

RESOLUTION 5-06-2002

DIGEST

Domestic Partnerships: Definition of Persons Covered

Amends Family Code section 297 to change the classes of persons who may form domestic partnerships and to add the obligation of support to domestic partnerships.

RESOLUTIONS COMMITTEE RECOMMENDATION

DISAPPROVE

Reasons:

This resolution amends Family Code section 297 to change the classes of persons who may form domestic partnerships and to add the obligation of support to domestic partnerships. This resolution should be disapproved because it would entirely change the character of the existing statute without justification.

The existing statute allows domestic partnerships to be created by two individuals of the same sex (or seniors of opposite sexes) where a partner assumes *limited* responsibility for another sharing a common residence. This resolution would greatly expand the responsibilities of domestic partners by essentially adding a requirement of support of one by the other. It would also allow entirely new classes of domestic partners, such as an aunt and niece or a father and son. At the same time, it would eliminate the ability of seniors of the opposite sex to form domestic partnerships.

The addition of new classes of domestic partners who are related to each other by blood goes far beyond the scope and intent of domestic partnership law. The relationship between siblings or other family members is not comparable to a marriage or to the relationships currently eligible to create domestic partnerships. There does not appear to be any justification for expanding the statutory scheme to embrace those familial relationships. Nor is there any justification for eliminating the ability of seniors of the opposite sex to create domestic partnerships.

Although it may be good policy to add a support component for registered domestic partnerships, legislation requiring the partners to assume support obligations is unnecessary. Registered domestic partners are free to consent to enter into a support relationship by written agreement, and they may also agree to apply criteria for continuing support upon the termination of a domestic partnership.

SECTION/COMMITTEE REPORT

FAMILY LAW SECTION EXECUTIVE COMMITTEE

Recommendation: Approve as Amended

Reasons: The Committee agrees with part of the premise/goal of the proponent, e.g., the protection of

the domestic partners upon separation or death. We do not believe that extending the rights under this act to blood relatives is necessary or beneficial.

We propose that Section 297 (b) (4), lines 21 and 22, be restored and that Subsection (B), lines 26 - 31 be restored as well, and delete the last sentence in Subsection (B), lines 31 - 32.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Family Code section 297 to read as follows:

1 § 297.

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

4 (b) A domestic partnership shall be established in California when all of the
5 following requirements are met:

6 (1) Both persons have a common residence.

7 (2) Both persons agree; to be jointly responsible for each other's basic living
8 expenses incurred and for support for health, education and maintenance in
9 accordance with their accustomed standard of living during the domestic
10 partnership; that, upon the death of a domestic partner, the deceased partner's
11 estate is obligated to provide a probate homestead and continued support for
12 the surviving domestic partner in accordance with the standards of Family Code
13 Section 4320; that, subject to a subsequent will or beneficiary designation
14 being executed, unless otherwise agreed in writing, all property of the deceased
15 partner, acquired other than by gift, bequest, devise or descent or the rents, issues
16 and profits of non-partnership property during the period of the partnership
17 ("partnership property"), passes to the surviving partner; and that, on dissolution
18 of the partnership, each partner is entitled to support for health, education and
19 maintenance in accordance with the standards of Family Code Section 4320.

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

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

23 ~~(5) Both persons are at least 18 years of age~~

24 ~~(6)(5) Either of the following:~~

25 ~~(A) Both persons are members of the same sex.~~

26 ~~(B) Both persons meet the eligibility criteria under Title II of the Social~~
27 ~~Security Act as defined in 42 U.S.C. Section 402(a) for old-age insurance benefits~~
28 ~~or Title XVI of the Social Security Act as defined in 42 U.S.C. Section 1381 for~~
29 ~~aged individuals. Notwithstanding any other provision of this section, persons of~~
30 ~~opposite sexes may not constitute a domestic partnership unless both persons are~~

31 ~~over the age of 62. The two persons are related by blood in a way that would~~
32 ~~prevent them from being married to each other in this state.~~

33 (7)(6) Both persons are capable of consenting to the domestic partnership.

34 (8) (7) Neither person has previously filed a Declaration of Domestic
35 Partnership with the Secretary of State pursuant to this division that has not been
36 terminated under Section 299.

37 (9) (8) Both file a Declaration of Domestic Partnership with the Secretary
38 of State pursuant to this division.

39 (c) "Have a common residence" means that both domestic partner share the
40 same residence. It is not necessary that the legal right to possess the common
41 residence be in both of their names. Two people have a common residence even
42 if one or both have additional residences. Domestic partners do not cease to have
43 a common residence if one leaves the common residence but intends to return.

44 (d) "Basic living expenses" means, shelter, utilities, and all other costs directly
45 related to the maintenance of the common household of the common residence of
46 the domestic partners. It also means any other cost, such as medical care, if some
47 or all of the cost is paid as a benefit because a person is another person's domestic
48 partner.

49 (e) "Joint responsibility" means that each partner agrees to provide for the other
50 partner's basic living expenses if the partner is unable to provide for herself or
51 himself. Persons to whom these expenses are owed may enforce this
52 responsibility if, in extending credit or providing goods or services, they relied on
53 the existence of the domestic partnership and the agreement of both partners to be
54 jointly responsible for those specific expenses.

(Proposed new language underlined, language to be deleted stricken.)

PROPONENT: Beverly Hills Bar Association

STATEMENT OF REASONS:

Existing Law: Last year AB 25 was enacted into law creating significant additional rights for domestic partners.

The Problem: AB 25 restricted domestic partnership rights in an unconstitutional manner to situations involving couples in homosexual relationships or elders. The need for such arbitrary discrimination is unclear. There are many healthy relationships which would benefit from the rights of domestic partners but which are being discriminated against. Many relationships exist between family members, for example, such as sister-sister or mother-daughter, where parties do not have a sexual relationship and yet form a viable family unit which would benefit from the rights of domestic partners.

Additionally, the current Act fails to protect the rights of domestic partners. After a 20 year relationship, an unemployed domestic partner would have little or no rights to support after the termination of the domestic partnership. Family Code §299.5 specifically provides that the only obligations that two people have to each other as a result of the domestic partnership are those described in §297. This is bad law and can only encourage litigation. It is a basic tenet of law that responsibilities should accompany rights.

This Resolution: Expands the responsibilities of domestic partners in a manner commensurate with the rights established under the Domestic Partners Act and eliminates arbitrary restrictions on eligibility. This resolution seeks to do that.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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COUNTERARGUMENTS

ORANGE COUNTY BAR ASSOCIATION

This proposed resolution goes much too far in its proposed changes to Family Code Sec. 297. First, it is the intent of Family Code Section 297 to define domestic partnerships so as to protect those entering into such relationships (either of the same sex or of the opposite sex) within the sense of a "partnership" and NOT a marriage.

The proposed resolution attempts to set up and confer upon domestic partners - ONLY OF THE SAME SEX - all the benefits, rights and priveleges of marriage, especially as it relates to community property laws in the State of California. Domestic partners may obtain the same effect by means of a will and/or a contract entered into between the partners. Further, the proposed resolution abolishes the rights of elderly persons of the opposite sex who live together without entering into marriage so as to protect their Social Security benefits by forming a domestic partnership. This proposed resolution should be rejected by the Conference of Delegates!

SANTA CLARA COUNTY BAR ASSOCIATION

This resolution attempts to radically and, in some respects, inappropriately alter the domestic

partnership law. It could have serious negative consequences and should not be approved. First, the resolution seeks to create an obligation on the part of individuals and their estates to support their domestic partners after the partnership ends (either by dissolution or death). It specifically mentions only one code section (Family Code Section 4320) as the standard for support. The resolution is unclear as to whether the myriad other Family and Probate Code provisions that apply to marriage in these contexts--as well as decades of case law interpreting them--would apply to domestic partners or not. Further, it creates an entirely new form of property known as "partnership property," but does not specify to what extent, if at all, California marital property law would apply to partnership property. Finally, the resolution does not state whether the Family/Probate Courts or regular civil Superior Court judges would have jurisdiction over domestic partnership dissolutions and estate matters. If the latter hear the cases, there is a risk of judges unfamiliar with these complex areas of law being asked to render important dissolution and estate decisions. In short, while imposing a support obligation on domestic partners may be a good idea, a more incremental and thorough approach should be taken.

Second, the resolution would allow people prevented from marrying because they are blood relations to enter into domestic partnerships. This idea is flawed both on its own merits and when viewed in conjunction with the first proposal discussed above. Expanding the domestic partnership law so radically would not comport with the Legislature's intent when it created the law, which was to recognize the unions of same-gender partners and provide them with some of the legal rights and obligations that apply to married couples. Further, if both provisions of this resolution are enacted, many persons who are blood relations may enter into domestic partnerships for convenience, without full understanding of the significant consequences of doing so (i.e., the support obligations to their "partner" that they are incurring). Would we really want a daughter to be obligated to support her mother if the daughter decides to move out of the mother's home? The combination of these provisions could also lead to fraud and undue influence; for instance, unscrupulous adult children may move in with a parent and convince the parent to become their domestic partner with an eye to depriving their siblings of their rightful share of the estate. This resolution is ill-advised and should not be approved.