23 issue of one deceased child.

24 (B) Where the decedent leaves no issue but leaves a
25 parent or parents or their issue or the issue of either of
26 them.

27 (3) One-third of the intestate estate in the following
28 cases:

29 (A) Where the decedent leaves more than one child.

30 (B) Where the decedent leaves one child and the issue
31 of one or more deceased children.

32 (C) Where the decedent leaves issue of two or more
33 deceased children.

34 SEC. 4. Section 6402 of the Probate Code is amended
35 to read:

36 6402. Except as provided in Section 6402.5, the part of
37 the intestate estate not passing to the surviving spouse *or*
38 *domestic partner* under Section 6401, or the entire
39 intestate estate if there is no surviving spouse *or domestic*
40 *partner*, passes as follows:



1 (a) To the issue of the decedent, the issue taking
2 equally if they are all of the same degree of kinship to the
3 decedent, but if of unequal degree those of more remote
4 degree take in the manner provided in Section 240.

5 (b) If there is no surviving issue, to the decedent's
6 parent or parents equally.

7 (c) If there is no surviving issue or parent, to the issue
8 of the parents or either of them, the issue taking equally
9 if they are all of the same degree of kinship to the
10 decedent, but if of unequal degree those of more remote
11 degree take in the manner provided in Section 240.

12 (d) If there is no surviving issue, parent or issue of a
13 parent, but the decedent is survived by one or more
14 grandparents or issue of grandparents, to the
15 grandparent or grandparents equally, or to the issue of
16 ~~such~~ *those* grandparents if there is no surviving
17 grandparent, the issue taking equally if they are all of the
18 same degree of kinship to the decedent, but if of unequal
19 degree those of more remote degree take in the manner
20 provided in Section 240.

21 (e) If there is no surviving issue, parent or issue of a
22 parent, grandparent or issue of a grandparent, but the
23 decedent is survived by the issue of a predeceased spouse,
24 to ~~such~~ *that* issue, the issue taking equally if they are all
25 of the same degree of kinship to the predeceased spouse,
26 but if of unequal degree those of more remote degree
27 take in the manner provided in Section 240.

28 (f) If there is no surviving issue, parent or issue of a
29 parent, grandparent or issue of a grandparent, or issue of
30 a predeceased spouse, but the decedent is survived by
31 next of kin, to the next of kin in equal degree, but where
32 there are two or more collateral kindred in equal degree
33 who claim through different ancestors, those who claim
34 through the nearest ancestor are preferred to those
35 claiming through an ancestor more remote.

36 (g) If there is no surviving next of kin of the decedent
37 and no surviving issue of a predeceased spouse of the
38 decedent, but the decedent is survived by the parents of
39 a predeceased spouse or the issue of ~~such~~ *those* parents,
40 to the parent or parents equally, or to the issue of ~~such~~



1 *those* parents if both are deceased, the issue taking
2 equally if they are all of the same degree of kinship to the
3 predeceased spouse, but if of unequal degree those of
4 more remote degree take in the manner provided in
5 Section 240.

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