

Introduced by Senator Migden

December 4, 2006

An act to amend Section 297 of the Family Code, and to amend Section 2854 of the Probate Code, relating to domestic partnerships.

LEGISLATIVE COUNSEL'S DIGEST

SB 11, as introduced, Migden. Domestic partnerships.

Existing law provides that 2 unmarried, unrelated adults with a common residence may establish a domestic partnership by filing a declaration with the Secretary of State if both persons are members of the same sex or are over 62 years of age.

This bill would delete that latter same-sex or age eligibility requirement, thereby allowing any 2 persons who meet the other, specified criteria to register as domestic partners. The bill would also make a nonsubstantive, technical, and conforming change to an unrelated provision.

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

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

- 1 SECTION 1. Section 297 of the Family Code is amended to
2 read:
3 297. (a) Domestic partners are two adults who have chosen
4 to share one another's lives in an intimate and committed
5 relationship of mutual caring.
6 (b) A domestic partnership shall be established in California
7 when both persons file a Declaration of Domestic Partnership with

1 the Secretary of State pursuant to this division, and, at the time of
 2 filing, all of the following requirements are met:

3 (1) Both persons have a common residence.

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

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

9 (4) Both persons are at least 18 years of age.

10 ~~(5) Either of the following:~~

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

12 ~~(B) One or both of the persons meet the eligibility criteria under~~
 13 ~~Title II of the Social Security Act as defined in 42 U.S.C. Section~~
 14 ~~402(a) for old-age insurance benefits or Title XVI of the Social~~
 15 ~~Security Act as defined in 42 U.S.C. Section 1381 for aged~~
 16 ~~individuals. Notwithstanding any other provision of this section,~~
 17 ~~persons of opposite sexes may not constitute a domestic partnership~~
 18 ~~unless one or both of the persons are over the age of 62.~~

19 ~~(6)~~

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

22 (c) “Have a common residence” means that both domestic
 23 partners share the same residence. It is not necessary that the legal
 24 right to possess the common residence be in both of their names.
 25 Two people have a common residence even if one or both have
 26 additional residences. Domestic partners do not cease to have a
 27 common residence if one leaves the common residence but intends
 28 to return.

29 SEC. 2. Section 2854 of the Probate Code is amended to read:

30 2854. (a) This chapter does not apply to any public conservator
 31 or public guardian with regard to his or her official acts in that
 32 capacity.

33 (b) This chapter does not apply to any conservator, guardian,
 34 or trustee when the person is related to the conservatee, ward, or
 35 trustor by blood, marriage, adoption, registered domestic
 36 partnership, or a relationship that satisfies the requirements of
 37 ~~subdivision subdivisions (a) and paragraphs (1) to (4), inclusive,~~
 38 ~~and paragraph (6) of subdivision (b) of Section 297 of the Family~~
 39 Code.

1 (c) This chapter does not apply to any trustee who is serving
2 for the benefit of not more than three people or not more than three
3 families, or a combination of people or families that does not total
4 more than three. The number of trust beneficiaries does not count
5 for the purposes of calculating if a trustee falls within this
6 exclusion. A trust excluded under subdivision (a) or (b) does not
7 count for the purpose of calculating if a trustee falls within this
8 exclusion. For the purposes of this subdivision, family means
9 people who are related by blood, marriage, adoption, registered
10 domestic partnership, or a relationship that satisfies the
11 requirements of ~~subdivision subdivisions~~ (a) and ~~paragraphs (1)~~
12 ~~to (4), inclusive, and paragraph (6) of subdivision~~ (b) of Section
13 297 of the Family Code.

14 (d) This chapter does not apply to any conservator or guardian
15 who is not required to file information with the clerk of the court
16 pursuant to Section 2340, to any person or entity subject to the
17 oversight of a local government, including an employee of a city,
18 county, or city and county, or to any person or entity subject to
19 the oversight of the state or federal government, including an
20 attorney licensed to practice law in the State of California who
21 acts as trustee of only attorney client trust accounts, as defined in
22 Section 6211 of the Business and Professions Code.

23 (e) This chapter does not apply to any conservator who resided
24 in the same home with the conservatee immediately prior to the
25 condition or event that gave rise to the necessity of a
26 conservatorship. This subdivision does not create any order or
27 preference of appointment, but simply exempts a conservator
28 described by this subdivision from registration.

29 (f) This chapter does not apply to a trustee who is any of the
30 following:

- 31 (1) Trust companies, as defined in Section 83.
- 32 (2) FDIC-insured institutions, their holding companies,
33 subsidiaries, or affiliates. For the purposes of this paragraph,
34 “affiliate” means any entity that shares an ownership interest with
35 or that is under the common control of, the FDIC-insured
36 institution.
- 37 (3) Employees of any entity listed in paragraph (1) or (2) while
38 serving as trustees in the scope of their duties.

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