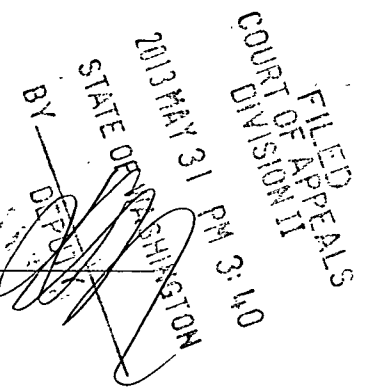
44289-2-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II



JEAN M. WALSH,

Appellant/Cross-Respondent,

v.

KATHRYN L. REYNOLDS,

Respondent/Cross-Appellant.

BRIEF OF APPELLANT/CROSS-RESPONDENT JEAN M. WALSH

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I. INTRODUCTION

This is an appeal from the trial court's Findings of Fact and Conclusions of Law entered in the dissolution of a Washington domestic partnership. This domestic partnership was registered on August 20, 2009, under the Domestic Partnership Act as enacted in 2008, before broad amendments in 2009 became effective. The 2008 version of the Act conferred limited rights on domestic partnerships, well short of the rights offered by marriage. This 2008 Act did not offer the expansive rights of "everything but marriage" that came in December 2009. The 2008 version of the Act specifically provided that community property was not created until the later date of June 12, 2008, or the date of registration. When the parties in this case entered into the Washington domestic partnership, they understood that the rights afforded to them were limited. Yet, even before the 2009 domestic partnership, the parties lived their lives separately with the intention of only sharing some things, but mostly maintaining separate property. Overall, the trial court overlooked this intentionality and treated the property as community property; it did not take into account that the parties' assets can be traced to each party separately, which demonstrates that the parties had maintained separate interests in the property throughout the course of their relationship. The trial court's application of equity improperly converted separate property to community property. It

was an error for the trial court to apply community property law to any assets acquired or accumulated between January 1, 2005, and August 20, 2009 (the date of registration). The trial court erred in awarding the respondent 48.8% of the assets from the sale of Federal Way property, when the property was held as Tenants in Common, and the Respondent made minimal financial contribution. The trial Court also erred when it ordered Petitioner to pay all of Respondent's attorney's fees.

II. ASSIGNMENTS OF ERROR

A. The trial court erred in its Conclusions of Law, Paragraphs 4, 5, 6, 7, 10, 11, 12, 13, 15, 16, 17, 21.E. (Petitioner), 21.F. (Petitioner), 21.L. (Petitioner), 21.B. (Respondent), 21.F. (Respondent), by failing to apply Washington law and finding that the parties' equitable relationship arose and their community property began to accumulate on *January 1, 2005*, (when *California* added the ability for domestic partners to accumulate community property) such that the community property acquired from *January 1, 2005* to separation is subject to an equitable distribution.

B. The trial court erred in its Conclusions of Law, Paragraph 21.J. (Petitioner), 21.G. (Respondent), that Respondent is awarded 48.8% of the net proceeds from the sale of the Federal Way property.

C. The trial court erred in its Findings of Fact, Paragraph 2.14, and its Conclusions of Law, Paragraph 3.8 and 18, that RCW 26.09.140 is applicable to the dissolution of this domestic partnership and that Appellant should be awarded 100% of Respondent's attorney's fees.

III. ISSUES ON ASSIGNMENTS OF ERROR

1. Whether the court erred in failing to apply Washington law and finding that the parties' equitable relationship arose and that they began to accumulate community property on January 1, 2005, when California expanded its Domestic Partnership law to allow domestic partners to accumulate community property. (Assignment of Error A.)

2. Whether the trial court properly awarded 48.8% of the sale proceeds of the Federal Way home to Respondent when the parties hold title as Tenants in Common and when Respondent made no financial contributions to the home. (Assignment of Error B.)

3. Whether the trial court erred in finding that RCW 26.09.140 allows the court to award attorney's fees and costs in the context of a dissolution of this domestic partnership and if so, whether an award of 100% attorney's fees to Respondent is a reasonable amount. (Assignment of Error C.)

IV. STATEMENT OF THE CASE

Jean Walsh is an orthopedic surgeon residing in Pierce County. RP (7/9/12), 34-35. In 1986, Dr. Walsh moved to Fresno, California. There, she purchased a home in 1986 and a private medical practice in 1987, using her personal savings. RP, 36: 3-11, 14-21. In 1988, Dr. Walsh met Kathryn Reynolds while she was working as an orthopedic surgeon. RP (7/9/12) 37:1-5; 38:12-14; 45:18-23. After about three months of dating, Ms. Reynolds moved into Dr. Walsh's home in Fresno.

RP (7/9/12), 46: 1-2, 47: 14-18. Although Ms. Reynolds lived there, she did not pay any part of the mortgage or utilities. RP (7/9/12), 48: 6-10.

Ms. Reynolds began receiving a salary almost immediately after moving in with Dr. Walsh. RP (7/9/12), 47:6-11; RP (7/10/12), 44:13-21. At Ms. Reynolds' request, Dr. Walsh fired her former housekeeper, Donna, and hired Ms. Reynolds to do the same work. *Id.* Ms. Reynolds was paid the same amount of money as Donna. *Id.* Not only was Ms. Reynolds paid a salary, but eventually, Dr. Walsh made additional contributions for Ms. Reynolds' to deposit into a separate retirement account. RP (7/10/12), 111:15-21.

Further, although the two resided together, they maintained separate bank accounts and finances for the entire relationship of over twenty (20) years. RP (7/9/12), 48: 14-25, 49: 1-14. In 1989, Ms. Reynolds was laid off from work and decided to go back to school at Fresno State University. RP (7/9/12), 49: 19-25, 50: 1-9. Dr. Walsh funded Ms. Reynolds' tuition and other expenses. RP (7/9/12), 50: 9-13.

In 1990, Dr. Walsh and Ms. Reynolds decided to have a child. RP (7/9/12), 50: 19-25, 51: 1-3. A child, Julia, was born to Dr. Walsh in 1992, and Dr. Walsh paid Ms. Reynolds a bit more income for daycare services. RP (7/9/12), 53: 4-22. In approximately January 1993, Ms. Reynolds moved out of Dr. Walsh's house, but continued to be paid by Dr.

Walsh for household and daycare services. RP (7/9/12), 55-56. After a number of months, Ms. Reynolds moved back to the house, but resided in a separate wing. *Id.* at 56. After some time, the two reconciled and Ms. Reynolds adopted Julia in December 1993. RP (7/9/12), 54: 21-24.

After the adoption, Dr. Walsh paid money to Ms. Reynolds which she put into a retirement account. RP (7/9/12), 55: 1-17. In 1996, Dr. Walsh gave birth to another child, Joe. RP (7/9/12), 57: 9-23. Ms. Reynolds then adopted Joe in 1997. RP (7/9/12), 61: 17-22. In 1998, Ms. Reynolds gave birth to a third child, Emily, and Dr. Walsh adopted Emily in 2000. RP (7/9/12), 80:3-15. Dr. Walsh paid for all three (3) of the adoptions. RP (7/9/12), 65.

When Dr. Walsh was pregnant with Joe, she decided to sell her private medical practice. RP (7/9/12), 58: 1-17. The medical equipment sold for about $20,000.00. RP (7/9/12), 58: 15-24. Dr. Walsh also sold a share of Value Care, a local HMO product, which she acquired in 1987 for $131,716.22. RP (7/9/12), 59-60. Dr. Walsh used the proceeds from the sale of the Value Care share and a small portion from her personal account to purchase a twenty-acre property in Eastern Fresno. RP (7/9/12), 70-71.

Although Dr. Walsh's income decreased significantly after the sale of her private practice, Dr. Walsh continued to pay Ms. Reynolds the same amount of income. RP (7/9/12), 60-61. Ms. Reynolds' income was used

solely for her personal needs and desires. RP (7/9/12), 65-66. Dr. Walsh paid all of the expenses for the children, the mortgage, utilities and other household expenses. RP (7/9/12), 65-66.

It was the parties' intention to be separate financial entities, and they were completely separate financial entities for twenty (20) years. RP (7/9/12), 67:9-11. Dr. Walsh and Ms. Reynolds never had any joint credit or joint debt. RP (7/9/12), 66: 18-23. If Ms. Reynolds paid for something for the children, or household, she would request reimbursement from Dr. Walsh. *Id.* For the purpose of buying such household items, Dr. Walsh made Ms. Reynolds an authorized user on Dr. Walsh's separate credit card in 2000, and in 2007, made Ms. Reynolds an authorized user on a different credit card. RP (7/9/12), 67:2-5. The parties always maintained separate financial records, and any property they wanted to co-own, they titled as co-owners. RP (7/9/12), 145:14-21. Between 1990 and 2011, Dr. Walsh paid Ms. Reynolds over $500,000.00, just in disposable income. RP (7/9/12), 67:15-24.

During their relationship, when Dr. Walsh paid off a significant debt, a credit card debt of Ms. Reynolds, Dr. Walsh was repaid through a deduction from Ms. Reynolds' salary. RP (7/9/12), 102. Dr. Walsh explained that situation with the credit card as follows:

> We looked over the last couple of statements and made a determination that some of the things that had been put on her personal credit card were household expenses that should have gone on the household credit card, but that approximately $7,500 were her own charges, and the credit card company was charging her 22 percent interest, and I did some calculations and at the rate she was paying it off, it would have taken over 20 years to pay it off. So I suggested that I pay it off and take it out of her monthly income that I was paying her and that way she could pay it off much more quickly. . . . I deducted $500 a month from her account between like 2006 and 2007 to pay off the $7,500. *Id.*

On March 6, 2000, the parties registered as domestic partners in California. RP (7/9/12), 68:6-9. The California domestic partnership was extremely limited in scope and offered no benefits to them. The purpose behind registering was to stop being "invisible". RP (7/9/12), 68-69.

> Now, when Kathy and I started living together, we were technically in the closet like most gay people that we knew and gradually people become more visible. But this was the best opportunity that I had seen in a long time to stop being invisible. These were going to be kept somewhere and recorded so someone would know that there were 10,000 or 100,000 or I don't know, some number of gay couples that would no longer be invisible.

RP (7/9/12), 69.

When the parties registered, California domestic partnership law specifically provided very limited rights. The law stated, "the Filing of the Declaration of Domestic Partnership pursuant to [AB 26] shall not, in and of itself, create any interest in, or rights to, any property, real or personal, owned by one partner in the other partner, including but not limited to,

rights similar to community property or quasi-community property." AB 26 Bill Analysis, Assembly Floor, 09/08/1999. The law created no duty to the registrants to keep a current address on file with the California Secretary of State. Similarly, the law did not indicate that any obligations created by the registration could be altered in the future by the state of California. Lastly, Dr. Walsh viewed the registration as a private contract that could not be altered by state action. RP (7/9/12), 45:4-7.

Shortly after registering in California, the parties moved to Washington in June 2000. RP (7/9/12), 69:17-18. The parties, thereafter, never received any notice or information about their registration as domestic partners from the State of California. RP (7/9/12), 69:19-25.

Dr. Walsh sold her house in Fresno, California in April 2000, and used the proceeds from the sale to purchase a house in Northeast Tacoma (2202 Davis Court NE). RP (7/9/12), 70:4-9. The twenty-acre Fresno property sold for $145,000.00 and Dr. Walsh used the proceeds to pay down the mortgage on the Davis Court property. RP (7/9/12), 71:12-25; Ex. 4.

Upon the move to Washington, Dr. Walsh was employed by Group Health as an orthopedic surgeon. RP (7/9/12), 72:5-16. Dr. Walsh and Ms. Reynolds continued with their same financial arrangement. RP (7/9/12), 73-79. Dr. Walsh continued to pay for the mortgage on the

home; health, dental and auto insurance; the children's private school tuition; and other household expenses. RP (7/9/12), 73-79. Dr. Walsh was able to provide Ms. Reynolds medical benefits by listing her as a domestic partner with the insurer. RP (7/9/12), 74-75. In addition, Dr. Walsh continued to pay Ms. Reynolds an income. RP (7/9/12), 75-76.

The parties also had separate vehicles and used titling to ensure that the cars remained either separate property or property for the family, i.e., Dr. Walsh and Ms. Reynolds both titled their own cars in their own names, and titled a family car in both of their names. RP (7/9/12), 78-79. Again, it was the parties' intention to maintain separate property and to operate as separate financial units. RP (7/9/12), 79:9-18. On the limited occasions when the parties wished to co-own an item, it was titled in both of their names. *See e.g.* RP (7/9/12), 78:18; 78:21-23; 79:3.

In 2003, the Davis Court property was sold. RP (7/9/12), 80-81. Dr. Walsh used the $350,000.00 in proceeds from the sale of the Davis Court property to purchase a home in Federal Way. RP (7/9/12), 80-81, 99. The parties signed the deed on the Federal Way property as joint tenants with right of survivorship ("JTWROS"). RP (7/9/12), 80-82. The parties signed the deed as JTWROS for inheritance purposes only and not as a transfer of income. RP (7/9/12), 80-82. Dr. Walsh explained the transaction as such:

> I was putting a down payment of about $350,000.00 which were the proceeds from the sale of the Northeast Tacoma home, and if that were going to be granted to us as community property, then Ms. Reynolds would need to get a half interest, which means that she would be getting a half interest of $175,000.00 or so, whatever that math is, and then the title officer said that she would need to report that to the IRS. So we were required to produce and sign a document stating that the purpose of this was for inheritance only and not to transfer income. RP (7/9/12), 82:1-10.

The deed to the Federal Way property states the following: "By their signature blow, Grantees evidence their intention to acquire all interest granted them hereunder as joint tenants with right of survivorship, *and not as community property* or as tenants in common." Ex. 33. (Emphasis added.)

Although Ms. Reynolds was listed on the deed, she did not make *any* financial contribution to the purchase of the Federal Way property. RP (7/9/12), 84: 2-4. (emphasis added). Dr. Walsh took out a mortgage on the Federal Way property, solely in her name. RP (7/9/12), 84:5-12. Dr. Walsh later refinanced the mortgage on the Federal Way property, and again, the mortgage remained solely in her name. RP (7/9/12), 84-85. In addition, Dr. Walsh paid for all of the utilities for the property both before and post separation, up to the dissolution. RP (7/9/12), 142:6-15. The

Federal Way property needed significant renovation and reconstruction, costing approximately $621,000.00. RP (7/9/12), 85:14-17, 99.

Dr. Walsh and her father made all payments on the Federal Way property; Ms. Reynolds made no contribution towards the purchase of the Federal Way property, nor any payment on the mortgage. RP (7/9/12), 92-93. Dr. Walsh's father contributed $185,000.00 towards the renovation and reconstruction of the home. RP (7/9/12), 86-88. Upon her father's passing in February 2010, Dr. Walsh put an additional $30,000.00 received as inheritance towards the principal on the Federal Way property. RP (7/9/12), 90-92. Dr. Walsh continued to make all mortgage payments on the Federal Way property post-separation while Ms. Reynolds resided there by Temporary Order. RP (7/9/12), 93-94. In sum, Dr. Walsh has invested approximately $1.1 million in the Federal Way property. RP (7/9/12), 100:13-19. The Federal Way property was recently tax assessed at $810,000.00. RP (7/9/12), 100:20-23. As of July 9, 2012, the balance on the mortgage was approximately $140,000.00. RP (7/9/12), 100-101.

In August 2009, the parties registered as domestic partners in Washington. RP (7/9/12), 91. Dr. Walsh entered into the registered domestic partnership for inheritance purposes. RP (7/9/12) 91. Because the registered domestic partnership form stated that the status could be altered by will or deed, Dr. Walsh believed that the status was not

irrevocable. RP (7/9/12), 91:8-20. The parties separated seven (7) months later, on March 14, 2010. RP (7/9/12), 83:7-11. However, their romantic and intimate relationship had been over for approximately fifteen (15) years. RP (7/9/12), 96-97.

Post separation and dissolution, Dr. Walsh continues to pay for over 92% of the private school tuition for the younger children, and nearly all college tuition and costs for Julia, in addition to paying 92 % of the basic support obligation for Emily to Ms. Reynolds. RP (7/9/12), 112-117. Dr. Walsh will also pay 92% of the two younger children's college tuitions (within limits). RP (7/9/12), 112-117.

V. ARGUMENT

This Court reviews the decision of the trial court to determine whether substantial evidence supports the trial court's findings of fact, and if those findings of fact in turn support the conclusions of law. *Pennington v. Pennington*, 93 Wn. App. 913, 917, 971 P.2d 98, 101 (1999) *aff'd and remanded sub nom. In re Marriage of Pennington*, 142 Wn. 2d 592, 14 P.3d 764 (2000) (citing *In re Marriage of Hilt*, 41 Wn. App. 434, 438, 704 P.2d 672 (1985)). "Substantial evidence is 'evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise." *Gormley v. Robertson*, 120 Wn. App. 31, 36, 83 P.3d 1042 (2004) (quoting *Fred Hutchinson Cancer Research Ctr. V. Holman*,

107 Wn.2d 693, 712, 732 P.2d 974 (1987)). The conclusions of law are reviewed de novo. *In re Long & Fregeau*, 158 Wn. App. 919, 925, 244 P.3d 26, 29 (2010) (citing *Gormley*, 120 Wn. App. at 36).

The trial court erred in it the Findings of Fact when it found that assets accumulated between January 1, 2005, and March 14, 2010, were community property. This constituted an abuse of discretion because substantial evidence in the record demonstrates that the parties did not acquire community property until they registered as Washington domestic partners on August 20, 2009. *See e.g.* Findings of Fact 2.8 E; F. Furthermore, the trial court erred when it held as a matter of law that property acquired after January 1, 2005, constituted community property, and subsequently distributed assets in accordance with that holding. *See e.g.* Conclusions of Law 4; 21.E (Petitioner); 21.F (Petitioner); and 21.B (Respondent). Similarly, the trial court erred when it distributed the proceeds of the sale of the Federal Way house other than in proportion to the parties' contributions, after properly finding that the Federal Way house was held by the parties as tenants in common. *See e.g.* Conclusions of Law 21.J (Petitioner); 21.H (Respondent). Lastly, the trial court erred when it held as a matter of law that the Ms. Reynolds was entitled to an award of 100% of her attorneys' fees. Conclusion of Law 18.

A. THE TRIAL COURT ERRED WHEN IT DETERMINED THAT PROPERTY ACQUIRED AFTER JANUARY 1, 2005, CONSTITUTED COMMUNITY PROPERTY.

The trial court erred by finding that assets acquired or accumulated between January 1, 2005, and August 20, 2009, constituted community property. RCW 26.60.080 limits the application of community property rights to domestic partners to the later of June 12, 2008, or the date of initial registration.

It was error for the trial court to apply community property law to any asset acquired or accumulated between January 1, 2005 and August 20, 2009 (the date of registration). The plain language clearly prohibits applying community property to this domestic partnership before the date of registration.

Further, the court erred in concluding, as a matter of law, that assets acquired between January 1, 2005, and August 20, 2009, constituted community property under an equitable relationship theory. Conclusion of Law 10.

As an initial matter, the property at issue has a traceable origin as separate property. The evidence on record overwhelmingly supports that the parties maintained a level of intentionality to maintain assets as separate, and only when intentionally done did they create jointly owned

property. The assets were traced to origins of separate property, with no co-mingling. The parties kept separate accounts, separate finances, and separate interests in each asset. If the parties intended to create what resembles community property, i.e. jointly owned by the parties, they intentionally titled the asset jointly. Dr. Walsh testified at trial, "Well, we were always separate financial entities. It was our intention to be separate financial entities, and we were that way for 20 years." RP (7/9/12), 67.

The trial court erred by holding that Dr. Walsh's separate property was community property because Washington did not recognize domestic partnerships in 2005; the statute limits application of community property to the date of registration. Here, the parties registered under the 2008 version of the domestic partnership act, which did not afford community property rights to domestic partners until the later of the date of enactment or the date of registration. Further, no equitable doctrine supports categorizing Dr. Walsh's separate property as community property prior to the registration of this domestic partnership in 2009.

1. Washington law did not recognize domestic partnerships in 2005 and therefore the court erred when it determined that property acquired in Washington after that date was community.

Washington did not recognize domestic partnerships from other states under the initial Domestic Partnership Act of 2008. House Bill

3104, Chapter 6, Laws of 2008; RCW 26.60.090. Washington's first recognition of foreign domestic partnerships was in 2008.

> A legal union between a same-sex couple, other than a marriage, that is created in a different state and that is substantially equivalent to a Washington domestic partnership will be recognized in Washington.

Final Bill Report 2 SHB 3104, Chapter 6, Laws of 2008. In 2008, California Domestic Partnerships were far from "equivalent" to Washington Domestic Partnerships. The rights granted to California domestic partners in 2008 were far broader than the rights granted in Washington in 2008. Since California Domestic Partnerships were substantially different,[1] Washington did not recognize these parties' 2000 California domestic partnership.

Effective January 1, 2005, California expanded the rights of registered domestic partners. (Stats.2003, ch. 421 § 4 (Assem. Bill No. 205), eff. Jan. 1, 2005). This expansion changed the few enumerated rights previously granted, and extended the rights and duties of marriage to persons registered as domestic partners on and after January 1, 2005.

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[1] In 2008, Washington domestic partners could not enjoy rights such as community property, whereas California domestic partners enjoyed the rights and duties of marriage as early as 2005. The broader grant of rights under California law creates a substantial difference between the two domestic partnerships afforded in each state. Washington would not have recognized the expansive domestic partnerships of California in 2008. It was not until December 2009 that Washington Domestic Partnerships were "equivalent" to California's. Thus, the trial court erred by applying the rights and duties of marriage in 2005 when Washington did not recognize California domestic partnerships as of that date.

See Armijo v. Miles, 127 Cal.App.4th 1405, 1413, CalRptr.3d 623 (2005). Neither Ms. Reynolds nor Dr. Walsh lived in California at the time, and neither party received notice of this expansion of rights. RP (7/9/12), 69. They subsequently registered in Washington, a useless act had either believed the California Domestic Partnership had meaning.

The California domestic partnership the parties registered for explicitly stated, "[r]egistration as a domestic partner under this division shall not be evidence of, or establish, any rights existing under law other than those expressly provided to domestic partners in the division and Section 1261 of the Health and Safety Code." Family Code section 299.5. These rights included requiring a health facility to allow a patient's domestic partner and other specific persons to visit a patient, except under specified conditions, and authorized state and local employers to offer health care coverage and other benefits to domestic partners. (Legis. Counsel's Digest, [AB 26; 9 West's Cal. Legis. Service (1999), ch. 588, p.3373]). The rights enumerated in the statute were the *only* rights available to domestic partnerships. *Armijo*, *supra* at 1411-12.

> The filing of a Declaration of Domestic Partnership pursuant to this ***bill shall not, in and of itself, create any interest in, or rights to, any property,*** real or personal, ***owned by one partner in the other partner,*** including, but not limited to, ***rights similar to community property or quasi-community property.***

AB26 Bill Analysis, Assembly Floor, 09/08/1999 (emphasis added). California amended its domestic partnership law to include a list of new expanded rights and obligations in 2002, after Dr. Walsh and Ms. Reynolds moved to Washington. *Holguin v. Flores*, 122 Cal.App.4th 428, 434, fn. omitted, 18 Cal.Rptr.3d 749 (2004). Still, it was not until 2005 that California domestic partnership law included the same rights and duties of marriage. (Legis. Counsel's Dig., Assem. Bill No. 205; 8 West's Cal. Legis. Service (2003) ch. 421, p. 2587).

Although Dr. Walsh and Ms. Reynolds had registered as domestic partners in California in March 2000, that domestic partnership afforded them hardly any rights, and was done more as a statement, rather than to receive any benefit as domestic partners. Dr. Walsh and Ms. Reynolds moved to Washington in June 2000, when Washington did not recognize their domestic partnership.

Dr. Walsh and Ms. Reynolds knew that when they registered in California as domestic partners, they registered under a statue that provided very few enumerated rights. RP (7/9/11), 68. This registration was more of an effort to "stop being invisible" than an effort to capture any specific benefits of marriage, and the rights afforded by marriage. *Id.* at 69. It most certainly was not to enter into a marriage, or the rights and responsibilities afforded by marriage.

The parties had no expectation of any rights or responsibilities of any domestic partnership until they registered for a Washington domestic partnership. The trial court erred by applying community property based upon California's date of expansion of these rights because the parties lived in Washington at the time, and Washington did not recognize their California Domestic Partnership. The trial Court also assigned a duty to the parties to notify the California Secretary of State of their address change. No such duty existed under the California law of 2000.

2. Property acquired before 2009 should not be treated as community property because community property rights did not attach until the parties registered as domestic partners.

When Washington created the domestic partnership registry in 2007, same sex couples and different-sex couples could register if they met the eligibility requirements. This early version of the law granted only enumerated rights and responsibilities, including those associated with health care, burial plots, and powers of attorney. *See* Senate Bill 5336, also referred to as Chapter 156, Laws of 2007.

The 2008 amendment to the domestic partnership act not only recognized domestic partnerships from other jurisdictions for the first time, but also expanded the rights and responsibilities of Washington domestic partnerships. House Bill 3104, also referred to as Chapter 6,

Laws of 2008. This amendment included changes to dissolution, community property, and inheritance rights of domestic partnerships. *Id.* Effective June 12, 2008, the amendment afforded community property rights to domestic partnerships stating:

> Any community property rights of domestic partners established by chapter 6, Laws of 2008 shall apply from the date of *initial registration* of the domestic partnership or June 12, 2008, *whichever is later.*

RCW 26.60.080 (emphasis added). Although the legislature expanded the rights and responsibilities of domestic partners in 2009, that amendment was not effective until after the parties registered as domestic partners in August 2009. The limited 2008 version of domestic partnership law still applied when Dr. Walsh and Ms. Reynolds registered.

Not only does the statute plainly provide for when community property begins to accrue, but the *Family Law Handbook*, promulgated by the Washington Courts, states:

> Washington is a "community property" state. Community property laws apply to domestic partnerships from their initial registration date of the partnership or June 12, 2008, whichever date is later. Generally, all property acquired during a domestic partnership after June 12, 2008 is presumed to be community property belonging to both partners...

Washington State Administrative Office of the Courts, *Family Law Handbook: Understanding the legal implications of Domestic Partnerships and Dissolution in Washington State* (2012).[2]

Given that RCW 26.60.080 limits the application of community property rights to domestic partners to the later of June 12, 2008, or the date of initial registration, it was error for the trial court to apply community property law to assets acquired or accumulated between January 1, 2005, and August 20, 2009 (the date of registration). The language of the statute is plain: community property could not be acquired by Dr. Walsh and Ms. Reynolds before August 20, 2009.

Not only does applying community property only from the date of registration through the date of separation comply with the plain language of the statute, but it accords with the legislative intent to create a prospective effective date, and therefore avoids violating Washington's prohibition on ex post facto laws. Washington's constitution clearly prohibits the enactment of an ex post facto law. Washington Constitution, Article I, Section 23. Unlike the California amendments, Washington's amendments to the Domestic Partnership Act could only apply prospectively. To hold, as the trial court did, that community property applies retroactively, irrespective of the date of enactment of the 2008

[2] Available at http://www.courts.wa.gov/newsinfo/content/pdf/FLHBDomesticPartnershipEdition.pdf.

amendment or registration of the domestic partnership, is to violate the prohibition on ex post facto laws.[3] The parties' enumerated rights and responsibilities attached at the date of registration, August 20, 2009—no earlier.[4]

When Dr. Walsh and Ms. Reynolds registered their Washington domestic partnership, they understood the registration to offer them specific rights and responsibilities. RP (7/9/12), 45. The registration certificate indicated these limitations to them, and they understood that the domestic partnership was not a marriage—that the rights of a marriage were not conferred upon them as domestic partners. Dr. Walsh and Ms. Reynolds not only understood the limited rights and responsibilities to be within the scope of those enumerated by statute, but they understood these limitations as complying with the way they intentionally managed their lives for the years prior to registration. In fact, the documents signed at the date of registration stated that the parties could alter the rights afforded under the registration by "will or deed," which indicated to Dr. Walsh that

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[3] The trial court acknowledged that the parties had a right to avoid ex post facto application of community property interests, but misapplied these considerations by permitting community property to attach before the date of registration. See Conclusions of Law 11, "Prior to January 1, 2005, there was no ability for domestic partners to accumulate or create community property and no legal basis for finding an equitable relationship to exist without violating the constitutional rights of the parties."

[4] Furthermore, the trial court acknowledged "retroactive application of a statute that would deprive an individual of a vested property right without due process of law. Retroactive application of a statute may be unconstitutional if it deprives an individual of a vested right without due process of law. A right is vested when it is already possessed or legitimately acquired." Oral Ruling, August 16, 2012; 11:18-24.

the rights did not confer an "irrevocable" transfer of interest in property.[5] RP (7/9/12), 91:16-20. The notion that the parties could alter their rights despite the domestic partnership registration comports with Washington's recognition that unmarried cohabitants have the same right to dispose of their property by contract as do other individuals. *Humphries v. Riveland*, 67 Wn.2d 376, 407 P.2d 967 (1965).

Additionally, substantial evidence before the court shows that the parties lived with a definite intentionality, an intentionality to avoid sharing community property-like ownership of assets. The parties took care to create separate financial lives. To hold otherwise, that community property attaches before August 2009, is to ignore the parties' intentions.

Lastly, by applying community property law to property acquired and accumulated from January 1, 2005, the trial court violated the plain language of the Washington statute, violated Washington's prohibition on ex post facto laws, violated the parties' understanding of what rights and responsibilities they were afforded, and distributed property in violation of a showing that the parties maintained separate property in accordance with their intentions to do so. For these reasons, the trial court's ruling should

[5] This intentionality was highlighted by the deed to the Federal Way home signed by both parties before the refinance which stated, "By their signature below, Grantees evidence their intention to acquire all interest granted them hereunder as joint tenants with right of survivorship, and not as community property or as tenants in common." The parties took the only steps available to them to avoid creating community property; even in the rare instance they jointly owned any property.

be reversed, and community property should not apply to any assets acquired before the date of registration in Washington, or August 20, 2009.

3. Equity does not support treating property acquired from 2005 to 2009 as community property because the doctrine of equity relationships does not apply.

The trial court erred in concluding that the facts present gave rise to an equity relationship, such that the property acquired during the equity relationship between January 1, 2005 and March 14, 2010, was community-like property and subject to an equitable distribution.[6] Upon review, the trial court's factual findings are entitled to deference, but the legal conclusions flowing from those findings are reviewed de novo. *Pennington*, 142 Wn.2d at, 602-03. Even leaving undisturbed the findings of fact that support this holding, the trial court erred in considering relevant factors in deciding that an equity relationship exists.

Washington courts developed an equitable doctrine to recognize relationships that are intimate, but do not constitute a marriage, or recently, are not a registered domestic partnership. *In re Fregeau*, 158 Wn. App. 919. Equitable relationships developed out of "meretricious relationships," which was a doctrine for "marital-like" relationships. *In re*

[6] Conclusions of Law 10; 11; 12; 13; 15; 21 F (Petitioner); 21 I (Petitioner); 21 J (Petitioner); 21 L (Petitioner); 21 B (Respondent); 21 D (Respondent); and 21 H (Respondent).

Marriage of Pennington, 142 Wn.2d 592. The court, in adopting the meretricious relationship doctrine attempted to divide property accumulations in a manner that was just and equitable. *In re Matter of the Marriage Lindsey* 101 Wn.2d 299, 678 P.2d 328 (1984). Meretricious or equitable relationships are not the same as marriage. *Connell v. Francisco*, 127 Wn.2d 339, 346, 898 P.2d 831 (1995).

a. The Legislature created a statute that applies.

The equitable doctrines of meretricious or equitable relationships arose in the courts as a method to divide property between unmarried people because the legislature had not devised a mechanism for such distribution. These doctrines apply, by *analogy*, the provisions of RCW 26.09.080:

> because the legislature has not provided a statutory means of resolving the property distribution issues that arise when unmarried persons, who have lived in a marital-like relationship and acquire what would have been community property had they been married, separate."

Vasquez v. Hawthorne, 145 Wn.2d 103, 109, 33 P.3d 735 (2001).

In this case, however, the legislature *has* devised a statutory means of resolving property distribution issues by enacting RCW 26.09.080. The gap existed in cases like *Vasquez and Gormley* because no formal domestic partnership existed (or was even possible). In this case, the

parties registered as domestic partners, and therefore no absence of legislative directive on the characterization of property exists.

b. There is no community property before 2009.

Under the equitable relationship doctrine, the only property which can be divided as community property is that which would have been characterized as community property had the parties been married. *Connell*, 127 Wn.2d at 349. Equity is not a tool to convert separate property to community property, but a mechanism to divide what otherwise would have been community property. The legislature clearly stated that community property only begins to attach for a domestic partnership after the date of registration (August 20, 2009). RCW 26.60.080. The statute itself says when community property can exist. This is not a case where an equitable doctrine applies in the absence of a legislative enactment. Here, the legislature established that community property does not exist in a domestic partnership before 2009. Thus, the court erred by characterizing separate property acquired before that date as community property by resorting to equity. The statute dictates that community property rights attached to domestic partnerships on the date of registration, not in 2005.

c. The *Lindsey* factors do not support a finding of equitable relationship.

Equitable relationships are "stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist." *Connell*, 127 Wn.2d at 346 (quoting *Lindsey* 101 Wn.2d 299). The court looks to five factors to determine whether an equity relationship exists: (1) whether there was continuous cohabitation; (2) the duration of the relationship; (3) the purpose of the relationship; (4) whether there was pooling of resources and services for joint projects; and (5) the intent of the parties. *Connell*, 127 Wn.2d at 346 (citing *Lindsey*, 101 Wn.2d at 305); *In re Fregeau*, 158 Wn. App. at 926; *Gormley* 120 Wn. App. at 38.

By way of example, the Court of Appeals has considered the following facts in determining whether an equity relationship had been established. In reviewing the "relationship purpose" factor, the Court of Appeals has found the element was fulfilled when: the parties provided mutual love, care, intimacy, support, sex, friendship, and companionship to one another; the parties treated one another as though they were married; the parties attempted counseling to maintain their relationship; the parties cared for one another when sick; and the record showed that the

parties engaged in permanency planning. *In re Fregeau*, 158 Wn. App. at 927. In this case, the facts substantially differ.

In reviewing the "pooling of resources" factor, the Supreme Court has found the element was *not* fulfilled even though the parties shared a joint checking account for some living expenses (although there were some periods where no living expenses were shared) and the parties shared the mortgage payments. *Pennington*, 142 Wn.2d at 607. In Pennington, the parties purchased no property jointly, each maintained their own careers and financial independence, each contributed separately to their respective retirement accounts, and each maintained their separate bank accounts. *Id.* Here, the same facts demonstrate there was no pooling of resources.

The trial court erred when it held that an equitable relationship exists, despite substantial facts to the contrary. Aside from the length of the relationship, the other factors weigh strongly against finding an equity relationship so that the court should divide the assets as community property. [7]

[7] The parties relationship was not "marital like." Their sexual relationship ended in 1995 and thus lacked the "intimacy" required to find a "committed intimate relationship", which is a term used interchangeably with equity relationship. *See Olver v. Fowler*, 161 Wn. 2d 655, 168 P.3d 348 (2007).

(i) The purpose of the relationship was to co-parent the children.

The court found that the purpose of the relationship was to co-parent the children. Conclusions of Law 11 B. The relationship between Dr. Walsh and Ms. Reynolds was a commitment to and for the benefit of the children—not a commitment to each other. Ms. Reynolds' testimony supports this contention as she directly testified that that the purpose of entering into the domestic partnership was to show a commitment to the children.

Dr. Walsh and Ms. Reynolds' intimate relationship ended in 1995, more than fifteen years prior to dissolution. The only reason the parties remained living in the same household was because of their bond to the children—not because of an intimate bond between the parties. RP (7/9/12), 57:9-14. The focus of the relationship was to provide a home for the children, and operate as co-parents. Providing for children, alone, does not define a marital-like relationship. If that were the case, then an equity relationship could be found in any number of domestic arrangements, such as a household where a grandparent lives with an adult child and grandchild. Here, the purpose of the relationship was to maintain a commitment to the children, not to each other. RP (7/9/12), 97:11-23.

> The whole relationship we had was built around our children. We had very little in common with each other --

> Kathy is an extrovert; I'm an introvert -- and innumerable differences, but our common bond was always our children and our desire to make their lives the best ones they could be. The children -- in my opinion, the children don't care about what Kathy and I think of each other, but they want their home environment and routine to be the same. So in an effort to keep that going, it seemed as though we could live -- at least at that time, I thought we could live indefinitely with an arrangement of sharing separate parts of this 5,000 square foot home. *Id.*

The intimate relationship with each other ended in 1995, before the second child was born. RP (7/9/12), 97:2-7. The parties did not share intimacy, did not have a sexual relationship, made no attempts to maintain a relationship, and did not act in a loving manner towards one another. Their relationship was extremely platonic. After 1995, the purpose of Dr. Walsh and Ms. Reynolds's relationship was to provide a home for their children, and to co-parent the children. If a sexual relationship is not necessary, then the Vasquez rules will apply to many family relationships, such as multi-generational families in which grandparents care for children and grandchildren in the same home. The trial Court acknowledged that the parties 'held themselves out to the world as a family', not as a couple. Conclusions of Law 11B. This is insufficient to support a finding of an equity relationship.

(ii) The parties never pooled resources.

From the time the parties first met, Dr. Walsh paid a salary to Ms. Reynolds. *See e.g.*RP (7/9/12), 47:6-11, 102; RP (7/10/12) 111:15-21. The parties intentionally kept separate their savings accounts, their discretionary spending, their credit cards, and all other debts. Dr. Walsh had her own investment and retirement accounts established before she met Ms. Reynolds. Similarly, Ms. Reynolds had her own established retirement and bank accounts. The parties never joined these accounts, comingled any funds, or shared any proceeds from their growth. Both parties had their own credit cards, and never entered into a joint debt. The separate nature of their assets and debts, combined with the fact that the parties never intended to pool their resources, does not support a finding that there was an equitable relationship. Instead, the evidence showed the parties' concerted effort to remain separate financial entitles—not an equitable relationship.

(iii) The parties had a clear intention to maintain separate accounts and avoided creating anything similar to community property.

The factor that most weighs against applying the equitable relationship doctrine is the court's consideration of the parties' intent. Not only was the parties' commitment only to the children and not to each

other, they parties intended to keep separate property. The testimony at trial overwhelmingly demonstrated Dr. Walsh and Ms. Reynolds operated their lives with purposeful separateness. Everything was owned as "mine, yours, or ours." When the parties intended to own things jointly, they did so. Most of the time, however, the parties intended to own assets in their separate names.

Dr. Walsh and Ms. Reynolds did everything available to them at the time to accomplish this. They understood their legal rights to be limited to the very few enumerated rights they registered for with their domestic partnership. Before registering for enumerated rights, they created a life with the intentionality to hold separate property. There was no conceivable reason to draft a prenuptial agreement, just as there was no reason to consider the effect of community property law. The law did not recognize their relationship as one to which community property might apply. To change this now by retroactively applying community property law unfairly contravenes the parties' actions and intentions over their relationship.

Furthermore, when the parties entered into the Washington registered domestic partnership, they understood their actions up to that point as keeping separate property separate. The trial court's error, holding that the equity relationship doctrine applies and converts separate

property acquired after to January 1, 2005, to community property, does not conform with the parties' intentions. Equity would uphold these intentions.

Weighing these factors, the trial court should have found that there was no marital-like equity relationship. The trial record substantially supports that there was no equitable, marital-like relationship. The division of property under these principles was an error, and should be reversed.

B. THE TRIAL COURT ERRED IN DETERMINING AND COMPUTING THE PARTIES' PROPORTIONATE INTEREST IN THE FEDERAL WAY PROPERTY AS TENANTS IN COMMON.

1. The trial court properly held that the parties held title to the Federal Way property as tenants in common.

Joint tenancy with right of survivorship ("JTWROS") is a form of co-ownership by two or more persons in which each co-owner stands in the same relationship to the asset as each other co-owner. *In Re Estate of Phillips*, 124 Wn.2d 80, 83, 874 P.2d 154, 156 (1994). It is well settled that a JTWROS is created when the four unities of time, title, interest and possession exist. *Merrick v. Peterson*, 25 Wn. App. 248, 258, 606 P.2d 700 (1980). The major distinguishing characteristic of a JTWROS is the right of survivorship, by which a surviving joint tenant takes sole title to the whole upon the death of the others. *Lyon v. Lyon*, 100 Wn.2d 409,

411, 670 P.2d 272, 274 (1983). However, *any agreement* subsequently executed, which is inconsistent with the joint tenancy, converts it into a tenancy in common. *Id.* (citing *Reilly v. Sageser*, 2 Wn. App. 6, 467 P.2d 358 (1970)).

For example, in *In Re: Estate of Phillips*, Phillips and Nyhus executed a quitclaim deed, "as joint tenants with right of survivorship and not as tenants in common." *In Re Estate of Phillips*, 124 Wn.2d at 82. Later, Phillips and Nyhus, *both* signed an earnest money agreement to sell part of the property held in joint tenancy. *Id.* Upon Phillips' death, his Estate attempted to declare their entitlement to proceeds from the sale, arguing that the JTWROS was severed when the parties executed the earnest money agreement. *Id.* at 83. The court disagreed, stating that, "A contract or agreement *by only one joint tenant* to convey property held in joint tenancy destroys the right of survivorship, terminates the joint tenancy and converts it into a tenancy in common." *Id.* at 85.

In addition, the court stated that "applicable Washington case law indicates that what joint action by joint tenants is considered sufficient to terminate a joint tenancy is determined principally by the *intent of the parties*." *Id.* at 89. (emphasis added.) As to intent, the court considered that both parties had signed the earnest money agreement and that their actions showed they intended to remain as JTWROS. However, any

agreement subsequently executed, inconsistent with the joint tenancy, converted it to a tenancy in common. *Reilly v. Sageser*, 2 Wn. App. 6.

Here, the trial court properly found that the parties' title to the Federal Way property as JTWROS was converted to a tenancy in common when Dr. Walsh took out a mortgage solely in her name.

The parties' expressed *intent* in titling the property as JTWROS was not for purposes of ownership, but was *for inheritance purposes* and to indicate that money for the down payment was not gifted to Ms. Reynolds. RP (7/9/12), 80-82. Later, in 2004, Dr. Walsh refinanced the mortgage, again, *solely in her name.* In addition, Dr. Walsh used her separate income to reconstruct the house—another financial action inconsistent with the equal ownership theory of a JTWROS. The trial court correctly found that by virtue of these actions the JTWROS was severed and the title converted to a tenancy in common.

2. The trial court erred when it awarded 48.11% of the proceeds of sale of the Federal Way house to Ms. Reynolds and 51.89% to Dr. Walsh as tenants in common.

A tenancy in common is an "indivisible interest." *Mayo v. Jones*, 8 Wn. App. 140, 141, 505 P.2d 157 (1972). The interest of a tenant in common is presumed to be an undivided one-half interest in the common property, although that presumption is rebuttable. *Mayo*, 8 Wn. App. 140.

When in rebuttal the purchasers of property are shown to have contributed unequally to the purchase price, the general rule is that a presumption arises that they intended to share the property in proportion to the amount contributed by each, where it can be traced, otherwise they share it equally. *Iradell v. Iradell*, 49 Wn.2d 627, 631, 305 P.2d 805 (1957); *West v. Knowles*, 50 Wn.2d 311, 313, 311 P.2d 689 (1957); *Shull v. Shepherd*, 63 Wn.2d 503, 387 P.2d 767 (1963).

Very similar to this case, in *West v. Knowles*, 50 Wn.2d 311, the Supreme Court of Washington upheld the trial court's division of property between two parties who lived in a meretricious relationship for ten years, during which time they held themselves out to the world as husband and wife. The "husband" contended that the trial court erred and should have awarded the real property to the party in whom the title stood at the commencement of the action, and that it erred in attempting to trace title from the time the property was acquired. *Id.* He argued that the parties were tenants in common in the real estate known as the University street property, and that he should have an undivided one-half interest in it because it stood in both their names. *Id.* at 314. However, the Plaintiff traced the acquisition of the University street property to her separate funds, which had been derived from the sale of her separate real estate in

Othello, Washington, her separate earnings, and her separate postal savings account. *Id.*

The Supreme Court cited to *Iredell v. Iredell*, supra, stating:

> The *presumption* that the parties *intended* to dispose of their property, as the title thereto would indicate, arises only when there is an absence of evidence as to intention . . . The court was correct in tracing the property in the instant case, because both parties testified *in extenso* regarding their properties . . . No presumptions arise as to property which can be traced to one or the other. It belongs to the original owner, in the absence of an overt gift or contract regarding it. Property acquired with contributions from both parties is held as tenants in common, and courts will presume they intended to share the property, in proportion to the amount contributed, where it can be traced, otherwise they share it equally. *Id.* (emphasis in original.)

Thus, in *West v. Knowles*, the Supreme Court upheld the trial court's award of the property to Plaintiff as her separate property even though the parties held title as joint tenants because the trial court had traced the acquisition of the property to Plaintiff's separate funds. *Id.*

Here, Dr. Walsh should have been awarded all the equity in the Federal Way property. She made *all* financial contributions towards the mortgage and reconstruction of the Federal Way house and traced the same to her separate property. Substantial evidence in the record supports that Dr. Walsh made the down payment and financed the reconstruction of the Federal Way property from her separate property funds. The only slight contribution Ms. Reynolds made to the property was in "sweat

equity," as she testified to maintaining the yard—however, Ms. Reynolds never quantified the value of this sweat equity. Hence, as a matter of law, even though the property is held as tenants in common, 100% of the funding can be traced to Dr. Walsh and she should have been awarded this percentage of interest in the property. An award of 48.11% interest in the property to Ms. Reynolds when no financial contributions can be traced to her is an abuse of discretion and is contrary to the black letter law. Here, the presumption that the parties would share equally as tenants in common was rebutted and Dr. Walsh should be awarded the proportion that is clearly traceable to her contribution—100%.

C. THE TRIAL COURT ERRED WHEN IT AWARDED MS. REYNOLDS' ATTORNEY'S FEES AND COSTS.

1. The 2008 Domestic Partnership Statute does not permit attorney's fees to be awarded for a dissolution.

When domestic partnerships were created in 2008, the statute did not include the ability to award attorney's fees as part of a Domestic Partnership Dissolution. This fee-shifting provision found in RCW 26.09.140 did not apply to Domestic Partnerships Dissolutions until December 3, 2009. *See* pgs. 1-2 SHB 3104, or Chapter 6, Laws of 2008. The expressed intent of the 2008 law was to be limited, just as the expressed intent of the 2009 law was to be broad. The trial Court erred

when it determined that it was not necessary under the 2008 Domestic Partnership statue to specifically amend RCW 26.09.140, since the statutory language refers to "parties" to an action brought under the dissolution statute. This ignores the fact that the entire chapter had to be amended to apply to the dissolution of Domestic Partnerships (See RCW 26.09.010), which occurred in December 2009.

Importantly, it was not until the 2009 amendment, effective December 3, 2009, that a party to dissolution of a domestic partnership could recover attorneys' fees, since the statutory scheme for dissolutions was not amended to apply to domestic partnership dissolution until 2009. Therefore, the statute authorizing an award of attorney fees in a dissolution proceedings did not apply to this domestic partnership.

Before domestic partnership law developed, and these statutes were amended to permit the trial court to award attorney fees in the dissolution of a domestic partnership, the court refused to award attorney fees in proceedings for the dissolution of equitable relationships or meretricious relationships. *Connell*, 127 Wn.2d at 349 ("RCW 26.09.140, which permits an award of attorney's fees in a marriage dissolution action, is inapplicable to an action to distribute property following a meretricious relationship"). Without the enacted changes, including dissolutions of

domestic partnerships effective in December 2009, the court had no basis to award attorney's fees in the dissolution of a domestic partnership.

When Dr. Walsh and Ms. Reynolds registered as domestic partners in August 2009, they registered under the domestic partnership laws of 2008, which did not contain a fee-shifting provision. Similar to the error the court committed with regard to applying community property law before the date of registration, the trial court should have strictly construed the statute and disallowed attorneys' fees where the statute did not specifically provide for fees. Because this amendment had not become effective by the time the parties registered their domestic partnership, the trial court had not power to shift the parties' attorney's fees, as if this had been a marriage. Lastly, the court relied on the equitable relationship doctrine to support its distribution of assets that it deemed community property. To borrow from that doctrine for the distribution of property, and to then apply the statute with regard to awarding attorney's fees is incongruous. Ms. Reynolds should not have been awarded substantially all of her fees because little of her case was devoted to the domestic partnership itself. Because fees are not available under the equity relationship doctrine, *see Connell, supra*, the fee award should have been reduced in light of the seven-month domestic partnership. The trial court should not have awarded attorneys' fees and costs and should be reversed.

2. Substantial evidence does not support the award.

In the alternative, if attorney fees are available in this case, the trial court abused its discretion by awarding such fees when substantial evidence in the record indicates Ms. Reynolds should not have been awarded substantially all of her fees because little of her case was devoted to the domestic partnership itself. This Court reviews the trial court's award of attorney's fees for an abuse of discretion. *Kellar v. Estate of Kellar*, 172 Wn. App. 562, 591,291 P.2d 906 (2012). Attorney's fees may be awarded to a party after considering the financial resources of both parties. RCW 26.09.140. Attorney's fees are not awarded as a matter of right. *In re Marriage of Sheffer*, 60 Wn. App. 51, 59, 802 P.2d 817 (1990).

Substantial evidence on the record did not support awarding $35,117.50 in fees to Ms. Reynolds. The record shows that despite any income disparity between the parties, Ms. Reynolds has the ability to pay her attorney's fees and did not need Dr. Walsh to pay substantially all of her attorney's fees.

Ms. Reynolds received approximately $500,000.00 over the course of her relationship with Dr. Walsh. RP (7/9/12), 67. Throughout their dissolution proceedings, Dr. Walsh paid the majority of Ms. Reynolds' expenses, including the mortgage and utilities on the Federal Way house

in which Ms. Reynolds resided. Additionally, during separation, Dr. Walsh paid Ms. Reynolds child support for two children, yet only one child (Emily) actually resided with Ms. Reynolds. Ms. Reynolds paid nothing toward the support of Joe and retained the funds paid to her by Dr. Walsh for his support. *See e.g.* RP (7/9/12), 117. Ms. Reynolds also received an inheritance from her father. She testified this was the source of the funds used to pay her attorney. RP (7/10/12), 110:17-111:5.

Ms. Reynolds has a college degree, which Dr. Walsh paid for, and chose to start a landscaping business rather than to seek a job in her field. RP (7/9/12), 50. Ms. Reynolds purchased equipment and insurance. RP (7/10/12), 114: 11-B; 135-36 and She also utilized equipment that had been acquired when she and Dr. Walsh resided in the same home. RP (7/11/12), 13. Finally, the court ordered the sale of other assets including a Sprinter van, valued at $25,000, a tent trailer, a utility trailer, and a farm tractor, with half of the proceeds from these assets awarded to Ms. Reynolds. RP (7/11/12) 37-38. Ms. Reynolds can pay her attorney's fees from assets, inheritance, and income.

3. The amount of the award was an abuse of discretion.

Even if the trial court did not abuse its discretion by awarding fees, the amount of the award was not reasonable under the circumstances of

this case. In determining a reasonable fee, the court should consider the difficulty of the case, the time involved in the preparation of the case, and the amount and character of property involved. *In Re Marriage of Knight*, 75 Wn. App. 721, 730, 880 P.2d 71, 76 (1994).

a. Factual and legal questions involved.

The facts of this case are largely undisputed. CP 1-24; 25-56. Before trial, the parties resolved all issues relating to the parenting plan and child support for the children. Dr. Walsh provided documents regarding the value of assets, including account statements and real estate closing documents. She also traced the value of separate assets and brought forth the parties' CPA, Richard Torosian, as a witness. As for the legal issues, while this case does present an issue of first impression, Ms. Reynolds did not brief the legal issues prior to trial[8], nor provide any response to the legal argument regarding the title to the Federal Way house. However, Dr. Walsh was ordered to pay for these activities.

[8] The Court ordered Dr. Walsh to pay at least $1,445.00 charged for drafting a brief. See entries of April 10 ($90.00); April 12 ($225); May 7 ($455); May 14 ($67.50); and May 15, 2012 ($675.00). Affidavit and Declaration of Fees and Costs (CP __: Supplemental Designation of Clerks Papers submitted May 31, 2013).

b. The time necessary for preparation and presentation of the case.

Dr. Walsh was ordered to pay attorney's fees that were charged by Ms. Reynolds's attorney for time spent attempting to become familiar with local rules. These fees were not reasonably necessary and should not have been included in the fees award.

c. The amount and character of the property involved.

The property covered under the seven (7) month domestic partnership was not in dispute. Both parties' pre-trial forms contained a list of all assets. Dr. Walsh traced her separate property and incurred the attorney's fees and expert witness fees to do so. Although Ms. Reynolds attempted to argue in post-trial briefing that she "believes" the numbers should be different, she provided no testimony at trial to refute the testimony or the documentary evidence submitted by Dr. Walsh. While the parties' domestic partnership lasted only seven months, Ms. Reynolds' theory of the case involved applying the equity relationship doctrine from the inception of the parties' relationship, a theory which the trial court did not adopt as requested. The attorney's fees statute (RCW 26.09.140) does not apply to an action to distribute property following an equity relationship. *Connell*, 127 Wn.2d at 349. The amount of attorney's fees

awarded is excessive given the short duration of the registered domestic partnership of these parties.

4. The amount of fees awarded was not reasonable when Ms. Reynolds had no personal knowledge of the fees charged.

Dr. Walsh was ordered to pay nearly 100% of Ms. Reynolds attorney's fees despite the fact that Ms. Reynolds had no reasonable awareness as to any fees incurred leading up to trial. The testimony she provided regarding her attorney's fees was speculative. Three weeks before trial, in her deposition, Ms. Reynolds had no idea of her attorney's hourly rate; she could not estimate the total fees incurred, nor identify how her monthly billing was conducted. RP (7/10/12), 141-42. Ms. Reynolds had no idea what her outstanding legal fees were and provided no documentary evidence whatsoever until her attorney submitted a supplemental declaration dated July 17, 2012, seeking a total of $31,787.50 in professional fees, and $2,898.90 in costs through June 30, 2012. Because Ms. Reynolds could not testify to the amount of fees incurred, the hourly billing rate, or any fee agreement with her attorney, the trial court had no basis to consider whether the fees incurred were reasonable, apart from the supplemental declaration submitted after trial concluded.

For these reasons, even if the trial court could find that attorney's fees were appropriate in this case, the award granted was unreasonable and should be reserved or the fees reduced.

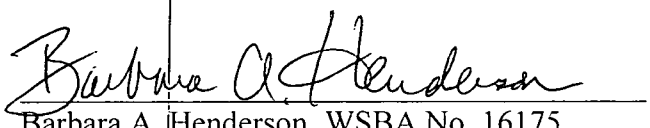
VI. CONCLUSION

For the reasons set forth herein, the trial court erred when it divided the parties separate property as community property between January 1, 2005, and the date of domestic partnership registration, August 20, 2009. The earliest date the court should have determined that community property began to accumulate was August 20, 2009, when the parties registered as a Washington domestic partnership. The Court erred when it awarded Ms. Reynolds nearly 50% of the proceeds of the Federal Way property, held as tenants in common, when Ms. Reynolds had contributed next to nothing. Similarly, the trial court erred by awarding essentially 100% of attorneys' fees and costs to the Ms. Reynolds. For these reasons, Appellant respectfully requests this Court reverse the trial court, and remand with instructions to revise the findings of fact and conclusions of law to distribute only property acquired after the date of registration of the domestic partnership in Washington and to distribute the proceedings of the Federal Way property according to proportion of

the financial contributions; and to deny or reduce the award of attorney fees to Ms. Reynolds.

RESPECTFULLY SUBMITTED this 31st day of May, 2013.

SMITH ALLING, P.S.



Barbara A. Henderson, WSBA No. 16175
Attorney for Appellant/Cross-Respondent
Jean Walsh

CERTIFICATE OF SERVICE

I hereby certify that I have this 31 day of May, 2013, served a true and correct copy of the foregoing document, via the methods noted below, properly addressed as follows:

Counsel for Respondent:

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Washington State Court of Appeals Division Two 950 Broadway, Suite 300 Tacoma, WA 98402-4454 coa2filings@courts.wa.gov	__X__ Hand Delivery ____ U.S. Mail __X__ ____ Email

I declare under penalty of perjury under the laws of the State of Washington that the I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 31 day of May, 2013, at Tacoma, Washington.

Lisa Schrader, Legal Assistant

FILED
COURT OF APPEALS
DIVISION II
2013 MAY 31 PM 3:40
STATE OF WASHINGTON
BY
DEPUTY

APPENDIX A

CERTIFICATION OF ENROLLMENT

SECOND SUBSTITUTE HOUSE BILL 3104

Chapter 6, Laws of 2008

60th Legislature
2008 Regular Session

DOMESTIC PARTNERSHIPS--RIGHTS

EFFECTIVE DATE: 06/12/08 - Except section 1044, which becomes effective 01/01/09; and section 1047, which becomes effective 07/01/09.

Passed by the House February 15, 2008
Yeas 62 Nays 32

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 4, 2008
Yeas 29 Nays 20

BRAD OWEN

President of the Senate

Approved March 12, 2008, 2:16 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 3104** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 13, 2008

Secretary of State
State of Washington

transfer fee of five dollars shall be charged in addition to all other appropriate fees. If the surviving spouse remarries or the surviving domestic partner registers in a new domestic partnership, he or she shall return the special plates to the department within fifteen days and apply for regular license plates.

(3) For purposes of this section, the term "special license plates" does not include any plate from the armed forces license plate collection established in RCW 46.16.30920.

PART VI - COMMUNITY PROPERTY AND OTHER PROPERTY RIGHTS

NEW SECTION. **Sec. 601.** A new section is added to chapter 26.60 RCW to read as follows:

Any community property rights of domestic partners established by this act shall apply from the date of the initial registration of the domestic partnership or the effective date of this section, whichever is later.

Sec. 602. RCW 26.16.010 and Code 1881 s 2408 are each amended to read as follows:

Property and pecuniary rights owned by ((~~the husband~~)) a spouse before marriage and that acquired by him or her afterwards by gift, bequest, devise ((~~or~~)), descent, or inheritance, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of his ((~~wife~~)) or her spouse, and he or she may manage, lease, sell, convey, encumber or devise by will such property without ((~~the wife~~)) his or her spouse joining in such management, alienation or encumbrance, as fully, and to the same ((~~effect~~)) extent or in the same manner as though he or she were unmarried.

Sec. 603. RCW 26.16.020 and Code 1881 s 2400 are each amended to read as follows:

((~~The~~)) Property and pecuniary rights ((~~of every married woman at the time of her marriage~~)) owned by a person in a state registered domestic partnership before registration of the domestic partnership or afterwards acquired by gift, bequest, devise, descent, or inheritance, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of ((~~her husband~~)) his or her domestic partner, and

he or she may manage, lease, sell, convey, encumber or devise by will such property without his or her domestic partner joining in such management, alienation, or encumbrance, as fully, to the same extent and in the same manner ((~~that her husband can, property belonging to him~~)) as though he or she were not in a state registered domestic partnership.

Sec. 604. RCW 26.16.030 and 1981 c 304 s 1 are each amended to read as follows:

Property not acquired or owned, as prescribed in RCW 26.16.010 and 26.16.020, acquired after marriage or after registration of a state registered domestic partnership by either domestic partner or either husband or wife or both, is community property. Either spouse or either domestic partner, acting alone, may manage and control community property, with a like power of disposition as the acting spouse or domestic partner has over his or her separate property, except:

(1) Neither ((~~spouse~~)) person shall devise or bequeath by will more than one-half of the community property.

(2) Neither ((~~spouse~~)) person shall give community property without the express or implied consent of the other.

(3) Neither ((~~spouse~~)) person shall sell, convey, or encumber the community real property without the other spouse or other domestic partner joining in the execution of the deed or other instrument by which the real estate is sold, conveyed, or encumbered, and such deed or other instrument must be acknowledged by both spouses or both domestic partners.

(4) Neither ((~~spouse~~)) person shall purchase or contract to purchase community real property without the other spouse or other domestic partner joining in the transaction of purchase or in the execution of the contract to purchase.

(5) Neither ((~~spouse~~)) person shall create a security interest other than a purchase money security interest as defined in RCW 62A.9-107 in, or sell, community household goods, furnishings, or appliances, or a community mobile home unless the other spouse or other domestic partner joins in executing the security agreement or bill of sale, if any.

(6) Neither ((~~spouse~~)) person shall acquire, purchase, sell, convey, or encumber the assets, including real estate, or the good will

of a business where both spouses or both domestic partners participate in its management without the consent of the other: PROVIDED, That where only one spouse or one domestic partner participates in such management the participating spouse or participating domestic partner may, in the ordinary course of such business, acquire, purchase, sell, convey or encumber the assets, including real estate, or the good will of the business without the consent of the nonparticipating spouse or nonparticipating domestic partner.

Sec. 605. RCW 26.16.050 and 1888 c 27 s 1 are each amended to read as follows:

A ((~~husband~~)) spouse or domestic partner may give, grant, sell or convey directly to ((~~his wife, and a wife may give, grant, sell or convey directly to her husband~~)) the other spouse or other domestic partner his or her community right, title, interest or estate in all or any portion of their community real property: And every deed made from ((~~husband to wife, or from wife to husband~~)) one spouse to the other or one domestic partner to the other, shall operate to divest the real estate therein recited from any or every claim or demand as community property and shall vest the same in the grantee as separate property((~~[. The]~~)). The grantor in all such deeds, or the party releasing such community interest or estate shall sign, seal, execute and acknowledge the deed as a single person without the joinder therein of the married party or party to a state registered domestic partnership therein named as grantee: PROVIDED, HOWEVER, That the conveyances or transfers hereby authorized shall not affect any existing equity in favor of creditors of the grantor at the time of such transfer, gift or conveyance. AND PROVIDED FURTHER, That any deeds of gift conveyances or releases of community estate by or between ((~~husband and wife~~)) spouses or between domestic partners heretofore made but in which ((~~the husband and wife~~)) both spouses or both domestic partners have not joined as grantors, said deeds((~~[,]~~)), where made in good faith and without intent to hinder, delay or defraud creditors((~~[,]~~)), shall be and the same are hereby fully legalized as valid and binding.

Sec. 606. RCW 26.16.060 and Code 1881 s 2403 are each amended to read as follows:

A ((~~husband or wife~~)) spouse or domestic partner may constitute the other his or her attorney-in-fact to manage, control or dispose of his or her property with the same power of revocation or substitution as could be exercised were they unmarried persons or were they not in a state registered domestic partnership.

Sec. 607. RCW 26.16.070 and 1888 c 27 s 2 are each amended to read as follows:

A ((~~husband or wife~~)) spouse or domestic partner may make and execute powers of attorney for the sale, conveyance, transfer or encumbrance of his or her separate estate both real and personal, without the other spouse or other domestic partner joining in the execution thereof. Such power of attorney shall be acknowledged and certified in the manner provided by law for the conveyance of real estate. Nor shall anything herein contained be so construed as to prevent either ((~~husband or wife~~)) spouse or either domestic partner from appointing the other his or her attorney-in-fact for the purposes provided in this section.

Sec. 608. RCW 26.16.080 and 1888 c 27 s 3 are each amended to read as follows:

Any conveyance, transfer, deed, lease or other encumbrances executed under and by virtue of such power of attorney shall be executed, acknowledged and certified in the same manner as if the person making such power of attorney had been unmarried or not in a state registered domestic partnership.

Sec. 609. RCW 26.16.090 and 1888 c 27 s 4 are each amended to read as follows:

A ((~~husband~~)) spouse or domestic partner may make and execute a letter of attorney to ((~~the wife, or the wife may make and execute a letter of attorney to the husband~~)) his or her spouse or domestic partner authorizing the sale or other disposition of his or her community interest or estate in the community property and as such attorney-in-fact to sign the name of such ((~~husband or wife~~)) spouse or such domestic partner to any deed, conveyance, mortgage, lease or other encumbrance or to any instrument necessary to be executed by which the property conveyed or transferred shall be released from any claim as

community property. And either ((~~said husband or said wife~~)) spouse or either domestic partner may make and execute a letter of attorney to any third person to join with the other in the conveyance of any interest either in separate real estate of either, or in the community estate held by such ((~~husband or wife~~)) spouse or such domestic partner in any real property. And both ((~~husband and wife~~)) spouses or both domestic partners owning community property may jointly execute a power of attorney to a third person authorizing the sale, encumbrance or other disposition of community real property, and so execute the necessary conveyance or transfer of said real estate.

Sec. 610. RCW 26.16.095 and 1891 c 151 s 1 are each amended to read as follows:

Whenever any person, married, in a state registered domestic partnership, or single, having in his or her name the legal title of record to any real estate, shall sell or dispose of the same to an actual bona fide purchaser, a deed of such real estate from the person holding such legal record title to such actual bona fide purchaser shall be sufficient to convey to, and vest in, such purchaser the full legal and equitable title to such real estate free and clear of any and all claims of any and all persons whatsoever, not appearing of record in the auditor's office of the county in which such real estate is situated.

Sec. 611. RCW 26.16.100 and 1891 c 151 s 2 are each amended to read as follows:

A ((~~husband or wife~~)) spouse or domestic partner having an interest in real estate, by virtue of the marriage relation or state registered domestic partnership, the legal title of record to which real estate is or shall be held by the other, may protect such interest from sale or disposition by the ((~~husband or wife~~)) other spouse or other domestic partner, as the case may be, in whose name the legal title is held, by causing to be filed and recorded in the auditor's office of the county in which such real estate is situated an instrument in writing setting forth that the person filing such instrument is the ((~~husband or wife~~)) spouse or domestic partner, as the case may be, of the person holding the legal title to the real estate in question, describing such real estate and the claimant's interest therein; and when thus presented for

record such instrument shall be filed and recorded by the auditor of the county in which such real estate is situated, in the same manner and with like effect as regards notice to all the world, as deeds of real estate are filed and recorded. And if either ((~~husband or wife~~)) spouse or either domestic partner fails to cause such an instrument to be filed in the auditor's office in the county in which real estate is situated, the legal title to which is held by the other, within a period of ninety days from the date when such legal title has been made a matter of record, any actual bona fide purchaser of such real estate from the person in whose name the legal title stands of record, receiving a deed of such real estate from the person thus holding the legal title, shall be deemed and held to have received the full legal and equitable title to such real estate free and clear of all claim of the other spouse or other domestic partner.

Sec. 612. RCW 26.16.120 and 1998 c 292 s 505 are each amended to read as follows:

Nothing contained in any of the provisions of this chapter or in any law of this state, shall prevent ((~~the husband and wife~~)) both spouses or both domestic partners from jointly entering into any agreement concerning the status or disposition of the whole or any portion of the community property, then owned by them or afterwards to be acquired, to take effect upon the death of either. But such agreement may be made at any time by ((~~the husband and wife~~)) both spouses or both domestic partners by the execution of an instrument in writing under their hands and seals, and to be witnessed, acknowledged and certified in the same manner as deeds to real estate are required to be, under the laws of the state, and the same may at any time thereafter be altered or amended in the same manner. Such agreement shall not derogate from the right of creditors; nor be construed to curtail the powers of the superior court to set aside or cancel such agreement for fraud or under some other recognized head of equity jurisdiction, at the suit of either party; nor prevent the application of laws governing the community property and inheritance rights of slayers under chapter 11.84 RCW.

Sec. 613. RCW 26.16.140 and 1972 ex.s. c 108 s 5 are each amended to read as follows:

When ((~~a husband and wife~~)) spouses or domestic partners are living separate and apart, their respective earnings and accumulations shall be the separate property of each. The earnings and accumulations of minor children shall be the separate property of the spouse or domestic partner who has their custody or, if no custody award has been made, then the separate property of the spouse or domestic partner with whom said children are living.

Sec. 614. RCW 26.16.150 and Code 1881 s 2396 are each amended to read as follows:

Every married person or domestic partner shall hereafter have the same right and liberty to acquire, hold, enjoy and dispose of every species of property, and to sue and be sued, as if he or she were unmarried or were not in a state registered domestic partnership.

Sec. 615. RCW 26.16.180 and Code 1881 s 2401 are each amended to read as follows:

Should either ((~~husband or wife~~)) spouse or either domestic partner obtain possession or control of property belonging to the other, either before or after marriage or before or after entering into a state registered domestic partnership, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and to the same extent as if they were unmarried or were not in a state registered domestic partnership.

Sec. 616. RCW 26.16.190 and 1972 ex.s. c 108 s 6 are each amended to read as follows:

For all injuries committed by a married person or domestic partner, there shall be no recovery against the separate property of the other spouse or other domestic partner except in cases where there would be joint responsibility if the marriage or the state registered domestic partnership did not exist.

Sec. 617. RCW 26.16.200 and 1983 1st ex.s. c 41 s 2 are each amended to read as follows:

Neither ((~~husband or wife~~)) person in a marriage or state registered domestic partnership is liable for the debts or liabilities of the other incurred before marriage or state registered domestic

partnership, nor for the separate debts of each other, nor is the rent or income of the separate property of either liable for the separate debts of the other: PROVIDED, That the earnings and accumulations of the ((~~husband~~)) spouse or domestic partner shall be available to the legal process of creditors for the satisfaction of debts incurred by ((~~him~~)) such spouse or domestic partner prior to the marriage((~~, and the earnings and accumulations of the wife shall be available to the legal process of creditors for the satisfaction of debts incurred by her prior to marriage~~)) or the state registered domestic partnership. For the purpose of this section, neither ((~~the husband nor the wife~~)) person in the marriage or the state registered domestic partnership shall be construed to have any interest in the earnings of the other: PROVIDED FURTHER, That no separate debt, except a child support or maintenance obligation, may be the basis of a claim against the earnings and accumulations of either ((~~a husband or wife~~)) spouse or either domestic partner unless the same is reduced to judgment within three years of the marriage or the state registered domestic partnership of the parties. The obligation of a parent or stepparent to support a child may be collected out of the parent's or stepparent's separate property, the parent's or stepparent's earnings and accumulations, and the parent's or stepparent's share of community personal and real property. Funds in a community bank account which can be identified as the earnings of the nonobligated spouse or nonobligated domestic partner are exempt from satisfaction of the child support obligation of the debtor spouse or debtor domestic partner.

Sec. 618. RCW 26.16.205 and 1990 1st ex.s. c 2 s 13 are each amended to read as follows:

The expenses of the family and the education of the children, including stepchildren, are chargeable upon the property of both ((~~husband and wife~~)) spouses or both domestic partners, or either of them, and they may be sued jointly or separately. When a petition for dissolution of marriage or state registered domestic partnership or a petition for legal separation is filed, the court may, upon motion of the stepparent, terminate the obligation to support the stepchildren. The obligation to support stepchildren shall cease upon the entry of a decree of dissolution, decree of legal separation, or death.

Sec. 619. RCW 26.16.210 and Code 1881 s 2397 are each amended to read as follows:

In every case, where any question arises as to the good faith of any transaction between ((~~husband and wife~~)) spouses or between domestic partners, whether a transaction between them directly or by intervention of third person or persons, the burden of proof shall be upon the party asserting the good faith.

Sec. 620. RCW 26.16.220 and 1988 c 34 s 1 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, as used in RCW 26.16.220 through 26.16.250 "quasi-community property" means all personal property wherever situated and all real property described in subsection (2) of this section that is not community property and that was heretofore or hereafter acquired:

(a) By the decedent while domiciled elsewhere and that would have been the community property of the decedent and of the decedent's surviving spouse or surviving domestic partner had the decedent been domiciled in this state at the time of its acquisition; or

(b) In derivation or in exchange for real or personal property, wherever situated, that would have been the community property of the decedent and ((~~the~~)) his or her surviving spouse or surviving domestic partner if the decedent had been domiciled in this state at the time the original property was acquired.

(2) For purposes of this section, real property includes:

(a) Real property situated in this state;

(b) Real property situated outside this state if the law of the state where the real property is located provides that the law of the decedent's domicile at death shall govern the rights of the decedent's surviving spouse or surviving domestic partner to a share of such property; and

(c) Leasehold interests in real property described in (a) or (b) of this subsection.

(3) For purposes of this section, all legal presumptions and principles applicable to the proper characterization of property as community property under the laws and decisions of this state shall apply in determining whether property would have been the community

property of the decedent and ((~~the~~)) his or her surviving spouse or surviving domestic partner under the provisions of subsection (1) of this section.

Sec. 621. RCW 26.16.230 and 1988 c 34 s 2 are each amended to read as follows:

Upon the death of any person domiciled in this state, one-half of any quasi-community property shall belong to the surviving spouse or surviving domestic partner and the other one-half of such property shall be subject to disposition at death by the decedent, and in the absence thereof, shall descend in the manner provided for community property under chapter 11.04 RCW.

Sec. 622. RCW 26.16.240 and 1988 c 34 s 3 are each amended to read as follows:

(1) If a decedent domiciled in this state on the date of his or her death made a lifetime transfer of a property interest that is quasi-community property to a person other than the surviving spouse or surviving domestic partner within three years of death, then within the time for filing claims against the estate as provided by RCW 11.40.010, the surviving spouse or surviving domestic partner may require the transferee to restore to the decedent's estate one-half of such property interest, if the transferee retains the property interest, and, if not, one-half of its proceeds, or, if none, one-half of its value at the time of transfer, if:

(a) The decedent retained, at the time of death, the possession or enjoyment of or the right to income from the property interest;

(b) The decedent retained, at the time of death, a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the property interest for the decedent's own benefit; or

(c) The decedent held the property interest at the time of death with another with the right of survivorship.

(2) Notwithstanding subsection (1) of this section, no such property interest, proceeds, or value may be required to be restored to the decedent's estate if:

(a) Such property interest was transferred for adequate consideration;

(b) Such property interest was transferred with the consent of the surviving spouse or surviving domestic partner; or

(c) The transferee purchased such property interest in property from the decedent while believing in good faith that the property or property interest was the separate property of the decedent and did not constitute quasi-community property.

(3) All property interests, proceeds, or value restored to the decedent's estate under this section shall belong to the surviving spouse or surviving domestic partner pursuant to RCW 26.16.230 as though the transfer had never been made.

(4) The surviving spouse or surviving domestic partner may waive any right granted hereunder by written instrument filed in the probate proceedings. If the surviving spouse or surviving domestic partner acts as personal representative of the decedent's estate and causes the estate to be closed before the time for exercising any right granted by this section expires, such closure shall act as a waiver by the surviving spouse or surviving domestic partner of any and all rights granted by this section.

Sec. 623. RCW 26.16.250 and 1988 c 34 s 4 are each amended to read as follows:

The characterization of property as quasi-community property under this chapter shall be effective solely for the purpose of determining the disposition of such property at the time of a death, and such characterization shall not affect the rights of the decedent's creditors. For all other purposes property characterized as quasi-community property under this chapter shall be characterized without regard to the provisions of this chapter. ((~~A husband and wife~~)) Both spouses or both domestic partners may waive, modify, or relinquish any quasi-community property right granted or created by this chapter by signed written agreement, wherever executed, before or after June 11, 1986, including without limitation, community property agreements, prenuptial and postnuptial agreements, or agreements as to status of property.

Sec. 624. RCW 11.84.030 and 1965 c 145 s 11.84.030 are each amended to read as follows:

The slayer shall be deemed to have predeceased the decedent as to

property which would have passed from the decedent or his estate to the slayer under the statutes of descent and distribution or have been acquired by statutory right as surviving spouse or surviving domestic partner or under any agreement made with the decedent under the provisions of RCW 26.16.120 as it now exists or is hereafter amended.

Sec. 625. RCW 64.28.010 and 1993 c 19 s 1 are each amended to read as follows:

Whereas joint tenancy with right of survivorship permits property to pass to the survivor without the cost or delay of probate proceedings, there shall be a form of co-ownership of property, real and personal, known as joint tenancy. A joint tenancy shall have the incidents of survivorship and severability as at common law, including the unilateral right of each tenant to sever the joint tenancy. Joint tenancy shall be created only by written instrument, which instrument shall expressly declare the interest created to be a joint tenancy. It may be created by a single agreement, transfer, deed, will, or other instrument of conveyance, or by agreement, transfer, deed or other instrument from a sole owner to himself or herself and others, or from tenants in common or joint tenants to themselves or some of them, or to themselves or any of them and others, or from ((~~husband and wife~~)) both spouses or both domestic partners, when holding title as community property, or otherwise, to themselves or to themselves and others, or to one of them and to another or others, or when granted or devised to executors or trustees as joint tenants: PROVIDED, That such transfer shall not derogate from the rights of creditors.

Sec. 626. RCW 64.28.020 and 1988 c 29 s 10 are each amended to read as follows:

(1) Every interest created in favor of two or more persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint tenancy, as provided in RCW 64.28.010, or unless acquired by executors or trustees.

(2) Interests in common held in the names of ((~~a husband and wife~~)) both spouses or both domestic partners, whether or not in conjunction with others, are presumed to be their community property.

(3) Subsection (2) of this section applies as of June 9, 1988, to all existing or subsequently created interests in common.

Sec. 627. RCW 64.28.030 and 1961 c 2 s 3 are each amended to read as follows:

The provisions of this chapter shall not restrict the creation of a joint tenancy in a bank deposit or in other choses in action as heretofore or hereafter provided by law, nor restrict the power of ((~~husband and wife~~)) both spouses or both domestic partners to make agreements as provided in RCW 26.16.120.

Sec. 628. RCW 64.28.040 and 1993 c 19 s 2 are each amended to read as follows:

(1) Joint tenancy interests held in the names of ((~~a husband and wife~~)) both spouses or both domestic partners, whether or not in conjunction with others, are presumed to be their community property, the same as other property held in the name of both ((~~husband and wife~~)) spouses or both domestic partners. Any such interest passes to the survivor of the ((~~husband and wife~~)) spouse or survivor of the domestic partner as provided for property held in joint tenancy, but in all other respects the interest is treated as community property.

(2) Either ((~~husband or wife~~)) person in a marriage or either person in a state registered domestic partnership, or both, may sever a joint tenancy. When a joint tenancy is severed, the property, or proceeds of the property, shall be presumed to be their community property, whether it is held in the name of ((~~the husband or wife~~)) either spouse, or both, or in the name of either domestic partner, or both.

(3) This section applies as of January 1, 1985, to all existing or subsequently created joint tenancies.

Sec. 629. RCW 9.46.231 and 1997 c 128 s 1 are each amended to read as follows:

(1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) All gambling devices as defined in this chapter;

(b) All furnishings, fixtures, equipment, and stock, including without limitation furnishings and fixtures adaptable to nongambling

uses and equipment and stock for printing, recording, computing, transporting, or safekeeping, used in connection with professional gambling or maintaining a gambling premises;

(c) All conveyances, including aircraft, vehicles, or vessels, that are used, or intended for use, in any manner to facilitate the sale, delivery, receipt, or operation of any gambling device, or the promotion or operation of a professional gambling activity, except that:

(i) A conveyance used by any person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(ii) A conveyance is not subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(iv) If the owner of a conveyance has been arrested under this chapter the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(d) All books, records, and research products and materials, including formulas, microfilm, tapes, and electronic data that are used, or intended for use, in violation of this chapter;

(e) All moneys, negotiable instruments, securities, or other tangible or intangible property of value at stake or displayed in or in connection with professional gambling activity or furnished or intended to be furnished by any person to facilitate the promotion or operation of a professional gambling activity;

(f) All tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to professional gambling activity and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter. A forfeiture of money, negotiable instruments,

securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. Personal property may not be forfeited under this subsection (1)(f), to the extent of the interest of an owner, by reason of any act or omission that that owner establishes was committed or omitted without the owner's knowledge or consent; and

(g) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements that:

(i) Have been used with the knowledge of the owner for the manufacturing, processing, delivery, importing, or exporting of any illegal gambling equipment, or operation of a professional gambling activity that would constitute a felony violation of this chapter; or

(ii) Have been acquired in whole or in part with proceeds traceable to a professional gambling activity, if the activity is not less than a class C felony.

Real property forfeited under this chapter that is encumbered by a bona fide security interest remains subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission. Property may not be forfeited under this subsection, to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent.

(2)(a) A law enforcement officer of this state may seize real or personal property subject to forfeiture under this chapter upon process issued by any superior court having jurisdiction over the property. Seizure of real property includes the filing of a lis pendens by the seizing agency. Real property seized under this section may not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later, but real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a bona fide security interest.

(b) Seizure of personal property without process may be made if:

(i) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(ii) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(iii) A law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(iv) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) In the event of seizure under subsection (2) of this section, proceedings for forfeiture are deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property must be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter ((~~62A.9~~)) 62A.9A RCW, or a certificate of title, must be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail is deemed complete upon mailing within the fifteen-day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the item seized is deemed forfeited. The

community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons must be afforded a reasonable opportunity to be heard as to the claim or right. The hearing must be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except if the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing must be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed must be the district court if the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom must be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees. In cases involving personal property, the burden of producing evidence is upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property. In cases involving property seized under subsection (1)(a) of this section, the only issues to be determined by the tribunal are whether the item seized is a gambling device, and whether the device is an antique device as defined by RCW 9.46.235. In cases involving real property, the burden of producing

evidence is upon the law enforcement agency. The burden of proof that the seized real property is subject to forfeiture is upon the law enforcement agency. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a final determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1) of this section.

(6) If property is forfeited under this chapter the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release the property to the agency for training or use in enforcing this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public; or

(c) Destroy any articles that may not be lawfully possessed within the state of Washington, or that have a fair market value of less than one hundred dollars.

(7)(a) If property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property. The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure, and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents.

(b) Each seizing agency shall retain records of forfeited property for at least seven years.

(8) The seizing law enforcement agency shall retain forfeited property and net proceeds exclusively for the expansion and improvement of gambling-related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(9) Gambling devices that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and must be seized and summarily forfeited to the state. Gambling equipment

that is seized or comes into the possession of a law enforcement agency, the owners of which are unknown, are contraband and must be summarily forfeited to the state.

(10) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. The superior court shall enter orders for the forfeiture of real property, subject to court rules. The seizing agency shall file such an order in the county auditor's records in the county in which the real property is located.

(11)(a) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (6)(b) of this section, only if:

(i) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(ii) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer before asserting a claim under this section.

(A) Only if the funds applied under (a)(ii) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search; and

(B) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency shall notify the landlord of the status of the claim by the end of the thirty-day period. This section does not require the claim to be paid by the end of the sixty-day or thirty-day period.

(b) For any claim filed under (a)(ii) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency within seven days of receipt of notification of the illegal activity.

(12) The landlord's claim for damages under subsection (11) of this section may not include a claim for loss of business and is limited to:

(a) Damage to tangible property and clean-up costs;

(b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (6)(b) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (7)(a) of this section.

(13) Subsections (11) and (12) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (11) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

(14) Liability is not imposed by this section upon any authorized state, county, or municipal officer, including a commission special agent, in the lawful performance of his or her duties.

Sec. 630. RCW 9A.83.030 and 2001 c 168 s 2 are each amended to read as follows:

(1) Proceeds traceable to or derived from specified unlawful activity or a violation of RCW 9A.83.020 are subject to seizure and forfeiture. The attorney general or county prosecuting attorney may file a civil action for the forfeiture of proceeds. Unless otherwise provided for under this section, no property rights exist in these proceeds. All right, title, and interest in the proceeds shall vest in the governmental entity of which the seizing law enforcement agency is a part upon commission of the act or omission giving rise to forfeiture under this section.

(2) Real or personal property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon

process issued by a superior court that has jurisdiction over the property. Any agency seizing real property shall file a lis pendens concerning the property. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later. Real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant issued pursuant to RCW 69.50.502; or

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter.

(3) A seizure under subsection (2) of this section commences proceedings for forfeiture. The law enforcement agency under whose authority the seizure was made shall cause notice of the seizure and intended forfeiture of the seized proceeds to be served within fifteen days after the seizure on the owner of the property seized and the person in charge thereof and any person who has a known right or interest therein, including a community property interest. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail is complete upon mailing within the fifteen-day period after the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the property within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the property seized shall be deemed forfeited. The community property

interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of property within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The provisions of RCW 69.50.505((~~(e)~~)) (5) shall apply to any such hearing. The seizing law enforcement agency shall promptly return property to the claimant upon the direction of the administrative law judge or court.

(6) Disposition of forfeited property shall be made in the manner provided for in RCW 69.50.505 ((~~(h) through (j) and (n)~~)) (8) through (10) and (14).

Sec. 631. RCW 69.50.505 and 2003 c 53 s 348 are each amended to read as follows:

(1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(c) All property which is used, or intended for use, as a container for property described in (a) or (b) of this subsection;

(d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in (a) or (b) of this subsection, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture

under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.4014;

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(v) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(f) All drug paraphernalia;

(g) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1)(g), to

the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(h) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

(i) No property may be forfeited pursuant to this subsection (1)(h), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, and other evidence which demonstrates the offender's intent to engage in commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if

the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(2) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the

state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(d), (g), or (h) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in

accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section.

(6) In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

(7) When property is forfeited under this chapter the board or seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the drug enforcement administration for disposition.

(8)(a) When property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value

of the property at the time of seizure, and the amount of proceeds realized from disposition of the property.

(b) Each seizing agency shall retain records of forfeited property for at least seven years.

(c) Each seizing agency shall file a report including a copy of the records of forfeited property with the state treasurer each calendar quarter.

(d) The quarterly report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(9)(a) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520.

(b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection (15) of this section.

(c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(10) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(11) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

(12) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

(13) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he or she is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(14) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

(15) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (7)(b) of this section, only if:

(a) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(b) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

(i) Only if the funds applied under (b) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement

officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search;

(ii) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

(c) For any claim filed under (b) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter 69.41 or 69.52 RCW; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW 59.18.075, within seven days of receipt of notification of the illegal activity.

(16) The landlord's claim for damages under subsection (15) of this section may not include a claim for loss of business and is limited to:

(a) Damage to tangible property and clean-up costs;

(b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (7)(b) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (9)(b) of this section.

(17) Subsections (15) and (16) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (15) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

Sec. 632. RCW 64.06.010 and 2007 c 107 s 3 are each amended to read as follows:

This chapter does not apply to the following transfers of residential real property:

(1) A foreclosure or deed-in-lieu of foreclosure;

(2) A gift or other transfer to a parent, spouse, domestic partner, or child of a transferor or child of any parent ((~~or~~)), spouse, or domestic partner of a transferor;

(3) A transfer between spouses or between domestic partners in connection with a marital dissolution or dissolution of a state registered domestic partnership;

(4) A transfer where a buyer had an ownership interest in the property within two years of the date of the transfer including, but not limited to, an ownership interest as a partner in a partnership, a limited partner in a limited partnership, a shareholder in a corporation, a leasehold interest, or transfers to and from a facilitator pursuant to a tax deferred exchange;

(5) A transfer of an interest that is less than fee simple, except that the transfer of a vendee's interest under a real estate contract is subject to the requirements of this chapter;

(6) A transfer made by the personal representative of the estate of the decedent or by a trustee in bankruptcy; and

(7) A transfer in which the buyer has expressly waived the receipt of the seller disclosure statement. However, if the answer to any of the questions in the section entitled "Environmental" would be "yes," the buyer may not waive the receipt of the "Environmental" section of the seller disclosure statement.

Sec. 633. RCW 6.13.020 and 1987 c 442 s 202 are each amended to read as follows:

If the owner is married or in a state registered domestic partnership, the homestead may consist of the community or jointly owned property of the spouses or the domestic partners or the separate property of either spouse or either domestic partner: PROVIDED, That the same premises may not be claimed separately by the ((~~husband and wife~~)) spouses or domestic partners with the effect of increasing the net value of the homestead available to the marital community or state registered domestic partnership beyond the amount specified in RCW

6.13.030 as now or hereafter amended. When the owner is not married or not in a state registered domestic partnership, the homestead may consist of any of his or her property.

Sec. 634. RCW 6.13.060 and 1987 c 442 s 206 are each amended to read as follows:

The homestead of a ((~~married person~~)) spouse or domestic partner cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both ((~~husband and wife~~)) spouses or both domestic partners, except that ((~~a husband or a wife~~)) either spouse or both or either domestic partner or both jointly may make and execute powers of attorney for the conveyance or encumbrance of the homestead.

Sec. 635. RCW 6.13.080 and 2007 c 429 s 2 are each amended to read as follows:

The homestead exemption is not available against an execution or forced sale in satisfaction of judgments obtained:

(1) On debts secured by mechanic's, laborer's, construction, maritime, automobile repair, materialmen's or vendor's liens arising out of and against the particular property claimed as a homestead;

(2) On debts secured (a) by security agreements describing as collateral the property that is claimed as a homestead or (b) by mortgages or deeds of trust on the premises that have been executed and acknowledged by ((~~the husband and wife~~)) both spouses or both domestic partners or by any ((~~unmarried~~)) claimant not married or in a state registered domestic partnership;

(3) On one spouse's or one domestic partner's or the community's debts existing at the time of that spouse's or that domestic partner's bankruptcy filing where (a) bankruptcy is filed by both spouses or both domestic partners within a six-month period, other than in a joint case or a case in which their assets are jointly administered, and (b) the other spouse or other domestic partner exempts property from property of the estate under the bankruptcy exemption provisions of 11 U.S.C. Sec. 522(d);

(4) On debts arising from a lawful court order or decree or administrative order establishing a child support obligation or obligation to pay ((~~spousal~~)) maintenance;

(5) On debts owing to the state of Washington for recovery of medical assistance correctly paid on behalf of an individual consistent with 42 U.S.C. Sec. 1396p;

(6) On debts secured by a condominium's or homeowner association's lien. In order for an association to be exempt under this provision, the association must have provided a homeowner with notice that nonpayment of the association's assessment may result in foreclosure of the association lien and that the homestead protection under this chapter shall not apply. An association has complied with this notice requirement by mailing the notice, by first-class mail, to the address of the owner's lot or unit. The notice required in this subsection shall be given within thirty days from the date the association learns of a new owner, but in all cases the notice must be given prior to the initiation of a foreclosure. The phrase "learns of a new owner" in this subsection means actual knowledge of the identity of a homeowner acquiring title after June 9, 1988, and does not require that an association affirmatively ascertain the identity of a homeowner. Failure to give the notice specified in this subsection affects an association's lien only for debts accrued up to the time an association complies with the notice provisions under this subsection; or

(7) On debts owed for taxes collected under chapters 82.08, 82.12, and 82.14 RCW but not remitted to the department of revenue.

Sec. 636. RCW 6.13.180 and 1987 c 442 s 218 are each amended to read as follows:

The money paid to the owner is entitled to the same protection against legal process and the voluntary disposition of the ((~~husband or wife~~)) other spouse or other domestic partner which the law gives to the homestead.

Sec. 637. RCW 6.13.210 and 1987 c 442 s 221 are each amended to read as follows:

In case of a homestead, if either ((~~the husband or wife~~)) spouse or either domestic partner shall be or become incompetent or disabled to such a degree that he or she is unable to assist in the management of his or her interest in the ((~~marital~~)) property of the marriage or domestic partnership and no guardian has been appointed, upon application of the other spouse or other domestic partner to the

superior court of the county in which the homestead is situated, and upon due proof of such incompetency or disability in the severity required above, the court may make an order permitting the ((~~husband or wife~~)) spouse or the domestic partner applying to the court to sell and convey or mortgage such homestead.

Sec. 638. RCW 6.13.220 and 1987 c 442 s 222 are each amended to read as follows:

Notice of the application for such order shall be given by publication of the same in a newspaper published in the county in which such homestead is situated, if there be a newspaper published therein, once each week for three successive weeks prior to the hearing of such application, and a copy of such notice shall be served upon the alleged incompetent ((~~husband or wife~~)) spouse or domestic partner personally, and upon the nearest relative of such incompetent or disabled ((~~husband or wife~~)) spouse or domestic partner other than the applicant, resident in this state, at least three weeks prior to such application being heard, and in case there be no such relative known to the applicant, a copy of such notice shall be served upon the prosecuting attorney of the county in which such homestead is situated; and it is hereby made the duty of such prosecuting attorney, upon being served with a copy of such notice, to appear in court and see that such application is made in good faith, and that the proceedings thereon are fairly conducted.

Sec. 639. RCW 6.13.230 and 1987 c 442 s 223 are each amended to read as follows:

Thirty days before the hearing of any application under the provisions of this chapter, the applicant shall present and file in the court in which such application is to be heard a petition for the order mentioned, subscribed and sworn to by the applicant, setting forth the name and age of the alleged incompetent or disabled ((~~husband or wife~~)) spouse or domestic partner; a description of the premises constituting the homestead; the value of the same; the county in which it is situated; such facts necessary to show that the nonpetitioning ((~~husband or wife~~)) spouse or domestic partner is incompetent or disabled to the degree required under RCW 6.13.210; and such additional facts relating to the circumstances and necessities of the applicant

and his or her family as he or she may rely upon in support of the petition.

Sec. 640. RCW 26.16.125 and Code 1881 s 2399 are each amended to read as follows:

Henceforth the rights and responsibilities of the parents in the absence of misconduct shall be equal, and ((~~the mother~~)) one parent shall be as fully entitled to the custody, control and earnings of the children as the ((~~father~~)) other parent, and in case of ((~~the father's~~)) one parent's death, the ((~~mother~~)) other parent shall come into ((~~as~~)) full and complete control of the children and their estate ((~~as the father does in case of the mother's death~~)).

Sec. 641. RCW 60.04.211 and 1991 c 281 s 21 are each amended to read as follows:

The claim of lien, when filed as required by this chapter, shall be notice to the ((~~husband or wife~~)) spouse or the domestic partner of the person who appears of record to be the owner of the property sought to be charged with the lien, and shall subject all the community interest of both ((~~husband and wife~~)) spouses or both domestic partners to the lien.

PART VII - TAXES

Sec. 701. RCW 82.45.010 and 2000 2nd sp.s. c 4 s 26 are each amended to read as follows:

(1) As used in this chapter, the term "sale" shall have its ordinary meaning and shall include any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term

APPENDIX B

FINAL BILL REPORT
2SHB 3104

C 6 L 08
Synopsis as Enacted

Brief Description: Expanding rights and responsibilities for domestic partnerships.

Sponsors: By House Committee on Finance (originally sponsored by Representatives Pedersen, Hankins, Moeller, Walsh, Linville, Takko, Upthegrove, Kessler, Jarrett, Ericks, Wallace, Grant, Eickmeyer, Quall, Clibborn, Dunshee, Lantz, Sullivan, Simpson, Blake, Hunter, Roberts, Rolfes, Williams, Sells, Schual-Berke, Springer, Eddy, Hunt, Hudgins, Santos, Cody, Seaquist, Fromhold, Nelson, McIntire, Chase, Hasegawa, Appleton, Darneille, Haigh, Sommers, Dickerson, Kirby, Wood, Flannigan, Conway, Goodman, Kenney, Kagi, Ormsby, Loomis, McCoy, Barlow, O'Brien, Pettigrew, Morris, Liias and VanDeWege).

House Committee on Judiciary
House Committee on Finance
Senate Committee on Government Operations & Elections

Background:

In 2007 the Legislature created a domestic partnership registry in the Office of the Secretary of State (Secretary), specified eligibility requirements for same-sex couples and qualifying different-sex couples to register, and granted certain rights and responsibilities to registered domestic partners. Those rights and responsibilities generally involved areas of law dealing with health care decision-making; powers of attorney; and the death and burial of a domestic partner.

A state registered domestic partnership may be terminated by either party filing a signed, notarized notice of termination with the Secretary and paying a filing fee. If the notice of termination is not signed by both parties, the party seeking termination must also file an affidavit stating that service of the notice on the other party has been made.

Upon receipt of the notice of termination, filing fee, and affidavit, the Secretary must register the notice of termination and provide a certificate of termination to each party. The termination is effective 90 days after the date of filing the notice. A state registered domestic partnership is automatically terminated if either party subsequently enters into a marriage with each other or another person that is recognized as valid in this state.

Summary:

Various statutory rights and responsibilities provided to spouses are extended to state registered domestic partners. The process for terminating a domestic partnership is changed. Before the effective date of the act, the Secretary must send a letter to registered domestic partners notifying them that laws affecting domestic partnerships have changed. A legal union between a same-sex couple, other than a marriage, that is created in a different state and that is

substantially equivalent to a Washington domestic partnership will be recognized in Washington.

Termination of Domestic Partnerships.
To terminate a domestic partnership, a domestic partner must file a petition for dissolution in superior court and follow the same procedures applicable to dissolution of marriages, unless the parties qualify to use the nonjudicial termination process. Once a month, the State Registrar of Vital Statistics must submit a list of persons who have dissolved their domestic partnerships to the Secretary.

Parties may use a nonjudicial termination process by filing a notice of termination with the Secretary if, at the time of filing the notice:
(1) both parties want the domestic partnership to be terminated and both have signed the notice of termination;
(2) neither party has minor children, whether born or adopted before or after the domestic partner registration and neither party is pregnant;
(3) the domestic partnership is not more than five years in duration;
(4) neither party has any ownership interest in real property and neither party leases a residence (except a lease of a residence occupied by either party that terminates in a year and does not include an option to buy);
(5) there are no unpaid obligations over $4,000 incurred by either or both parties after the domestic partnership registration, except for debts on a vehicle (this threshold amount will be adjusted for inflation every two years);
(6) the total fair market value of community property assets, minus any encumbrances, is less than $25,000 and neither party has separate property assets over $25,000 (this amount will be adjusted for inflation every two years);
(7) the parties have executed an agreement establishing the division of assets and debts and have executed any documents to effectuate the agreement; and
(8) the parties waive any rights to maintenance by the other party.

A domestic partnership is no longer automatically terminated if the parties enter into a marriage with another person that is recognized in this state.

Rights and Responsibilities.
Rights and responsibilities provided to spouses in various areas of law are extended to state registered domestic partners. The amended statutes generally involve: dissolutions; community property; estate planning; taxes; court process; services to indigent veterans and other public assistance; conflicts of interest for public officials; and guardianships. The following is a list of the broad categories and a short description of some of the changes made in each category.

Dissolution, Parenting Plans, and Child Support.
- Procedures for dissolution apply to domestic partners.
- Child support, maintenance, and parenting plan obligations, and procedures for enforcing such orders, apply to domestic partners.

Community Property and Other Property Rights.

- Property of domestic partners are subject to community property laws.
- A domestic partner's property is obligated to family expenses and education of the children.
- The slayer statute prohibits inheritance by a domestic partner perpetrator.
- A homestead may consist of property owned by domestic partners.

Judicial Process and Victim's Rights.

- A domestic partner may sue on behalf of the community.
- Testimonial privilege for spouses applies to domestic partners.
- A domestic partner is a "family or household member" for purposes of the domestic violence laws.

Taxes.

- Property assigned from one domestic partner to another under a dissolution decree is exempt from real estate excise tax.
- Property tax deferrals for eligible persons, such as senior citizens meeting certain criteria, extend to the person's surviving domestic partner.

Public Officials.

- Appointed and elected officials must disclose financial affairs of their domestic partners.
- Gifts received by an elected official's domestic partner are subject to public disclosure reporting requirements.
- A domestic partner of an elected official may not be a member of the State Commission on Salaries.

Public Assistance.

- The Department of Social and Health Services must consider hardship to a person's domestic partner, to the same extent hardship is considered for spouses, when filing a lien against a person's property as reimbursement for receiving medical assistance.
- Domestic partners who are residents in long-term care facilities or nursing homes may share the same room under certain circumstances.
- An abused same-sex domestic partner is considered a "victim" for purposes of services provided by domestic violence shelters.

Veterans.

- State colleges and universities must waive tuition for domestic partners of deceased or disabled veterans if certain conditions are met.
- Services for honorably discharged indigent veterans, such as residency in a veteran's home, are available to veterans' domestic partners.

Guardianship and Powers of Attorney.

- Procedures under guardianship laws, such as who is entitled to notice, apply to domestic partners of incapacitated persons.

- Domestic partners may file a petition to determine the effectiveness of a power of attorney, receive an accounting, and request other information regarding the power of attorney.

Probate and Trust Law.

- A domestic partner not named in a will that was created before registration of the domestic partnership is an omitted domestic partner for purposes of intestate distribution.
- Letters testamentary go to the surviving domestic partner to administer community property.
- Procedures under probate involving transfer of community property apply to domestic partners.
- The court may award a certain amount from the estate to the decedent's domestic partner for purposes of family support.

Notice to Registered Domestic Partners.

Sixty days before the effective date of the act, and again 30 days before the effective date, the Secretary must send a letter to the mailing address of each registered domestic partner notifying the person that Washington's laws will change. The letter must state that persons who do not wish to be subject to the new rights and responsibilities must terminate their domestic partnership before the effective date of the act.

Votes on Final Passage:

House	62	32
Senate	29	20

Effective: June 12, 2008
January 1, 2009 (Section 1044)
July 1, 2009 (Section 1047)

APPENDIX C

Assembly Bill No. 205

CHAPTER 421

An act to amend Sections 297, 298, and 298.5 of, to add Sections 297.5, 299.2, and 299.3 to, to repeal Section 299.5 of, and to repeal and add Section 299 of, the Family Code, to amend Section 14771 of the Government Code, and to amend Section 3 of Chapter 447 of the Statutes of 2002, relating to domestic partnerships.

[Approved by Governor September 19, 2003. Filed with Secretary of State September 22, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 205, Goldberg. Domestic partners.

Existing law provides for the issuance of a marriage license and specifies the rights and obligations of married persons.

Existing law also provides for the establishment and the termination of domestic partnerships. Existing law requires the Secretary of State to prepare and distribute forms for creating and terminating domestic partnerships. Existing law specifies the requirements for completing the form necessary to create a domestic partnership and provides that a violation of this provision is a misdemeanor.

This bill would enact the California Domestic Partner Rights and Responsibilities Act of 2003. The bill would modify the procedure and the accompanying form for terminating domestic partnerships, and require additional duties of the Secretary of State in relation, as specified. The bill would also revise the requirements for entering into a domestic partnership to require each person to consent to the jurisdiction of the superior courts of this state for the purpose of a proceeding to obtain a judgment of dissolution or nullity of the domestic partnership. The bill would revise the provision described above making it a misdemeanor to violate the provision specifying the requirements for completing the form necessary to create a domestic partnership. The bill would instead specifically provide that filing an intentionally and materially false Declaration of Domestic Partnership would be punishable as a misdemeanor, thereby creating a new crime. By creating a new crime, this bill would impose a state-mandated local program.

This bill would extend the rights and duties of marriage to persons registered as domestic partners on and after January 1, 2005. The bill would provide that the superior courts shall have jurisdiction over all proceedings governing the dissolution of domestic partnerships, nullity of domestic partnerships, and legal separation of partners in domestic

partnerships. These proceedings would follow the same procedures as the equivalent proceedings with respect to marriage. The bill would provide that a legal union validly formed in another jurisdiction that is substantially equivalent to a domestic partnership would be recognized as a valid domestic partnership in this state. The bill would require the Secretary of State to send a letter on 3 separate, specified occasions to the mailing address of registered domestic partners informing them of these changes, as specified. The bill would also require the Director of General Services, through the forms management center, to provide notice to state agencies, among others, that in reviewing and revising all public-use forms that refer to or use the terms spouse, husband, wife, father, mother, marriage, or marital status, that appropriate references to domestic partner, parent, or domestic partnership be included. The bill would also make related and conforming changes. The bill would further make specified provisions operative on January 1, 2005. The bill would impose a state-mandated local program by adding to the duties of county clerks.

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.

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

SECTION 1. (a) This act is intended to help California move closer to fulfilling the promises of inalienable rights, liberty, and equality contained in Sections 1 and 7 of Article 1 of the California Constitution by providing all caring and committed couples, regardless of their gender or sexual orientation, the opportunity to obtain essential rights, protections, and benefits and to assume corresponding responsibilities, obligations, and duties and to further the state's interests in promoting stable and lasting family relationships, and protecting Californians from the economic and social consequences of abandonment, separation, the death of loved ones, and other life crises.

(b) The Legislature hereby finds and declares that despite longstanding social and economic discrimination, many lesbian, gay, and bisexual Californians have formed lasting, committed, and caring relationships with persons of the same sex. These couples share lives together, participate in their communities together, and many raise children and care for other dependent family members together. Many of these couples have sought to protect each other and their family members by registering as domestic partners with the State of California and, as a result, have received certain basic legal rights. Expanding the rights and creating responsibilities of registered domestic partners would further California's interests in promoting family relationships and protecting family members during life crises, and would reduce discrimination on the bases of sex and sexual orientation in a manner consistent with the requirements of the California Constitution.

(c) This act is not intended to repeal or adversely affect any other ways in which relationships between adults may be recognized or given effect in California, or the legal consequences of those relationships, including, among other things, civil marriage, enforcement of palimony agreements, enforcement of powers of attorney, appointment of conservators or guardians, and petitions for second parent or limited consent adoption.

SEC. 2. This act shall be known and may be cited as "The California Domestic Partner Rights and Responsibilities Act of 2003."

SEC. 3. Section 297 of the Family Code is amended to read:

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

(b) A domestic partnership shall be established in California when both persons file a Declaration of Domestic Partnership with the Secretary of State pursuant to this division, and, at the time of filing, all of the following requirements are met:

(1) Both persons have a common residence.

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

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

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

(5) Either of the following:

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

(B) One or both of the persons meet the eligibility criteria under Title II of the Social Security Act as defined in 42 U.S.C. Section 402(a) for old-age insurance benefits or Title XVI of the Social Security Act as

defined in 42 U.S.C. Section 1381 for aged individuals. Notwithstanding any other provision of this section, persons of opposite sexes may not constitute a domestic partnership unless one or both of the persons are over the age of 62.

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

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

SEC. 4. Section 297.5 is added to the Family Code, to read:

297.5. (a) Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses.

(b) Former registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon former spouses.

(c) A surviving registered domestic partner, following the death of the other partner, shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon a widow or a widower.

(d) The rights and obligations of registered domestic partners with respect to a child of either of them shall be the same as those of spouses. The rights and obligations of former or surviving registered domestic partners with respect to a child of either of them shall be the same as those of former or surviving spouses.

(e) To the extent that provisions of California law adopt, refer to, or rely upon, provisions of federal law in a way that otherwise would cause registered domestic partners to be treated differently than spouses, registered domestic partners shall be treated by California law as if federal law recognized a domestic partnership in the same manner as California law.

(f) Registered domestic partners shall have the same rights regarding nondiscrimination as those provided to spouses.

(g) Notwithstanding this section, in filing their state income tax returns, domestic partners shall use the same filing status as is used on their federal income tax returns, or that would have been used had they filed federal income tax returns. Earned income may not be treated as community property for state income tax purposes.

(h) No public agency in this state may discriminate against any person or couple on the ground that the person is a registered domestic partner rather than a spouse or that the couple are registered domestic partners rather than spouses, except that nothing in this section applies to modify eligibility for long-term care plans pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2 of the Government Code.

(i) This act does not preclude any state or local agency from exercising its regulatory authority to implement statutes providing rights to, or imposing responsibilities upon, domestic partners.

(j) This section does not amend or modify any provision of the California Constitution or any provision of any statute that was adopted by initiative.

(k) This section does not amend or modify federal laws or the benefits, protections, and responsibilities provided by those laws.

(*l*) Where necessary to implement the rights of domestic partners under this act, gender-specific terms referring to spouses shall be construed to include domestic partners.

SEC. 5. Section 298 of the Family Code is amended to read:

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

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

(2) The Secretary of State shall, by regulation, establish fees for the actual costs of processing each of these forms, and the cost for preparing and sending the mailings and notices required pursuant to Section 299.3, and shall charge these fees to persons filing the forms.

(c) The Declaration of Domestic Partnership shall require each person who wants to become a domestic partner to (1) state that he or she meets the requirements of Section 297 at the time the form is signed, (2) provide a mailing address, (3) state that he or she consents to the jurisdiction of the Superior Courts of California for the purpose of a

proceeding to obtain a judgment of dissolution or nullity of the domestic partnership or for legal separation of partners in the domestic partnership, or for any other proceeding related to the partners' rights and obligations, even if one or both partners ceases to be a resident of, or to maintain a domicile in, this state, (4) sign the form with a declaration that representations made therein are true, correct, and contain no material omissions of fact to the best knowledge and belief of the applicant, and (5) have a notary public acknowledge his or her signature. Both partners' signatures shall be affixed to one Declaration of Domestic Partnership form, which form shall then be transmitted to the Secretary of State according to the instructions provided on the form. Filing an intentionally and materially false Declaration of Domestic Partnership shall be punishable as a misdemeanor.

SEC. 6. Section 298.5 of the Family Code is amended to read:

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

(b) The Secretary of State shall register the Declaration of Domestic Partnership in a registry for those partnerships, and shall return a copy of the registered form and a Certificate of Registered Domestic Partnership to the domestic partners at the mailing address provided by the domestic partners.

(c) No person who has filed a Declaration of Domestic Partnership may file a new Declaration of Domestic Partnership or enter a civil marriage with someone other than their registered domestic partner unless the most recent domestic partnership has been terminated or a final judgment of dissolution or nullity of the most recent domestic partnership has been entered. This prohibition does not apply if the previous domestic partnership ended because one of the partners died.

SEC. 7. Section 299 of the Family Code is repealed.

SEC. 8. Section 299 is added to the Family Code, to read:

299. (a) A domestic partnership may be terminated without filing a proceeding for dissolution of domestic partnership by the filing of a Notice of Termination of Domestic Partnership with the Secretary of State pursuant to this section, provided that all of the following conditions exist at the time of the filing:

(1) The Notice of Termination of Domestic Partnership is signed by both domestic partners.

(2) There are no children of the relationship of the parties born before or after registration of the domestic partnership or adopted by the parties after registration of the domestic partnership, and neither of the domestic partners, to their knowledge, is pregnant.

(3) The domestic partnership is not more than five years in duration.

(4) Neither party has any interest in real property wherever situated, with the exception of the lease of a residence occupied by either party which satisfies the following requirements:

(A) The lease does not include an option to purchase.

(B) The lease terminates within one year from the date of filing of the Notice of Termination of Domestic Partnership.

(5) There are no unpaid obligations in excess of the amount described in paragraph (6) of subdivision (a) of Section 2400, as adjusted by subdivision (b) of Section 2400, incurred by either or both of the parties after registration of the domestic partnership, excluding the amount of any unpaid obligation with respect to an automobile.

(6) The total fair market value of community property assets, excluding all encumbrances and automobiles, including any deferred compensation or retirement plan, is less than the amount described in paragraph (7) of subdivision (a) of Section 2400, as adjusted by subdivision (b) of Section 2400, and neither party has separate property assets, excluding all encumbrances and automobiles, in excess of that amount.

(7) The parties have executed an agreement setting forth the division of assets and the assumption of liabilities of the community property, and have executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.

(8) The parties waive any rights to support by the other domestic partner.

(9) The parties have read and understand a brochure prepared by the Secretary of State describing the requirements, nature, and effect of terminating a domestic partnership.

(10) Both parties desire that the domestic partnership be terminated.

(b) The domestic partnership shall be terminated effective six months after the date of filing of the Notice of Termination of Domestic Partnership with the Secretary of State pursuant to this section, provided that neither party has, before that date, filed with the Secretary of State a notice of revocation of the termination of domestic partnership, in the form and content as shall be prescribed by the Secretary of State, and sent to the other party a copy of the notice of revocation by first-class mail, postage prepaid, at the other party's last known address. The effect of termination of a domestic partnership pursuant to this section shall be the same as, and shall be treated for all purposes as, the entry of a judgment of dissolution of a domestic partnership.

(c) The termination of a domestic partnership pursuant to subdivision (b) does not prejudice nor bar the rights of either of the parties to institute an action in the superior court to set aside the termination for fraud, duress, mistake, or any other ground recognized at law or in equity. A

court may set aside the termination of domestic partnership and declare the termination of the domestic partnership null and void upon proof that the parties did not meet the requirements of subdivision (a) at the time of the filing of the Notice of Termination of Domestic Partnership with the Secretary of State.

(d) The superior courts shall have jurisdiction over all proceedings relating to the dissolution of domestic partnerships, nullity of domestic partnerships, and legal separation of partners in a domestic partnership. The dissolution of a domestic partnership, nullity of a domestic partnership, and legal separation of partners in a domestic partnership shall follow the same procedures, and the partners shall possess the same rights, protections, and benefits, and be subject to the same responsibilities, obligations, and duties, as apply to the dissolution of marriage, nullity of marriage, and legal separation of spouses in a marriage, respectively, except as provided in subdivision (a), and except that, in accordance with the consent acknowledged by domestic partners in the Declaration of Domestic Partnership form, proceedings for dissolution, nullity, or legal separation of a domestic partnership registered in this state may be filed in the superior courts of this state even if neither domestic partner is a resident of, or maintains a domicile in, the state at the time the proceedings are filed.

SEC. 9. Section 299.2 is added to the Family Code, to read:

299.2. A legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership as defined in this part, shall be recognized as a valid domestic partnership in this state regardless of whether it bears the name domestic partnership.

SEC. 10. Section 299.3 is added to the Family Code, to read:

299.3. (a) On or before June 30, 2004, and again on or before December 1, 2004, and again on or before January 31, 2005, the Secretary of State shall send the following letter to the mailing address on file of each registered domestic partner who registered more than one month prior to each of those dates:

"Dear Registered Domestic Partner:

This letter is being sent to all persons who have registered with the Secretary of State as a domestic partner.

Effective January 1, 2005, California's law related to the rights and responsibilities of registered domestic partners will change (or, if you are receiving this letter after that date, the law has changed, as of January 1, 2005). With this new legislation, for purposes of California law, domestic partners will have a great many new rights and responsibilities,

including laws governing community property, those governing property transfer, those regarding duties of mutual financial support and mutual responsibilities for certain debts to third parties, and many others. The way domestic partnerships are terminated is also changing. After January 1, 2005, under certain circumstances, it will be necessary to participate in a dissolution proceeding in court to end a domestic partnership.

Domestic partners who do not wish to be subject to these new rights and responsibilities MUST terminate their domestic partnership before January 1, 2005. Under the law in effect until January 1, 2005, your domestic partnership is automatically terminated if you or your partner marry or die while you are registered as domestic partners. It is also terminated if you send to your partner or your partner sends to you, by certified mail, a notice terminating the domestic partnership, or if you and your partner no longer share a common residence. In all cases, you are required to file a Notice of Termination of Domestic Partnership.

If you do not terminate your domestic partnership before January 1, 2005, as provided above, you will be subject to these new rights and responsibilities and, under certain circumstances, you will only be able to terminate your domestic partnership, other than as a result of domestic partner's death, by the filing of a court action.

If you have any questions about any of these changes, please consult an attorney. If you cannot find an attorney in your locale, please contact your county bar association for a referral.

Sincerely,

The Secretary of State"

(b) From January 1, 2004, to December 31, 2004, inclusive, the Secretary of State shall provide the following notice with all requests for the Declaration of Domestic Partnership form. The Secretary of State also shall attach the Notice to the Declaration of Domestic Partnership form that is provided to the general public on the Secretary of State's Web site:

"NOTICE TO POTENTIAL DOMESTIC PARTNER REGISTRANTS

As of January 1, 2005, California's law of domestic partnership will change.

Beginning at that time, for purposes of California law, domestic partners will have a great many new rights and responsibilities,

including laws governing community property, those governing property transfer, those regarding duties of mutual financial support and mutual responsibilities for certain debts to third parties, and many others. The way domestic partnerships are terminated will also change. Unlike current law, which allows partners to end their partnership simply by filing a "Termination of Domestic Partnership" form with the Secretary of State, after January 1, 2005, it will be necessary under certain circumstances to participate in a dissolution proceeding in court to end a domestic partnership.

If you have questions about these changes, please consult an attorney. If you cannot find an attorney in your area, please contact your county bar association for a referral."

SEC. 11. Section 299.5 of the Family Code is repealed.

SEC. 12. Section 14771 of the Government Code is amended to read:

14771. (a) The director, through the forms management center, shall do all of the following:

(1) Establish a State Forms Management Program for all state agencies, and provide assistance in establishing internal forms management capabilities.

(2) Study, develop, coordinate and initiate forms of interagency and common administrative usage, and establish basic state design and specification criteria to effect the standardization of public-use forms.

(3) Provide assistance to state agencies for economical forms design and forms art work composition and establish and supervise control procedures to prevent the undue creation and reproduction of public-use forms.

(4) Provide assistance, training, and instruction in forms management techniques to state agencies, forms management representatives, and departmental forms coordinators, and provide direct administrative and forms management assistance to new state organizations as they are created.

(5) Maintain a central cross index of public-use forms to facilitate the standardization of these forms, to eliminate redundant forms, and to provide a central source of information on the usage and availability of forms.

(6) Utilize appropriate procurement techniques to take advantage of competitive bidding, consolidated orders, and contract procurement of forms, and work directly with the Office of State Publishing toward more efficient, economical and timely procurement, receipt, storage, and distribution of state forms.

(7) Coordinate the forms management program with the existing state archives and records management program to ensure timely disposition of outdated forms and related records.

(8) Conduct periodic evaluations of the effectiveness of the overall forms management program and the forms management practices of the individual state agencies, and maintain records which indicate net dollar savings which have been realized through centralized forms management.

(9) Develop and promulgate rules and standards to implement the overall purposes of this section.

(10) Create and maintain by July 1, 1986, a complete and comprehensive inventory of public-use forms in current use by the state.

(11) Establish and maintain, by July 1, 1986, an index of all public-use forms in current use by the state.

(12) Assign, by January 1, 1987, a control number to all public-use forms in current use by the state.

(13) Establish a goal to reduce the existing burden of state collections of public information by 30 percent by July 1, 1987, and to reduce that burden by an additional 15 percent by July 1, 1988.

(14) Provide notice to state agencies, forms management representatives, and departmental forms coordinators, that in the usual course of reviewing and revising all public-use forms that refer to or use the terms spouse, husband, wife, father, mother, marriage, or marital status, that appropriate references to domestic partner, parent, or domestic partnership are to be included.

(15) Delegate implementing authority to state agencies where the delegation will result in the most timely and economical method of accomplishing the responsibilities set forth in this section.

The director, through the forms management center, may require any agency to revise any public-use form which the director determines is inefficient.

(b) Due to the need for tax forms to be available to the public on a timely basis, all tax forms, including returns, schedules, notices, and instructions prepared by the Franchise Tax Board for public use in connection with its administration of the Personal Income Tax Law, Senior Citizens Property Tax Assistance and Postponement Law, Bank and Corporation Tax Law, and the Political Reform Act of 1974 and the State Board of Equalization's administration of county assessment standards, state-assessed property, timber tax, sales and use tax, hazardous substances tax, alcoholic beverage tax, cigarette tax, motor vehicle fuel license tax, use fuel tax, energy resources surcharge, emergency telephone users surcharge, insurance tax, and universal

telephone service tax shall be exempt from subdivision (a), and, instead, each board shall do all of the following:

(1) Establish a goal to standardize, consolidate, simplify, efficiently manage, and, where possible, reduce the number of tax forms.

(2) Create and maintain, by July 1, 1986, a complete and comprehensive inventory of tax forms in current use by the board.

(3) Establish and maintain, by July 1, 1986, an index of all tax forms in current use by the board.

(4) Report to the Legislature, by January 1, 1987, on its progress to improve the effectiveness and efficiency of all tax forms.

(c) The director, through the forms management center, shall develop and maintain, by December 31, 1995, an ongoing master inventory of all nontax reporting forms required of businesses by state agencies, including a schedule for notifying each state agency of the impending expiration of certain report review requirements pursuant to subdivision (b) of Section 14775.

SEC. 13. Section 3 of Chapter 447 of the Statutes of 2002 is amended to read:

Sec. 3. On or before March 1, 2003, the Secretary of State shall send the following letter to the mailing address on file of each registered domestic partner who registered prior to January 1, 2003:

"Dear Registered Domestic Partner:

This letter is being sent to all persons who have registered with the Secretary of State as a domestic partner.

As of July 1, 2003, California's law of intestate succession will change. The intestate succession law specifies what happens to a person's property when that person dies without a will, trust, or other estate plan.

Under existing law, if a domestic partner dies without a will, trust, or other estate plan, a surviving domestic partner cannot inherit any of the deceased partner's separate property. Instead, surviving relatives, including, for example, children, brothers, sisters, nieces, nephews, or parents may inherit the deceased partner's separate property.

Under the law to take effect July 1, 2003, if a domestic partner dies without a will, trust, or other estate plan, the surviving domestic partner will inherit the deceased partner's separate property in the same manner as a surviving spouse. This change will mean that the surviving domestic partner would inherit a third, a half, or all of the deceased partner's separate property, depending on whether the deceased domestic partner has surviving children or other relatives. This change does not affect any community or quasi-community property that the deceased partner may have had.

This change in the intestate succession law will not affect you if you have a will, trust, or other estate plan.

If you do not have a will, trust, or other estate plan and you do not wish to have your domestic partner inherit your separate property in the manner provided by the revised law, you may prepare a will, trust, or other estate plan, or terminate your domestic partnership.

Under existing law, your domestic partnership is automatically terminated if you or your partner married or died while you were registered as domestic partners. It is also terminated by you sending your partner or your partner sending to you by certified mail a notice terminating the domestic partnership, or by you and your partner no longer sharing a common residence. In all cases, you are required to file a Notice of Termination of Domestic Partnership with the Secretary of State in order to establish the actual date of termination of the domestic partnership. You can obtain a Notice of Termination of Domestic Partnership from the Secretary of State's office.

If your domestic partnership has terminated because you sent your partner or your partner sent to you a notice of termination of your domestic partnership, you must immediately file a Notice of Termination of Domestic Partnership. If you do not file that notice, your former domestic partner may inherit under the new law. However, if your domestic partnership has terminated because you or your partner married or you and your partner no longer share a common residence, neither you nor your former partner may inherit from the other under this new law.

If you have any questions about this change, please consult an estate planning attorney. If you cannot find an estate planning attorney in your locale, please contact your county bar association for a referral.

Sincerely,

The Secretary of State"

SEC. 14. The provisions of Sections 3, 4, 5, 6, 7, 8, 9, and 11 of this act shall become operative on January 1, 2005.

SEC. 15. This act shall be construed liberally in order to secure to eligible couples who register as domestic partners the full range of legal rights, protections and benefits, as well as all of the responsibilities, obligations, and duties to each other, to their children, to third parties and to the state, as the laws of California extend to and impose upon spouses.

SEC. 16. The provisions of this act are severable. If any provision of this act is held to be invalid, or if any application thereof to any person

or circumstance is held to be invalid, the invalidity shall not affect other provisions or applications that may be given effect without the invalid provision or application.

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

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

O

APPENDIX D

127 Cal.App.4th 1405
Court of Appeal, Second District, Division 1, California.

Connie ARMIJO, Plaintiff and Appellant,
v.
Jamie MILES et al., Defendants and Respondents.

No. B166050. | March 30, 2005.
| Rehearing Denied April 21, 2005.
| Review Denied June 15, 2005.

Synopsis

Background: Domestic partner of decedent sued doctor and medical providers for wrongful death. Defendants demurred. The Superior Court, Los Angeles County, Richard Wolfe, J., No. LC061944, sustained demurrers, concluding that domestic partner lacked standing to sue, in that she and decedent had not registered their domestic partnership. Domestic partner appealed. During pendency of appeal, Legislature amended wrongful death statute to apply retroactively to provide nonregistered domestic partners standing to bring wrongful death actions.

Holdings: The Court of Appeal, Spencer, P.J., held that:

[1] retroactive application of wrongful death statute for nonregistered domestic partners did not violate constitutional rights of defendants;

[2] domestic partner alleged facts sufficient to plead standing under amended statute; and

[3] retroactive application of amended statute did not violate voter initiative specifying that only marriage between a man and a woman is valid in California.

Reversed and remanded.

West Headnotes (21)

[1] **Appeal and Error**
⇐ Demurrers

In reviewing the trial court's order sustaining a demurrer, the appellate court presumes the material factual allegations in plaintiff's operative complaint, as well as those that may be implied or inferred therefrom, to be true, while disregarding conclusions of law and factual allegations that are contrary to facts judicially noticed.

1 Cases that cite this headnote

[2] **Death**
⇐ Persons Entitled to Sue

Registration of domestic partnership was a prerequisite to plaintiff's standing to sue for her partner's wrongful death under the 2002 wrongful death statute, based on review of the statute itself, relevant provisions of the domestic partnership law, and the legislative history. West's Ann.Cal.C.C.P. § 377.60.

2 Cases that cite this headnote

[3] **Statutes**
⇐ Reports and analyses

Background information requests are a proper source for ascertaining legislative intent of a statute.

2 Cases that cite this headnote

[4] **Constitutional Law**
⇐ Parties

Death
⇐ Constitutional and statutory provisions

Retroactive application of wrongful death statute, to provide nonregistered domestic partners standing to bring wrongful death actions, did not violate the due process rights of a doctor who was sued in a wrongful death case; persons who may have wrongfully caused another person's death had no right to have the class of potential plaintiffs frozen as of the time of death. U.S.C.A. Const.Amend. 14; West's Ann.Cal.C.C.P. § 377.60(f)(2).

See 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 1209A; Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2003) ¶ 20:141 (CAFAMILY CH. 20-D).

[5] **Constitutional Law**

⇦ Retrospective laws and decisions; change in law

Retroactive application of a statute may be unconstitutional if it deprives an individual of a vested right, that is, a right already possessed or legitimately acquired, without due process of law. U.S.C.A. Const.Amend. 14.

[6] **Death**

⇦ Constitutional and statutory provisions

The right to sue for wrongful death by a person on whom the Legislature has conferred such right vests on the decedent's death, and once that right has vested, the Legislature cannot impair it.

[7] **Constitutional Law**

⇦ Imposition of Legislative Preference in Particular Proceedings

Death

⇦ Constitutional and statutory provisions

Retroactive application of wrongful death statute, to provide nonregistered domestic partners standing to bring wrongful death actions, did not violate the separation of powers doctrine by attempting to legislate judicial interpretation of the statute; retroactive amendment to statute constituted an actual change in the law, which was designed to fill a gap in the previous law. West's Ann.Cal. Const. Art. 3, § 3; West's Ann.Cal.C.C.P. § 377.60(f)(2).

[8] **Constitutional Law**

⇦ Construction of statutes in general

Constitutional Law

⇦ Prescribing rule of decision or directing specific result

Separation of powers principles do not preclude the Legislature from amending a statute and applying the change to both pending and future cases, though any such law cannot readjudicate or otherwise disregard judgments that are already final.

[9] **Constitutional Law**

⇦ Particular Issues and Applications

Death

⇦ Constitutional and statutory provisions

Retroactive application of wrongful death statute, to provide nonregistered domestic partners standing to bring wrongful death actions, did not violate federal and state constitutional proscriptions against passing a bill of attainder; defendants in wrongful death action failed to demonstrate that the wrongful death statute punished anyone without a trial. U.S.C.A. Const. Art. 1, §§ 9, 10; West's Ann.Cal. Const. Art. 1, § 9; West's Ann.Cal.C.C.P. § 377.60(f)(2).

[10] **Constitutional Law**

⇦ Bills of Attainder; Bills of Pains and Penalties

Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder that constitutionally prohibited. U.S.C.A. Const. Art. 1, §§ 9, 10; West's Ann.Cal. Const. Art. 1, § 9.

1 Cases that cite this headnote

[11] **Constitutional Law**

⇦ Penal laws in general

The constitutional prohibition on *ex post facto* laws applies only to penal statutes which disadvantage the offender affected by them. U.S.C.A. Const. Art. 1, § 10, cl. 1; West's Ann.Cal. Const. Art. 1, § 9.

[12] **Constitutional Law**

⇦ Relationship between federal and state provisions

California courts interpret state ex post facto provisions identically to that of its federal counterpart. U.S.C.A. Const. Art. 1, § 10, cl. 1; West's Ann.Cal. Const. Art. 1, § 9.

[13] **Constitutional Law**
Family Law

Death
Constitutional and statutory provisions

Retroactive application of wrongful death statute, to provide nonregistered domestic partners standing to bring wrongful death actions, did not violate the constitutional prohibition on ex post facto laws, which applied only to penal statutes. U.S.C.A. Const. Art. 1, § 10, cl. 1; West's Ann.Cal. Const. Art. 1, § 9; West's Ann.Cal.C.C.P. § 377.60(f)(2).

[14] **Constitutional Law**
Parties

Death
Constitutional and statutory provisions

Retroactive application of wrongful death statute, to provide nonregistered domestic partners standing to bring wrongful death actions, did not violate the constitutional equal protection clause; defendants in wrongful death action failed to demonstrate that they would be treated differently from similarly situated defendants, and there was a rational basis for amending the statute, inasmuch as the amendment allowed non-registered domestic partners whose partners died prior to 2002 to benefit from the wrongful death statute. U.S.C.A. Const.Amend. 14.

2 Cases that cite this headnote

[15] **Constitutional Law**
Statutes and other written regulations and rules

In order to withstand an equal protection challenge, ordinarily a legislative classification need only bear a rational relationship to a conceivable legitimate state purpose. U.S.C.A. Const.Amend. 14.

[16] **Death**
Issues, proof, and variance

A wrongful death plaintiff is required to plead and prove standing to sue.

[17] **Death**
Persons Entitled to Sue

Plaintiff alleged facts sufficient to plead standing under the 2005 version of the wrongful death statute, which provided for retroactive application of statute to allow nonregistered domestic partners to bring wrongful death actions; plaintiff and her deceased partner were members of the same sex, they were jointly responsible for each other's living expenses, they lived together in a common residence and ultimately purchased a home together, they were not related by blood in a way that would have prevented them from getting married if they could have been married, and each was over the age of 18 when they met and formed their relationship. West's Ann.Cal.C.C.P. § 377.60(f)(2).

2 Cases that cite this headnote

[18] **Death**
Constitutional and statutory provisions

Retroactive application of wrongful death statute, to provide nonregistered domestic partners standing to bring wrongful death actions, did not violate initiative measure specifying that only marriage between a man and a woman is valid in California; wrongful death statute had nothing at all to do with marriage, inasmuch as it simply established that the right to sue for wrongful death belonged to registered domestic partners who satisfied specified criteria. West's Ann.Cal.C.C.P. § 377.60(f)(2); West's Ann.Cal.Fam. Code § 308.5.

1 Cases that cite this headnote

[19] **Statutes**

Construction and operation of initiated statutes

When interpreting a voter initiative, courts apply the same principles applicable to the construction of statutes.

[20] **Elections**

Statement of question or proposition

When the language is of a voter initiative is ambiguous, courts refer to other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet.

[21] **Death**

Creation of new cause of action

The statutorily created wrongful death cause of action does not effect a survival of the decedent's cause of action; it gives to the representative a totally new right of action, on different principles. West's Ann.Cal.C.C.P. § 377.60.

2 Cases that cite this headnote

Attorneys and Law Firms

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Opinion

SPENCER, P.J.

*1409 INTRODUCTION

Plaintiff Connie Armijo sued defendants Jamie Miles, M.D. (Miles), Labriute Medical Group Incorporated (Labriute) and Sherman Oaks Hospital and Health Center (Sherman Oaks Hospital) for the wrongful death of her domestic partner, Dana Schwartz (Dana). The trial court sustained defendants' demurrers to plaintiff's causes of action, concluding that plaintiff lacked standing to sue under the 2002 version of the wrongful death statute (Stats. 2001, ch. 893, § 2), in that she and Dana had not registered their domestic partnership with the Secretary of State.

Plaintiff appealed from the order and judgment dismissing her action. During the pendency of this appeal, and after the parties had filed their briefs, the Legislature amended the wrongful death statute (Stats. 2004, ch. 947, § 1). Based upon this amendment, which took effect on January 1, 2005 and which applies retroactively to plaintiff's wrongful death claim, we conclude the facts plaintiff alleged in her operative complaint are sufficient to establish her standing to sue for wrongful death. Accordingly, we reverse the judgment and remand for further proceedings.

FACTS [1]

[1] Plaintiff and Dana first met in 1987. After dating for six months, the two women made a decision to be committed to each other exclusively as "life partners and 'spouses.' "

Plaintiff and Dana jointly were responsible for each other's living expenses. During their relationship, neither woman entered into any other relationship or domestic partnership. They lived with one another, and, in 1998, they purchased a home together, where they resided until Dana's death.

Plaintiff and Dana were not related by blood in a way that would have prevented them from marrying each another if they could have been married. Each was over the age of 18 when they met and formed their relationship.

*1410 On August 6, 2001, Dana died at defendant Sherman Oaks Hospital, where she had been "hospitalized for pain management and associated rehabilitation." Miles, an employee of Labriute, had been Dana's physician.

PROCEDURAL BACKGROUND

On August 20, 2002, plaintiff and Dana's sister, Lori Schwartz (who is not a party to this appeal), filed this wrongful death action against defendants. Their operative second amended complaint was filed on December 20, 2002. Plaintiff alleged that Dana died as the result of defendants' medical malpractice. Plaintiff sought compensatory damages, including compensation for the loss of love, companionship, ****627** comfort, affection, solace and moral support, that she suffered as a result of Dana's death. Plaintiff also sought compensation for burial and funeral expenses, as well as the loss of Dana's income and future earnings.

Defendants demurred to plaintiff's causes of action. Relying on Code of Civil Procedure section 377.60 (section 377.60 or the wrongful death statute) and Family Code section 297, defendants asserted that plaintiff lacked standing to sue them for wrongful death, in that she and Dana had failed to file a Declaration of Domestic Partnership with the Secretary of State.

Plaintiff opposed the demurrers. Although she acknowledged that she and Dana had not fulfilled the registration requirement necessary to establish a domestic partnership, she argued that they had fulfilled the statutory intent and underlying purpose of domestic partnership registration despite the lack of registration.

The trial court, believing it had no discretion in this matter, sustained the demurrers without leave to amend based on the failure to file a Declaration of Domestic Partnership with the Secretary of State. On May 7, 2003, the trial court dismissed all of plaintiff's causes of action with prejudice. This appeal followed.

CONTENTIONS

The trial court's decision to sustain defendants' demurrers without leave to amend was based upon the 2002 version of the wrongful death statute. Plaintiff contends that under the most reasonable construction of that statute and the domestic partnership law, she need not allege that she and Dana registered their domestic partnership with the Secretary of State in order to establish standing. Plaintiff further contends that a registration requirement would run afoul of the state and federal equal protection clauses and that, apart from whether she and Dana were domestic partners under the 2002 ***1411** wrongful death statute, she nevertheless was entitled to bring this lawsuit under the equal protection and privacy guarantees of the California Constitution and under the equal protection and due process provisions of the United States Constitution. We conclude that registration is a prerequisite for standing under the 2002 version of the wrongful death statute. We further conclude, however, that the 2005 version of the wrongful death statute affords plaintiff standing to sue. We therefore need not and do not address plaintiff's remaining constitutional contentions regarding the 2002 wrongful death statute.

With respect to the 2005 wrongful death statute, Assembly Bill 2580 (AB 2580), defendants[2] contend that the Legislature amended the wrongful death statute for the sole purpose of changing the results in three cases presently on appeal. Defendants concede that the statute expressly provides that it is to have retroactive effect but contend that various constitutional provisions prevent the statute's retroactive application in this case. Defendants further contend that even if there is no constitutional impediment to the statute's retroactive application, AB 2580 cannot be enforced because it violates Proposition 22, an initiative measure approved by California voters during the March 2000 election. ****628** For the reasons that follow, there is no merit to these contentions.

DISCUSSION

I. OVERVIEW OF PERTINENT STATUTORY PROVISIONS

In order to place the issues in this case into perspective, an understanding of the evolution of the wrongful death statute in relationship to California domestic partnership law is required. In 1999, the Legislature passed Assembly Bill 26 (AB 26), which became effective on January 1, 2000. Among other things, AB 26 added Division 2.5, entitled "Domestic Partner Registration" (commencing with section 297), to the Family Code. (Stats. 1999, ch. 588, § 2.) This division set forth the definitions of domestic partners and domestic partnership, the procedural steps to be taken to register or to terminate a domestic partnership, the legal effect of registering a domestic partnership, and preemption provisions.

As originally enacted, Family Code section 299.5 provided that "[r]egistration as a domestic partner under this division

shall not be evidence of, or ***1412** establish, any rights existing under law other than those expressly provided to domestic partners in this division and Section 1261 of the Health and Safety Code." AB 26 "require[d] a health facility to allow a patient's domestic partner and other specific persons to visit a patient, except under specified conditions" and "authorize[d] state and local employers to offer health care coverage and other benefits to domestic partners." (Legis. Counsel's Digest, Assem. Bill 26; 9 West's California Legislative Service (1999), ch. 588, p. 3373.) The new legislation conferred no other rights.

When Dana died in August 2001, California's wrongful death statute did not confer standing on a surviving domestic partner. Legislation passed in 2001, shortly after Dana's death, changed this. On October 14, 2001, Assembly Bill 25 (AB 25) (Stats.2001, ch. 893) was enacted. Effective January 1, 2002, AB 25 amended subdivision (a) of section 377.60 to add the decedent's surviving "domestic partner" to the list of individuals entitled to sue for wrongful death.

AB 25 also added subdivision (f) to section 377.60, which specified that for purposes of the wrongful death statute, the term " 'domestic partners' has the meaning provided in Section 297 of the Family Code."[3] (Stats.2001, ch. 893, § 2.) ****629** Subdivision (d) of section 377.60, which prior to the 2002 amendment provided that the wrongful death statute "applies to any cause of action arising on or after January 1, 1993," was reenacted without ***1413** change, thereby reflecting the Legislature's clear intent that the 2002 amendment have retroactive application.

In 2003, the Legislature enacted Assembly Bill 205 (AB 205), the California Domestic Partner Rights and Responsibilities Act of 2003. (Stats. 2003, ch. 421, § 2.) Among other things, AB 205 amended Family Code section 297's definition of domestic partnership. (Stats. 2003, ch. 421, § 3.)

AB 205 also significantly expanded the rights and protections provided to registered domestic partners. Specifically, it "extend[ed] the rights and duties of marriage to persons registered as domestic partners on and after January 1, 2005." (Legis. Counsel's Digest, Assem. Bill 205; 8 West's Cal. Legislative Service (2003) ch. 421, p. 2587.) AB 205 added section 297.5 to the Family Code. It provided in part: "(a) Registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses." Family Code section 297.5 (Stats. 2003, ch. 421, § 4), and the amendment to Family Code section 297 (Stats. 2003, ch. 421, § 3), became operative on January 1, 2005. (Stats. 2003, ch. 421, § 14.)

In 2004, while this appeal was pending but after the parties had fully briefed this case, AB 2580 was enacted into law (Stats. 2004, ch. 947, § 1). The Legislative Counsel's Digest to AB 2580, as amended in the Senate August 16, 2004, states, in part, that "[e]xisting law provides that a cause of action for the wrongful death of a person may be asserted by his or her domestic partner, as defined. [¶] Under certain circumstances, this bill would allow a cause of action for wrongful death to proceed pursuant to the above although a Declaration of Domestic Partnership was not filed with the Secretary of State, if other specified requirements are met." (Italics omitted.)

AB 2580 amended subdivision (f) of the wrongful death statute. Effective January 1, 2005, section 377.60, subdivision (f), provides: "(1) For the purpose of this section, 'domestic partner' means a person who, at the time of the decedent's death, was the domestic partner of the decedent in a registered domestic partnership established in accordance with subdivision (b) of Section 297 of the Family Code.

"(2) *Notwithstanding paragraph (1), for a death occurring prior to January 1, 2002, a person may maintain a cause of action pursuant to this section* ***1414** *as a domestic partner of the decedent by establishing the factors listed in paragraphs (1) to (6), inclusive, of subdivision (b) of Section 297 of the Family Code, as it read pursuant to Section 3 of Chapter 893 of the Statutes of 2001, prior to its becoming inoperative on January 1, 2005.*

"(3) The amendments made to this subdivision during the 2003–2004 Regular Session of the Legislature are not intended to revive any cause of action that has been fully and finally adjudicated by the courts, ****630** or that has been settled, or as to which the applicable limitations period has run." (Italics added.)

II. UNDER THE 2002 VERSION OF THE WRONGFUL DEATH STATUTE, ONLY REGISTERED SURVIVING DOMESTIC PARTNERS HAVE STANDING TO SUE FOR WRONGFUL DEATH

[2] We reject plaintiff's contention that under the 2002 wrongful death statute, registration of her partnership with Dana was not a prerequisite to her standing to sue for Dana's wrongful death. In *Holguin v. Flores* (2004) 122 Cal.App.4th 428, 18 Cal.Rptr.3d 749, Division Seven of this Court held that registration as a domestic partnership was required in order for the surviving domestic partner to sue for the wrongful death of the deceased partner. The court reached this conclusion after an extensive review of the 2002 wrongful death statute, relevant provisions of the domestic partnership law and legislative history underlying those provisions. (*Id.* at pp. 434–437, 18 Cal.Rptr.3d 749.)

We agree with *Holguin* and adopt its reasoning. Accordingly, we hold that a surviving domestic partner can sue for wrongful death under the 2002 version of the wrongful death statute only if at the time of the decedent's death the partnership had been registered with the Secretary of State. Inasmuch as plaintiff and Dana were not registered domestic partners at the time of Dana's death, and plaintiff could not amend her complaint to allege registration, the trial court correctly determined that plaintiff lacked standing to sue for Dana's wrongful death under the 2002 version of the wrongful death statute. We nevertheless must reverse the judgment because a subsequent amendment to the wrongful death statute, which amendment applies retroactively, confers on plaintiff the requisite standing even in the absence of partnership registration. We therefore need not and do not reach the merits of plaintiff's remaining contentions with respect to the 2002 wrongful death statute. We now turn to defendants' challenges to the 2005 wrongful death statute.

III. THE LEGISLATURE PASSED AB 2580 FOR THE PURPOSE OF CLARIFYING PREVIOUS LEGISLATION

AB 2580 was a clean-up bill designed to clarify through technical changes that various provisions of the California Domestic Partner ***1415** Rights and Responsibilities Act (Fam.Code, § 297 et seq., added by Stats. 2003, ch. 421) apply to state-registered domestic partners. (Assem. Com. on Judiciary, Analysis of Assem. Bill 2580, as introduced Feb. 20, 2004, p. 1.) This particular bill was sparked by inquiries as to whether AB 205 applied to domestic partners registered at one of the 59 local jurisdictions. (Assem. Com. on Judiciary, Analysis of Assem. Bill 2580, *supra,* p. 1.)

The August 10, 2004 Senate floor amendments to AB 2580 sought to "clarify application of existing law to wrongful death actions brought by domestic partners.... Among the provisions amended by AB 25 was Section 377.60 of the Civil Code [*sic*], to allow domestic partners to assert wrongful death claims in the same manner as spouses. Apparently courts have interpreted the amendment made by AB 25 to Section 377.60 of the Civil Code [4], as applied to deaths prior to its effective date of January 1, 2002, in different and conflicting ways. These amendments to AB 2580 clarify the application of the AB 25 amendments to those wrongful death actions. The amendments will not affect actions that have been adjudged or settled ****631** or where the statute of limitations has run." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill 2580, as amended Aug. 10, 2004, pp. 1–2.)

[3] Contained in the legislative history materials supplied by plaintiff is a Senate Committee on the Judiciary "Background Information Request." Following as "background material in explanation of the bill," is a document entitled "*Explanation of Proposed Amendment to Wrongful Death Statute (Code of Civil Procedure Section 377.60) for Possible Inclusion in AB 2580 (2004) (Goldberg).*"[5]

This document references AB 25, which amended the wrongful death statute effective January 1, 2002 by adding surviving domestic partners to the list of individuals who had standing to bring a wrongful death cause of action. Of particular interest is part C of the document entitled, "*The Need for Clarification With Respect to Suits for Wrongful Deaths Occurring Prior to January 1, 2002.*" It explains that "[u]nfortunately, some of the plaintiffs for whom the Legislature contemplated that AB 25 would authorize recovery—that is, plaintiffs bringing wrongful death actions for pre–2002 deaths—have found themselves in a legal 'Catch–22' that the Legislature did not ***1416** contemplate. During the lifetimes of their now-deceased partners, the plaintiffs that the Legislature expected to benefit from the retroactive availability of the wrongful death cause of action had no reason to expect that registration would entitle them to the protections of the wrongful death statute. Indeed, for the duration of years 2000 and 2001, Family Code section 299.5 expressly prohibited courts from considering registration as evidence of the right to bring any cause of action."

Part C further explains that lawsuits filed under AB 25 with regard to pre–2002 deaths have resulted in incongruent holdings, necessitating clarification by the Legislature of the standing requirements. Such clarification effectively would conserve judicial resources in ongoing litigation by obviating

the need for the Legislature to decide complex constitutional issues relating to same-sex partners' previous inability to sue for wrongful death. Claims barred by the statute of limitations would not be revived. In addition, legislative clarification would "confirm[ ] that these surviving partners have a fair and rational legal remedy, as was intended by AB 25."

The Legislature's decision to amend the wrongful death statute therefore was fueled by its recognition that AB 25, as enacted, did not fully achieve its desired result—retroactive enjoyment of the benefit of the wrongful death statute by all surviving domestic partners for deaths occurring prior to January 1, 2002. References in the legislative materials to ongoing litigation and the disparate results reached therein served only to highlight the need for amendment of the wrongful death statute. Contrary to defendants' assertion, such references do not evince an intent on the part of the Legislature to usurp the function of the judiciary.

**632 *IV. DEFENDANTS HAVE FAILED TO DEMONSTRATE THAT THERE IS A CONSTITUTIONAL IMPEDIMENT TO THE RETROACTIVE APPLICATION OF AB 2580* [6]

Defendants concede that the wrongful death statute as amended by AB 2580 provides that it is to apply retroactively. Defendants argue, however, that "it would be unconstitutional to apply AB 2580 retroactively here because: (1) it violates Dr. Miles' due process rights by substantively changing the law regarding wrongful death tort liability, thereby upsetting Dr. Miles' vested rights; (2) it violates the separation of powers by directing courts how to rule on pending appeals; (3) it constitutes an unconstitutional bill of attainder by singling out for punishment a small discreet group of defendants and [violates the prohibition against ex post facto laws; and] (4) it *1417 violates Dr. Miles' equal protection rights by treating her differently from other similarly situated doctors who will not be liable in wrongful death actions brought by surviving non-registered domestic partners." As we now explain, each of defendants' constitutional challenges lacks merit. We discuss each in turn.

A. Due Process

[4] Defendants contend that it would be unconstitutional to apply AB 2580's amendment of the wrongful death statute retroactively. In defendants' view, AB 2580 is a legislative act that deprives them of a vested right without due process of law. We disagree.

[5] Our state's high court has long held that the retroactive application of a statute may be unconstitutional if it deprives an individual of a vested right without due process of law. (*In re Marriage of Buol* (1985) 39 Cal.3d 751, 756, 758, 218 Cal.Rptr. 31, 705 P.2d 354.) "A right is 'vested' when it is ' "already possessed" ' or ' "legitimately acquired." ' " (*Standard Oil Co. v. Feldstein* (1980) 105 Cal.App.3d 590, 605, 164 Cal.Rptr. 403, quoting *Harlow v. Carleson* (1976) 16 Cal.3d 731, 735, 129 Cal.Rptr. 298, 548 P.2d 698.)

[6] The right to sue for wrongful death by a person on whom the Legislature has conferred such right vests on the decedent's death. Once that right has vested, the Legislature cannot impair it. (*Wexler v. City of Los Angeles* (1952) 110 Cal.App.2d 740, 747, 243 P.2d 868.) Defendants assert that "[s]imple fairness dictates that the reverse must also be true —where a potential wrongful death defendant is protected by the law from any liability at the time of decedent's death the Legislature should be barred from retroactively imposing liability where none existed before." We reject this argument.

Defendants do not cite to any California or federal case law that compels the conclusion that a person who wrongfully or negligently causes another's death has a right, vested or otherwise, to have the class of potential plaintiffs frozen as of the time of death. Expansion of the class of plaintiffs who can sue for wrongful death does not change the legal definition of negligence, the standard by which liability is assessed, or the character of defendants' acts or omissions. It simply enlarges the class of plaintiffs to whom defendants may be liable for their purported negligence.

Defendants' reliance on *Theodosis v. Keeshin Motor Express Co.* (1950) 341 Ill.App. 8 [92 N.E.2d 794] is misplaced. In *Theodosis,* the question before the Illinois appellate court was whether the Injuries Act of 1947, *1418 which increased the limit of recovery from $10,000 to $15,000, should **633 be construed to apply retroactively. (At p. 795.) The Illinois court concluded that it could not be applied retroactively based on case law and a specific statute prohibiting retroactive application of statutes. (*Id.* at pp. 795–802.) *Theodosis* did not bar retroactive application of the Injuries Act of 1947 on due process grounds. *Theodosis* is of no aid to defendants and, in any event, we are not bound by the decisions of courts of other states. We conclude that defendants have not demonstrated a due process violation. [7]

B. Separation of Powers

[7] Defendants contend that AB 2580 violates the separation of powers doctrine "by attempting to legislate judicial interpretation of the AB 25 amendment." More specifically, defendants maintain that "AB 2580 constitutes an impermissible legislative intrusion into the function of the courts because the Legislature is purporting to make findings interpreting the meaning of an existing statute. But interpreting a statute and determining whether it is ambiguous is the role of the courts, not the Legislature. Such an intrusion into the judicial function should not be permitted. Accordingly, AB 2580 should not be applied in this case." We disagree with defendants' characterization of AB 2580.

[8] "Separation of powers principles do not preclude the Legislature from amending a statute and applying the change to both pending and future cases, though any such law cannot 'readjudicat[e]' or otherwise 'disregard' judgments that are already 'final.' [Citation.]" (*People v. Bunn* (2002) 27 Cal.4th 1, 17, 115 Cal.Rptr.2d 192, 37 P.3d 380; accord, *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 473–474, 476, 20 Cal.Rptr.3d 428, 99 P.3d 1015.) Although the Legislature's intent in passing AB 2580 was to "clarify" existing law, the portion of AB 2580 that retroactively amends the wrongful death statute to allow nonregistered partners to sue for wrongful death constitutes a *change* in the law designed to fill a gap left open by AB 25. We do not construe AB 2580's amendment of the wrongful death statute to be "a subsequent legislative declaration as to the meaning of a preexising statute," which in any event would not be binding or conclusive. (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1007, 90 Cal.Rptr.2d 236, 987 P.2d 705.) Defendants have failed to demonstrate a separation of powers violation.

***1419 C. Bill of Attainder**

[9] [10] There is no merit to defendants' assertion that AB 2580, to the extent it amends the wrongful death statute retroactively, violates the federal and state constitutional proscriptions against passing a bill of attainder. (U.S. Const., art. I, § 9, cl. 3, § 10, cl. 1; Cal. Const., art. I, § 9.) "[L]egislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution." (*United States v. Lovett* (1946) 328 U.S. 303, 315–316, 106 Ct.Cl. 856, 66 S.Ct. 1073, 90 L.Ed. 1252; accord, *Estate of Castiglioni* (1995) 40 Cal.App.4th 367, 377, fn. 17, 47 Cal.Rptr.2d 288; *California State Employees' Assn. v. Flournoy* (1973) 32 Cal.App.3d 219, 225, 108 Cal.Rptr. 251.)

****634** Apart from whether AB 2580 applies to readily identifiable members of a particular group or constitutes punishment under a functional approach (*Sagaser v. McCarthy* (1986) 176 Cal.App.3d 288, 306, 221 Cal.Rptr. 746), as defendants assert, defendants do not contend, let alone attempt to demonstrate, that the wrongful death statute, as amended by AB 2580, punishes anyone without a trial. The 2005 version of the statute merely sets forth the standing requirements that a surviving domestic partner must fulfill in order to obtain access to the courts and maintain a wrongful death action for a death occurring prior to January 1, 2002. Defendants therefore have failed to demonstrate that AB 2580 is an unconstitutional bill of attainder.

D. Ex Post Facto Law

[11] [12] The United States Supreme Court has long recognized that "the constitutional prohibition on *ex post facto* laws applies only to penal statutes which disadvantage the offender affected by them." (*Collins v. Youngblood* (1990) 497 U.S. 37, 41, 110 S.Ct. 2715, 111 L.Ed.2d 30; accord, *INS v. Lopez–Mendoza* (1984) 468 U.S. 1032, 1038–1039, 104 S.Ct. 3479, 82 L.Ed.2d 778; *Calder v. Bull* (1798) 3 U.S. (3 Dall.) 386, 390–392, 1 L.Ed. 648 (opn. of Chase, J.); *id.* at p. 396 (opn. of Paterson, J.); *id.* at p. 400 (opn. of Iredell, J.).) We interpret our state ex post facto provision (Cal. Const., art. I, § 9) identically to that of its federal counterpart. (*People v. Grant* (1999) 20 Cal.4th 150, 158, 83 Cal.Rptr.2d 295, 973 P.2d 72; *People v. McVickers* (1992) 4 Cal.4th 81, 84, 13 Cal.Rptr.2d 850, 840 P.2d 955; *Pro–Family Advocates v. Gomez* (1996) 46 Cal.App.4th 1674, 1683, fn. 11, 54 Cal.Rptr.2d 600.)

[13] Defendants acknowledge that we are powerless to set aside the United States Supreme Court's determination that the ex post facto clause applies ***1420** only to criminal laws. Nevertheless, in an effort to preserve the issue for any future petition for writ of certiorari, defendants argue that "the ex post facto clause applies to civil cases and would operate independently to invalidate the Legislature's attempt to retroactively apply AB 2580 to this case." We reject this argument.

E. Equal Protection

[14] Defendants assert that application of AB 2580 to this case would violate the equal protection clause. They maintain that "the Legislature acknowledges that there are perhaps only three cases in the entire state which will be affected by this new statute.... Thus, Dr. Miles will be treated very differently from the numerous other doctors and medical groups who were sued by non-registered domestic partners for wrongful deaths that occurred prior to 2002 and who were not subject to any liability. There is no rational basis to create liability for Dr. Miles and two others when all other doctors in the state are immunized from any similar liability." There is no merit to this assertion.

[15] "In order to withstand an equal protection challenge, ordinarily a legislative classification need only bear a rational relationship to a conceivable legitimate state purpose." (*In re Marriage of Carpenter* (1986) 188 Cal.App.3d 604, 617, 231 Cal.Rptr. 783.) Although Miles and Labriute cite numerous cases as authority for general principles of constitutional law, they cite no authority and no facts establishing that AB 2580 actually violates their right to equal protection of the law.

We reject outright their specious suggestion that AB 2580 was enacted for the purpose of subjecting Miles and two other individuals to liability. AB 2580 was not designed to target any particular defendant. Under the 2005 version of the wrongful death statute, any person whose purported negligence resulted in the death ****635** of a domestic partner prior to January 1, 2002 can be sued by the surviving domestic partner if certain factors can be established. That AB 2580, practically speaking, may apply only in a limited number of cases does not render the legislation unconstitutional. Defendants have failed to demonstrate that under AB 2580 they will be treated differently from similarly situated defendants.

Moreover, the Legislature had a rational basis for amending the wrongful death statute. Effective January 1, 2002, AB 25 conferred upon surviving domestic partners standing to sue for wrongful death, including deaths occurring prior to January 1, 2002. Prior to January 1, 2002, however, the rights afforded to registered domestic partners were extremely limited and did not include the right to sue for wrongful death. Prior to ***1421** January 1, 2002, domestic partners thus could not have foreseen that registration would entitle them to the protection of the wrongful death statute. Recognizing that for many domestic partners, the incentive to register their partnerships might not have existed prior to January 1, 2002 because of the very limited rights registration afforded, the Legislature amended the wrongful death statute so that nonregistered domestic partners whose partners died prior to January 1, 2002 could benefit from the wrongful death statute. This legislation is not irrational in the constitutional sense and thus does not violate equal protection. [8]

V. PLAINTIFF ALLEGED FACTS SUFFICIENT TO PLEAD STANDING UNDER THE 2005 VERSION OF THE WRONGFUL DEATH STATUTE

[16] [17] A wrongful death plaintiff is required to plead and prove standing to sue. (*Nelson v. County of Los Angeles* (2003) 113 Cal.App.4th 783, 789, 6 Cal.Rptr.3d 650.) Having determined that there is no constitutional impediment to applying the 2005 version of the wrongful death statute in this case, we proceed to determine whether plaintiff alleged facts sufficient to establish her standing to sue for the wrongful death of Dana.

Under the current wrongful death statute, for deaths occurring before January 1, 2002, a surviving same-sex domestic partner may maintain a cause of action for wrongful death by establishing the following six factors set forth in former Family Code section 297, subdivision (b):

"(1) Both persons [had] a common residence.

"(2) Both persons agree[d] to be jointly responsible for each other's basic living expenses incurred during the domestic partnership.

"(3) Neither person [was] married or a member of another domestic partnership.

"(4) The two persons [were] not related by blood in a way that would [have] prevent[ed] them from being married to each other in this state.

"(5) Both persons [were] at least 18 years of age.

"(6) ... [¶] (A) Both persons [were] members of the same sex." (Former Fam. Code, § 297, subd. (b), as amended by Stats.2001, ch. 893, § 3; see Code Civ.Proc., § 377.60, subd. (f)(2).)

***1422** A review of plaintiff's operative complaint readily reveals that it contains factual allegations satisfying each of these six criteria. Plaintiff and Dana were members of the same sex. The women jointly were responsible for each

other's living **636 expenses. They lived together in a common residence and ultimately purchased a home together. Plaintiff and Dana were not related by blood in a way that would have prevented them from getting married if they could have been married, and each was over the age of 18 when they met and formed their relationship. These allegations are sufficient to establish plaintiff's standing to sue under the 2005 version of the wrongful death statute. We therefore conclude that plaintiff has stated a cause of action for wrongful death against defendants.

VI. AB 2580 DOES NOT VIOLATE PROPOSITION 22, THE INITIATIVE MEASURE APPROVED BY CALIFORNIA VOTERS IN 2000

On March 7, 2000, California voters approved Proposition 22, commonly known as the Knight Initiative or the California Defense of Marriage Act. This successful initiative measure (Cal. Const., art. II, § 8) added section 308.5 to the Family Code. It specifies that "[o]nly marriage between a man and a woman is valid or recognized in California."

[18] Defendants contend that AB 2580 violates Family Code section 308.5 by "impermissibly overturn[ing] the will of the voters as expressed through the passage of Proposition 22." Marriage, defendants assert, "is more than just a name given to a particular relationship. By its terms, it also includes the benefits and status afforded by society to those individuals who have entered into the relationship." In defendants' view, "Proposition 22 must be read to mean that the benefits that are incidental to marriage are limited solely to opposite sex couples" and that "the Legislature's decision to provide domestic partners with marital benefits such as the ability to sue for wrongful death, is prohibited by Proposition 22."

[19] [20] When interpreting a voter initiative, we apply the same principles applicable to the construction of statutes. We look first to the language of the statute and give the words their commonplace meaning. (*People v. Rizo* (2000) 22 Cal.4th 681, 685, 94 Cal.Rptr.2d 375, 996 P.2d 27.) "The statutory language must also be construed in the context of the statute as a whole and the overall statutory scheme. [Citation.] When the language is ambiguous, 'we refer to other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet.' [Citation.]" (*Ibid.*) Stated otherwise, "our 'task is simply to interpret and apply the initiative's language so as to effectuate the electorate's intent.' [Citation.]" (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 900–901, 135 Cal.Rptr.2d 30, 69 P.3d 951.)

*1423 Family Code section 300, then and now, defines marriage as "a personal relation arising out of a civil contract between a man and a woman, to which the consent of the parties capable of making that contract is necessary...." Family Code section 301, then and now, provides that "[a]n unmarried male of the age of 18 years or older, and an unmarried female of the age of 18 years or older, and not otherwise disqualified, are capable of consenting to and consummating marriage."

To shed light on the fundamental underpinnings of Proposition 22, we deem it appropriate to refer to other indicia of the voters' intent. (*People v. Rizo, supra,* 22 Cal.4th at p. 685, 94 Cal.Rptr.2d 375, 996 P.2d 27.) We look first to the ballot's legislative analysis and then to the arguments contained in the official ballot pamphlet to ascertain the intent of the voters. (*Robert L. v. Superior Court, supra,* 30 Cal.4th at p. 906, 135 Cal.Rptr.2d 30, 69 P.3d 951.)

**637 The Legislative Analyst explained the background of Proposition 22 as follows: "Under current California law, 'marriage' is based on a civil contract between a man and a woman. Current law also provides that a legal marriage that took place outside of California is generally considered valid in California. No state in the nation currently recognizes a civil contract or any other relationship between two people of the same sex as a marriage." (Ballot Pamp., Primary Elec. (Mar. 7, 2000) analysis of Prop. 22 by Legis. Analyst, p. 51.) The law to which the Legislative Analyst made reference was Family Code section 308. Enacted in 1992 (Stats. 1992, ch. 162, § 10, p. 476) and operative January 1, 1994, Family Code section 308 provides that "[a] marriage contracted outside this state that would be valid by the laws of the jurisdiction in which the marriage was contracted is valid in this state."

The argument in favor of Proposition 22 consisted of a letter written by a 20–year–old voter. In part, it states: "When people ask, 'Why is [Proposition 22] necessary?' I say that even though California law already says only a man and a woman may marry, it also recognizes marriages from other states. However, judges in some of those states want to define marriage differently than we do. If they succeed, California may have to recognize new kinds of marriages, even though most people believe marriage should be between a man and a woman." (Ballot Pamp., Primary Elec. (Mar. 7, 2000) argument in favor of Prop. 22, p. 52.) That Proposition 22 would prohibit California from recognizing as valid a same-sex marriage solemnized beyond

its borders is also reflected in the Rebuttal to Argument Against Proposition 22: "Opponents say Proposition 22 is unnecessary. [¶] THE TRUTH IS, *UNLESS WE PASS PROPOSITION 22, LEGAL LOOPHOLES COULD FORCE CALIFORNIA TO RECOGNIZE 'SAME–SEX MARRIAGES' PERFORMED IN OTHER STATES.* [¶] That's why 30 other states and the federal government have passed laws to close these loopholes. California deserves the same choice." (*Id.*, rebuttal to argument against Prop. 22, p. 53.)

***1424** The legislative analysis and the ballot arguments readily demonstrate that Proposition 22 was crafted with a prophylactic purpose in mind. It was designed to prevent same-sex couples who could marry validly in other countries or who in the future could marry validly in other states from coming to California and claiming, in reliance on Family Code section 308, that their marriages must be recognized as valid marriages. With the passage of Proposition 22, then, only opposite-sex marriages validly contracted outside this state will be recognized as valid in California. Same-sex marriages will be given no recognition.

The question remaining is whether the portion of AB 2580 that amends the wrongful death statute subverts Proposition 22. Defendants' position that it does is based on the faulty premise that the right to sue for wrongful death is an exclusive benefit of marriage. It is not.

[21] At common law, personal tort claims expired when either the victim or the tortfeasor died. (*Willis v. Gordon* (1978) 20 Cal.3d 629, 637, 143 Cal.Rptr. 723, 574 P.2d 794 (conc. opn. of Mosk, J.).) Today, a cause of action for wrongful death exists only by virtue of legislative grace. (*Rosales v. Battle* (2003) 113 Cal.App.4th 1178, 1182, 7 Cal.Rptr.3d 13; accord, *Nelson v. County of Los Angeles, supra,* 113 Cal.App.4th at p. 789, 6 Cal.Rptr.3d 650.) The statutorily created "wrongful death cause of action does not effect a survival of the decedent's cause of action, it 'gives to the representative a totally new right of action, on different ****638** principles.' [Citation.]" (*Willis, supra,* at p. 637, 143 Cal.Rptr. 723, 574 P.2d 794 (conc. opn. of Mosk, J.).) "The statute limits the right of recovery to a class of persons who, because of their relation to the deceased, are presumed to be injured by his death." (*Nelson, supra,* at p. 789, fn. 6, 6 Cal.Rptr.3d 650.) This class of individuals includes the decedent's "surviving spouse, domestic partner, children, and issue of deceased children, or, if there is no surviving issue of the decedent, the persons, including the surviving spouse or domestic partner, who would be entitled to the property of the decedent by intestate succession." (§ 377.60, subd. (a).) Thus, by no means is the right to sue for wrongful damages limited to spouses.

Nothing in AB 2580 validates same-sex marriages in California. In fact, it has nothing at all to do with marriage. As relevant to this case and the limited issue before us-whether plaintiff stated a cause of action for wrongful death—AB 2580 simply establishes that the right to sue for wrongful death belongs to registered domestic partners (whether they be same-sex or opposite-sex partners), except that for deaths occurring prior to January 1, 2002, the right to sue for wrongful death also belongs to nonregistered surviving domestic partners who, like plaintiff, can satisfy six specific criteria.

*1425 DISPOSITION

The order and judgment of dismissal are reversed and the matter is remanded for further proceedings. The trial court is directed to vacate its order sustaining defendants' demurrers, to enter a new order overruling them, and to grant defendants time to file their answers. The parties are to bear their own costs on appeal.

We concur: MALLANO and SUZUKAWA, JJ. *

Parallel Citations

127 Cal.App.4th 1405, 05 Cal. Daily Op. Serv. 2789, 2005 Daily Journal D.A.R. 3772

Footnotes

1 In reviewing the trial court's order sustaining defendants' demurrers, we presume the material factual allegations in plaintiff's operative complaint, as well as those that may be implied or inferred therefrom, to be true. We disregard conclusions of law and factual allegations that are contrary to facts judicially noticed. (*Barratt American, Inc. v. City of San Diego* (2004) 117 Cal.App.4th 809, 812, fn. 2, 12 Cal.Rptr.3d 132; *Marshall v. Gibson, Dunn & Crutcher* (1995) 37 Cal.App.4th 1397, 1403, 44 Cal.Rptr.2d 339.)

2 Miles and Labriute, as well as Sherman Oaks Hospital, have filed a supplemental letter brief addressing the effect of AB 2580. Sherman Oaks Hospital further "joins in the request of [Miles and Labriute] to file a supplemental letter brief in advance of oral

argument to address the effect of the recent passage of assembly bill 2580." We construe this to be a request by Sherman Oaks Hospital to join in the letter brief filed by Miles and Labriute.

3 AB 25 amended Family Code section 297 to read: "(a) Domestic partners are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring.

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

"(1) Both persons have a common residence.

"(2) Both persons agree to be jointly responsible for each other's basic living expenses incurred during the domestic partnership.

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

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

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

"(6) Either of the following:

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

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

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

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

"(9) Both file a Declaration of Domestic Partnership with the Secretary of State pursuant to this division." (Stats. 2001, ch. 893, § 3.)

4 AB 25 amended section 377.60 of the Code of Civil Procedure not the Civil Code.

5 Background information requests are a proper source for ascertaining legislative intent. (*Florez v. Linens 'N Things, Inc.* . (2003) 108 Cal.App.4th 447, 452, 133 Cal.Rptr.2d 465; *Arthur Andersen v. Superior Court* (1998) 67 Cal.App.4th 1481, 1499–1500, 79 Cal.Rptr.2d 879; *Forty-Niner Truck Plaza, Inc. v. Union Oil Co.* (1997) 58 Cal.App.4th 1261, 1284, fn. 11, 68 Cal.Rptr.2d 532.)

6 At no time in their demurrers did defendants argue that the 2002 version of the wrongful death statute could not be applied retroactively in this case. On appeal, Sherman Oaks Hospital concedes "that [Dana's] passing falls within the time limits dictated by A.B. 25."

7 In addressing defendants' due process concerns, we have restricted ourselves to those specific and limited arguments raised by defendants. We observe, however, that *Bouley v. Long Beach Memorial Medical Center* (2005) 127 Cal.App.4th 601, 25 Cal.Rptr.3d 813, recently decided by Division Five of this court, contains an expanded and well-reasoned discussion as to why the retroactive application of the 2002 and 2005 amendments to the wrongful death statute does not violate due process. (25 Cal.Rptr.3d at 817–18.)

8 *Cunningham v. Superior Court* (1986) 177 Cal.App.3d 336, 222 Cal.Rptr. 854, cited by Sherman Oaks Hospital, is factually inapposite and does not establish an equal protection violation in this case.

* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

End of Document

APPENDIX E

Assembly Bill No. 26

CHAPTER 588

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.

[Approved by Governor October 2, 1999. Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 26, 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.

The bill would also preempt, on and after 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.

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

SECTION 1. It is the intent of the Legislature to retain the right of hospitals and other health care facilities to establish visitation policies in reasonable and appropriate circumstances. In enacting this legislation, it is the intent of the Legislature to provide hospitals and other health facilities with the authority to administer those policies in a manner that applies equally to spouses, registered domestic partners, and other immediate family members.

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

DIVISION 2.5. DOMESTIC PARTNER REGISTRATION

PART 1. DEFINITIONS

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

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

(1) Both persons have a common residence.

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

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

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

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

(6) Either of the following:

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

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

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

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

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

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

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

(e) "Joint responsibility" means that each partner agrees to provide for the other partner's basic living expenses if the partner is unable to provide for herself or himself. Persons to whom these

expenses are owed may enforce this responsibility if, in extending credit or providing goods or services, they relied on the existence of the domestic partnership and the agreement of both partners to be jointly responsible for those specific expenses.

PART 2. REGISTRATION

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

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

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

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

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

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

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

PART 3. TERMINATION

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

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

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

(b) Upon the termination of a domestic partnership, the partners, from that time forward, shall incur none of the obligations to each

other as domestic partners that are created by this division and Section 1261 of the Health and Safety Code.

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

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

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

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

PART 5. PREEMPTION

299.6. (a) Any local ordinance or law that provides for the creation of a "domestic partnership" shall be preempted on and after July 1, 2000, except as provided in subdivision (c).

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

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

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

Article 9. Domestic Partners

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, 22812, 22813, 22815, subdivision (c) of Section 22816, Sections 22816.3, 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 health coverage eligibility upon the death of the employee or annuitant.

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

22872. (a) In order to receive any benefit provided by this article, an employee or annuitant shall present the board with proof in a manner designated by the board that the employee or annuitant and his or her domestic partner have filed a valid Declaration of

Domestic Partnership pursuant to Division 2.5 (commencing with Section 297) of the Family Code.

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

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

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

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

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

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

22875. This article shall apply to any of the following:

(a) Represented state employees who are members of a bargaining unit or who retired from a bargaining unit only if (1) there is a signed memorandum of understanding between the state and the recognized employee organization to adopt the benefits accorded under this article and (2) the Department of Personnel Administration makes this article simultaneously applicable to all eligible annuitants retired from the bargaining unit. This article shall not apply to active state employees who are members of a state bargaining unit unless it also applies to eligible annuitants retired from that bargaining unit.

(b) Members of the Public Employees' Retirement System who are employed by the Assembly, the Senate, and the California State University only if the Assembly Rules Committee, the Senate Rules Committee, and the Board of Trustees of the California State University, respectively, make this section applicable to their employees.

(c) Members of the Public Employees' Retirement System who are state employees of the judicial branch, and judges and justices

who are members of the Judges' Retirement System or the Judges' Retirement System II, if the Judicial Council makes this section applicable to them.

(d) Employees excluded from the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1) upon adoption by the Department of Personnel Administration of regulations to implement employee benefits under this article for those state officers and employees excluded from, or not otherwise subject to the Ralph C. Dills Act. Regulations adopted or amended pursuant to this section shall not be subject to review and approval of the Office of Administrative Law pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2). These regulations shall become effective immediately upon filing with the Secretary of State.

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

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

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

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

(1) No visitors are allowed.

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

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

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

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

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates

a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

O

APPENDIX F

122 Cal.App.4th 428
Court of Appeal, Second
District, Division 7, California.

Jack HOLGUIN, Plaintiff and Appellant,
v.
Jose FLORES et al., Defendants and Respondents.

No. B168774. | Sept. 15, 2004.

Synopsis

Background: Unmarried male cohabitant of woman who was killed in automobile accident brought wrongful death action against other driver. The Superior Court, Los Angeles County, No. KC041438G, James Jaeger, J., dismissed for lack of standing. Unmarried cohabitant appealed.

Holdings: The Court of Appeal, Johnson, J., held that:

[1] only registered domestic partners had standing under statute to sue for wrongful death, and

[2] statutory distinction between registered domestic partners and unmarried heterosexual couples was supported by rational basis, and thus did not violate equal protection clause.

Affirmed.

West Headnotes (2)

[1] **Death**
Persons Entitled to Sue

Only registered domestic partners, i.e., partners of same sex or partners of whom one was over the age of 62 who had actually registered domestic partnership with Secretary of State, had standing under statute to sue for wrongful death, and thus unmarried male cohabitant who did not meet statutory requirements for domestic partnership registration lacked standing to sue for wrongful death of female partner. West's Ann.Cal.C.C.P. § 377.60; West's Ann.Cal.Fam.Code § 297.

See Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2003) ¶ 20:141 . (CAFAMILY CH. 20-D).

7 Cases that cite this headnote

[2] **Constitutional Law**
Other Particular Issues and Applications

Death
Constitutional and Statutory Provisions

Distinction in statute which accorded right to sue for wrongful death to registered domestic partners, but which did not accord such right to unmarried, cohabiting heterosexual couples, was rationally based on fact that domestic partners were legally or practically prevented from marrying, and thus such distinction did not violate equal protection clause. U.S.C.A. Const.Amend. 14; West's Ann.Cal. Const. Art. 1, § 7; West's Ann.Cal.C.C.P. § 377.60; West's Ann.Cal.Fam.Code § 297.

See 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 1210.

6 Cases that cite this headnote

Attorneys and Law Firms

****750 *430** Rowley & Rinaldelli and Daniel W. Rinaldelli for Plaintiff and Appellant.

Wood, Smith, Henning & Berman, Kenneth D. Smith and Nicholas M. Gedo, Los Angeles, for Defendants and Respondents.

Opinion

***431** JOHNSON, J.

Under California law unmarried cohabiting couples who qualify as "domestic partners" are afforded rights and benefits not afforded to other unmarried couples including the right of the surviving partner to sue for the wrongful death of the other partner. An adult couple living together may qualify as a "domestic partnership" if they are of the same sex or one of them is at least 62 years of age and eligible for benefits under

the Social Security Act based on age. [1] Plaintiff, the surviving member of a cohabiting unmarried couple of opposite sex, neither of whom was over age 62, sued for wrongful death of his female partner. The trial court dismissed the suit because plaintiff lacked standing to sue under the wrongful death statute.

Plaintiff's appeal raises the following question: If the state grants the right to sue for wrongful death to the surviving member of a "domestic partnership" may it constitutionally deny the same right to the surviving member of an unmarried cohabiting couple of opposite sex?

We hold the Legislature had rational bases for extending the right to sue for wrongful death to survivors of registered "domestic partnerships" but not to cohabiting unmarried couples in general. Therefore we affirm the judgment.

FACTS AND PROCEEDINGS BELOW

Plaintiff's verified complaint alleges the following facts which we accept as true for purposes of this appeal. [2]

Jack Holguin and Tamara Booth were an unmarried couple who had lived together for three years at the time of Booth's death. During those three years they shared "an intimate and committed relationship of mutual caring." They were jointly responsible for each other's basic living expenses. Neither Holguin nor Booth were married or a member of a domestic partnership or related by blood. Each was over the age of 18 and mentally competent.

Booth was killed in a traffic accident when a big rig truck driven by defendant Flores sideswiped Booth's car sending it spinning out of control and crushing it under the truck's back wheels.

Holguin seeks damages for Booth's death in this action for negligence against Flores and the owner of the truck.

*432 Defendants demurred to Holguin's complaint solely on the ground he lacked standing to sue for Booth's wrongful death because he and Booth were not married and were not "domestic partners" as the term is defined in section 297.

Holguin alleges he and Booth met all the statutory requirements necessary to register as a "domestic partnership" under section 297 except the requirements related to gender and age. He contends extending **751 the right to sue for wrongful death to some unmarried cohabiting couples but denying it to others solely on the basis of the couples' gender or age denies the excluded couples the equal protection of the law guaranteed under the United States and California Constitutions.

The trial court disagreed with this argument. It sustained the defendants' demurrer without leave to amend and entered judgment for defendants dismissing the complaint. Holguin filed a timely appeal.

We affirm the judgment. The fact domestic partners are legally or practically prevented from marrying, while cohabiting couples of the opposite sex are not, provides a rational basis for extending the right to sue for wrongful death to the former but not the latter. In addition, married couples and domestic partners have publicly registered their legal relationship while cohabiting couples of the opposite sex have not, thereby providing an additional basis for recognizing the economic loss to the survivors of the former but not the latter.

DISCUSSION

I. *UNDER CURRENT LAW HOLGUIN LACKS STANDING TO SUE FOR BOOTH'S WRONGFUL DEATH.*

[1] Before turning to Holguin's constitutional arguments we look to see whether the trial court correctly held Holguin lacks standing to sue for Booth's wrongful death under Code of Civil Procedure section 377.60. The question arises because of ambiguities in the language used in that section and section 297 pertaining to "domestic partners" and "domestic partnerships."

*433 A. *California's Domestic Partnership Law.*

In the year 2000 California became one of the first states to allow cohabiting adults of the same sex to establish a "domestic partnership" in lieu of the right to marry. [3] The statute also authorized domestic partnerships on the part of couples whose Social Security or Supplemental Security Income benefits might be reduced or eliminated if they were to marry. [4]

In creating the new status of domestic partnerships the Legislature declared: "Domestic partners are two adults who have chosen to share one another's lives in an intimate and

committed relationship of mutual caring."[5] To establish a domestic partnership both partners must meet the following qualifications: (1) share a common residence; (2) agree to be jointly responsible for each other's basic living expenses incurred during the partnership; (3) not be married or a member of another domestic partnership; (4) not be related by blood in a way which would prevent them from being married under state law; (5) be at least 18 years of age; (6) be of the same sex or one partner be over age 62 and eligible for benefits under the Social Security Act based on age;[6] (7) be **752 capable of consenting to a domestic partnership; (8) not have previously filed a Declaration of Domestic Partnership which has not been terminated; (9) file a Declaration of Domestic Partnership with the Secretary of State.[7]

*434 Persons desiring to become domestic partners must file a Declaration of Partnership with the Secretary of State declaring they meet the criteria described in the preceding paragraph. Upon receipt of a properly completed form the Secretary is to "register the Declaration of Domestic Partnership in a registry of those partnerships...."[8]

A domestic partnership may be terminated if one partner mails a notice of termination to the other and is automatically terminated if one of the partners dies or marries or the partners no longer share a common residence. Upon termination at least one partner is required to give notice to the Secretary of State and to certain third parties. A former partner cannot enter into a new domestic partnership until six months after the notice of termination is filed unless the partnership ended because of the death or marriage of a partner.[9]

The domestic partnership law, as originally enacted, conferred few rights or benefits on the domestic partners other than the right to register as a domestic partnership.[10] It did not address discrimination against same sex couples or impose any new obligations on public or private entities except for the Secretary of State's duty to register the partnerships and their terminations.

Effective in the year 2002, the Legislature amended the domestic partnership law to add a substantial number of new rights and obligations bringing domestic partnerships much closer to marriages. Among other things the amendments enabled domestic partners to make medical decisions for each other, adopt their partner's child, use sick leave to care for an ailing partner and participate in their partner's conservatorship.[11]

For our purposes, the significant amendment was the expansion of the categories of persons authorized to sue for wrongful death to include the surviving member of a **753 domestic partnership.[12] We discuss that amendment in detail below.

B. ***To Be Entitled To Sue For Wrongful Death As A Surviving Domestic Partner The Partners Must Have Been A Registered Domestic Partnership At The Time Of The Decedent's Death.***

Code of Civil Procedure section 377.60 states in relevant part: "A cause of action for the death of a person by the wrongful act or neglect of *435 another may be asserted by ... [t]he decedent's surviving ... domestic partner[.].... For the purpose of this section, 'domestic partners' has the meaning provided in section 297 of the Family Code."[13] Section 297 states in subdivision (a): "Domestic partners are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring." Subdivision (a) does not say domestic partners must be of the same sex or one of them must be at least age 62 and eligible for Social Security benefits. Those criteria are contained in subdivision (b) of the statute which describes how a "domestic partnership" can be established and registered with the Secretary of State.[14]

The language of section 297, subdivision (a) appears definitional, ("Domestic partners are ...") and is separate from subdivision (b)'s definition of a domestic "*partnership*" which includes criteria of age and gender. It could be argued, therefore, the "meaning" of the term "domestic partners" for purposes of the wrongful death statute is *any* two adults who have chosen to share their lives "in an intimate and committed relationship of mutual caring." Holguin's complaint alleges he and Booth had lived together for three years under just such a commitment.

On further analysis, however, we conclude that in order to be a domestic partner entitled to sue for wrongful death an individual must meet the criteria of subdivisions (a) *and* (b).

The language of section 297 unambiguously states its provisions are not to be interpreted as applying to unmarried cohabiting couples generally: "Notwithstanding any other provision of this section, persons of opposite sexes may not

constitute a domestic partnership unless one or both of the persons are over the age of 62."[15]

The amendment which allowed a surviving domestic partner to sue for wrongful death was part of a series of statutory amendments in Assembly Bill Number 25 (2001–2002 Regular Session) enlarging the definition of a domestic partnership and expanding the rights and benefits of its members.[16] As previously explained, in order to qualify as a domestic partnership both partners must be of the same sex or one of them must be at least 62 years of age and eligible for benefits under the Social Security Act based on age.[17] The evidence is overwhelming that in adopting Assembly Bill Number 25 the Legislature only intended to extend the rights and benefits of members of ***436** domestic partnerships as defined in section 297, not to create new rights and benefits for unmarried cohabiting couples in general.

****754** The amendment to section 299.5, subdivision (a) made this intent plain. There the Legislature stated: "*Registration as a domestic partner* under this division shall not be evidence of, or establish, any rights existing under law other than those expressly provided to domestic partners in this division and *any provision of law specifically referring to domestic partners.*"[18] The Legislative Counsel restated this sentence in the positive: "This bill would expand the legal effect of the registration of a domestic partnership to any provision of law specifically referring to domestic partners."[19] The wrongful death statute is a "provision of law specifically referring to domestic partners."[20] Therefore, in order to sue under the statute the plaintiff must be a registered domestic partner of the decedent. The plaintiff can only be a registered domestic partner if he or she was of the same sex as the deceased partner or one of them was at least 62 years of age and eligible for benefits under the Social Security Act based on age.

The legislative history of Assembly Bill Number 25 also clearly reflects the Legislature's intent to confer additional rights and benefits only on members of registered domestic partnerships.

The Assembly Judiciary Committee described the bill as "seek[ing] to confer various new legal rights on *registered* domestic partners including rights ... to bring an action and recover damages for wrongful death and emotional distress."[21]

The Senate committee report on the bill explained that existing law defines domestic partners as two adults having a "committed relationship" "*and* who file a Declaration of Domestic Partnership with the Secretary of State."[22] The report goes on to note the bill would confer on same-sex couples "most of the rights recognized under the law that pertain to married couples" but that "unmarried cohabitants" would remain "without any rights."[23] According to the report the amendment to the wrongful death statute was triggered in part ***437** by the well-publicized death of a San Francisco woman mauled by two large dogs. The report noted the woman's domestic partner "has no right under existing law to assert a wrongful death claim against the owners of the vicious dogs that killed her partner. Under this bill that domestic partner would be able to assert a wrongful death action."[24]

For the reasons stated above we agree with the trial court's conclusion Holguin and Booth fell in the category of "unmarried cohabitants ... without any rights." Therefore Holguin does not have standing ****755** to sue for wrongful death under current law.

II. *EXCLUDING THE SURVIVING MEMBER OF AN UNMARRIED COHABITING COUPLE OF OPPOSITE SEX FROM THE CLASS OF PERSONS ENTITLED TO SUE FOR WRONGFUL DEATH DOES NOT DENY THE SURVIVOR EQUAL PROTECTION OF THE LAW.*

[2] As defendants correctly observe, the issue in this case is not the constitutionality of section 297's limitation of domestic partnerships to same sex couples or couples in which at least one member is over age 62 and eligible for Social Security Act benefits. Nothing in section 297 prevents Holguin from suing for Booth's wrongful death. Furthermore, even if the Legislature extended domestic partnerships to all cohabiting couples regardless of gender or age this would not entitle Holguin to sue for Booth's wrongful death. The Legislature could decide not to incorporate the broadened definition of domestic partners into the wrongful death statute. Thus, the classification Holguin objects to is the one made by Code of Civil Procedure section 377.60 which grants the right to sue for wrongful death to surviving spouses, surviving putative spouses and surviving "domestic partners" but not to surviving members of unmarried couples of opposite sex.

It is well settled under California law recovery for wrongful death is a legislatively created right and in creating such a

right the Legislature is not required to extend it to every conceivable class of persons who might suffer injury from the death of another.[25] The decision of the Legislature as to just how far to extend a statutorily created right of action " 'is conclusive, unless it appears beyond rational doubt that an arbitrary discrimination between persons or classes similarly situated has been made ***438** without any reasonable cause therefor.' [Citations.]"[26] Thus California courts have found the equal protection clause does not stand in the Legislature's way if it wants to deny a cause of action for wrongful death to the parent of a stillborn fetus,[27] to a non-adopted stepchild,[28] to a spouse whose marriage to the decedent has been dissolved,[29] or to an adopted child for the wrongful death of her natural mother.[30]

Not every restriction on the right to sue for wrongful death has passed constitutional muster, however. In *Levy v. Louisiana* the United States Supreme Court held a statute which allowed legitimate children to sue for the wrongful death of their mothers but denied that right to illegitimate children constituted an invidious discrimination against the latter "when no action, conduct, or demeanor of theirs is possibly relevant to the harm that was done the mother."[31] In *Glona v. American Guarantee Co.* the court considered ****756** the flip-side of *Levy*. It concluded there was "no possible rational basis" for allowing a mother to sue for the wrongful death of her legitimate child but not allowing her to sue for the wrongful death of her illegitimate child.[32]

Applying a "rational basis" test, California courts have consistently held it is not a violation of the right to equal protection to bar the surviving member of an unmarried cohabiting couple of opposite sex from asserting a cause of action for the wrongful death of the other member.[33] The last such case, however, was decided more than 20 years ago.[34] Thus we will revisit the question to determine whether, given subsequent developments, what was rational in 1982 is still rational today.

Initially Holguin contends he is being discriminated against because of his gender and age. Therefore, we should not be inquiring whether denying him the right to sue for wrongful death has a rational basis but whether denying him that right is necessary to further a compelling, or at least substantial, state interest. We conclude the rational basis test is the proper test to apply.

***439** As a general rule, the state may place persons in different classes and treat those classes differently so long as the classification and treatment are not arbitrary and rest on some ground of difference having a rational relationship to the object of the legislation.[35] Some classifications, however, because of their very nature or effect are subjected to a higher level of scrutiny, requiring they be justified by a substantial or, in some cases, compelling state interest.[36]

Such a heightened level of scrutiny is not required in the present case because the wrongful death statute does not discriminate against Holguin on the basis of his gender or age but on the basis of his marital status—unmarried with the right to wed.[37]

As previously discussed, prior to its 2001 amendment the wrongful death statute required the survivor of an adult couple to be the decedent's spouse or putative spouse. This requirement deprived some couples of the statute's protection because although they were the functional equivalent of a married couple their gender or age legally or practically prevented them from marrying.[38] By extending the right to sue for wrongful death to surviving members of domestic partnerships the Legislature remedied this inequity. But Holguin and Booth never suffered from this inequity ****757** because they were never members of the class of couples who, because of their gender or age, were barred from marrying and thereby barred from bringing a wrongful death action. Holguin and Booth always had the right to marry. Holguin's argument boils down to the claim the state discriminated against him on the basis of his gender, heterosexual orientation and age by giving him the legal option to marry which it denied to others on the basis of their gender and age. No case we know of has held the plaintiff was denied equal protection because he was a member of a class granted *more* advantages than the comparison class. We decline to adopt this new definition of "reverse discrimination."

Past decisions have found numerous reasons for concluding the state has a rational basis for denying members of unmarried couples the right to sue for a member's wrongful death.[39]

***440** It has been held, for example, denying a cause of action for wrongful death to members of unmarried couples furthers "the state's substantial interest in promoting and protecting marriage."[40] But even the proponents of this

justification have admitted its logical flaw. As one court pointed out, "It is inconceivable that an individual's choice of living companion or form of living arrangement bears any relation to the existence or nonexistence of a remedy upon the companion's wrongful death."[41] Furthermore, despite their being denied the right to sue for wrongful death, the number of unmarried cohabiting couples of opposite sex increased 800 percent between 1960 and 1970 and almost tripled between 1970 and 1984.[42] In 2001 a California legislative committee estimated the number of "unmarried cohabitants" in the state as approximately 600,000.[43] NATIONWIDE, THE NUMber is purported to be over 4 million.[44]

In *Garcia v. Douglas Aircraft Co.* the court expressed concern "an action based on a meretricious relationship presents greater problems of proof and dangers of fraudulent claims than an action by a spouse or putative spouse."[45] There are several responses to this argument. In *Glona v. American Guarantee Co.,* the court held even if extending wrongful death actions to mothers of illegitimate children "may conceivably be a temptation to some to assert motherhood fraudulently" this was an insufficient reason to deny the mothers a right of action when the alternative was to give "a windfall to tortfeasors."[46] Furthermore, there is no empirical reason to believe the problem of fraud would be any greater in the context of cohabiting couples in general than in the case of "domestic partnerships" or in the case of those who marry solely for the ****758** purpose of obtaining pension benefits or health care coverage. In any event, our Supreme Court has held fear of unfounded or fraudulent claims is not a valid reason for disallowing a tort action predicated on a meritorious claim.[47] As to problems of proof, they appear exaggerated. It would not be difficult for the survivor to prove he or she lived with the ***441** deceased, or that they were both over the age of 18, unmarried, unrelated by blood, legally competent, and had agreed to be jointly responsible for each other's basic living expenses.[48]

One court has claimed denying unmarried couples the right to sue for one another's wrongful death "is rationally related to 'the legislative goal of placing reasonable limits on wrongful death actions in this state.' "[49] This argument begs the question, however. It is axiomatic the Legislature can place reasonable limits on wrongful death actions. The issue is whether denying standing to survivors of opposite sex couples is such a "reasonable limitation."

Even if some or all of the above rationales may be questioned, we conclude others retain their viability and permit the distinction the Legislature has made between married and unmarried couples.

For most of its history the common thread uniting plaintiffs who can sue for wrongful death was heirship.[50] In *Steed v. Imperial Airlines* our Supreme Court upheld this classification scheme as rationally based because it provided "for the recovery of a financial loss wrongfully suffered in limited situations by one who stands in a close relationship to a deceased" and "[h]eirs are those who, as a class, stand in the closest relationship to a deceased."[51] The court acknowledged this class might be under inclusive because some persons who are not in the class may "suffer equal or greater losses than some who are within the class."[52] This under inclusiveness does not invalidate the class, however, because "the Legislature is not compelled to anticipate and provide for such persons."[53]

In the years since the Supreme Court decided *Steed* the Legislature has gradually expanded the class of persons entitled to sue for wrongful death. ***442** Two years after the *Steed* decision the Legislature overruled it by amending the wrongful death statute to provide "heirs" include the decedent's dependent stepchildren.[54] Two years after that amendment the Legislature gave standing to a minor whether or not related to the decedent if, at the time ****759** of death, the minor had resided for the previous 180 days in the decedent's household and was dependent on the decedent for one-half or more of his support.[55] Then, in 2001, the Legislature amended the statute to give standing to "domestic partners" as previously discussed.[56]

The fact the Legislature has gotten away from the concept of heirship in defining the individuals permitted to sue for wrongful death does not mean the existing classifications no longer have a rational basis. As our Supreme Court pointed out in *Justus v. Atchison,* " 'when conferring new rights of action upon particular classes of citizens for injuries not previously actionable ... [m]any considerations of public policy affect the question of the propriety and extent of such laws, the weight and effect of which, and the method of meeting or avoiding them, are matters resting exclusively in the legislative discretion [.]' "[57] The Legislature's decision as to how far to go in extending the new right "is conclusive" unless it is totally lacking in any rational basis.[58]

The Legislature rationally could have concluded the survivors of same sex couples and couples with an aged member eligible for Social Security benefits are deserving of solicitude because they are as likely to suffer economic loss from the death of their partners as are spouses but, because of other statutory schemes, they are legally or practically prevented from marrying.[59] Couples such as Holguin and Booth are not entitled to the same solicitude because the law did not prevent them from marrying.[60]

Furthermore, the Legislature could reasonably have concluded the failure of opposite sex couples "to adopt the responsibility of the marital vows and ***443** the legal obligation resulting from a formal marriage ceremony evidenced a lack of permanent commitment which made compensation for loss of monetary support too speculative to calculate."[61] In the case of married couples this permanency is evidenced by the marriage certificate which provides a public record to all that a legal relationship exists between two persons.[62] In the case of domestic partners this permanency is evidenced by the Declaration of Domestic Partnership which also provides the parties and the public with a record of the partners' legal relationship.[63] NO EQUIVALENT PUBLIC record exists for unmarried cohabiting couples who are of opposite sex.

For all of the reasons discussed above, we conclude California does not deny the equal protection of the law to the surviving ****760** members of unmarried cohabiting couples when it denies them standing to sue for the wrongful death of the other member.

DISPOSITION

The judgment is affirmed.

We concur: PERLUSS, P.J. and WOODS, J.

Parallel Citations

122 Cal.App.4th 428, 04 Cal. Daily Op. Serv. 8527, 04 Daily Journal D.A.R. 11,639

Footnotes

1 Family Code section 297, subdivision (b)(6). Future statutory references are to the Family Code unless otherwise noted.

2 *Thompson v. County of Alameda* (1980) 27 Cal.3d 741, 746, 167 Cal.Rptr. 70, 614 P.2d 728.

3 Statutes 1999, chapter 588, section 1 adding sections 297 through 299.6 to the Family Code. At the time chapter 588 was enacted California law provided: "Marriage is a personal relation arising out of a civil contract between a man and a woman" (Fam.Code, § 300) and "[o]nly marriage between a man and a woman is valid or recognized in California." (Fam.Code, § 308.5.)

4 Section 297, subdivision (b)(6)(B) added by Statutes 1999, chapter 588, section 2.

5 Section 297, subdivision (a) added by Statutes 1999, chapter 588, section 2.

6 Originally both partners had to satisfy the age requirement. The statute was amended effective 2002 to provide only one member of the couple had to meet the age requirement. (Stats.2001, ch. 893, § 3, amending § 297, subd. (b)(6)(B).)

7 Section 297, subdivision (b) added by Statutes 1999, chapter 588, section 2. The full text of this subdivision currently reads as follows. "A domestic partnership shall be established in California when all of the following requirements are met: (1) Both persons have a common residence. (2) Both persons agree to be jointly responsible for each other's basic living expenses incurred during the domestic partnership. (3) Neither person is married or a member of another domestic partnership. (4) The two persons are not related by blood in a way that would prevent them from being married to each other in this state. (5) Both persons are at least 18 years of age. (6) Either of the following: (A) Both persons are members of the same sex. (B) One or both of the persons meet the eligibility criteria [for old age benefits under the Social Security Act]. Notwithstanding any other provision of this section, persons of opposite sexes may not constitute a domestic partnership unless one or both of the persons are over the age of 62.... (9) Both file a Declaration of Domestic Partnership with the Secretary of State pursuant to [sections 298 and 298.5]." (Some of the numbering and wording of section 297 will change effective January 1, 2005 but the substance will remain the same. See Stats.2003, ch. 421, § 3.)

8 Sections 298, 298.5, added by Statutes 1999, chapter 588, section 2.

9 Sections 298.5, 299, added by Statutes 1999, chapter 588, section 2.

10 Carrillo–Heian, Domestic Partnership in California: Is It a Step Toward Marriage? (2000) 31 McGeorge L.Rev. 475, 485–487.

11 Statutes 2001, chapter 893.

12 Statutes 2001, chapter 893, section 2, amending Code of Civil Procedure section 377.60, subdivision (a).

13 Code of Civil Procedure section 377.60, subdivisions (a), (f).

14 See footnote 7, *ante*.

15 Section 297, subdivision (b)(6)(B).

16 Statutes 2001, chapter 893.

17 Section 297, subdivision (b), as amended by Statutes 2001, chapter 893, section 3.

18 Section 299.5, subdivision (a) as amended by Statutes 2001, chapter 893, section 4; italics added.

19 Legislative Counsel's Digest, Assembly Bill Number 25 (2001–2002 Regular Session) Statutes 2001, chapter 893, 13 West's Cal. Leg. Service (2001) at page 5634.

20 See Code of Civil Procedure section 377.60, subdivision (a).

21 Assembly Committee on Judiciary, Report on Assembly Bill Number 25 (2001–2002 Regular Session) March 13, 2001, page 1; italics added.

22 Senate Committee on the Judiciary, Report on Assembly Bill Number 25 (2001–2002 Regular Session) July 10, 2001, page 4; italics added.

23 Senate Committee on the Judiciary, Report on Assembly Bill Number 25 (2001–2002 Regular Session) July 10, 2001, pages 10, 22.

24 Senate Committee on the Judiciary, Report on Assembly Bill Number 25 (2001–2002 Regular Session) July 10, 2001, page 13; and see Donovan, Baby Steps or One Fell Swoop? The Incremental Extension Of Rights Is Not A Defensible Strategy (2001) 38 Cal. Western L.Rev. 1, 7.

25 *Justus v. Atchison* (1977) 19 Cal.3d 564, 580–581, 139 Cal.Rptr. 97, 565 P.2d 122.

26 *Justus v. Atchison, supra,* 19 Cal.3d at page 581, 139 Cal.Rptr. 97, 565 P.2d 122.

27 *Justus v. Atchison, supra,* 19 Cal.3d at pages 580–581, 139 Cal.Rptr. 97, 565 P.2d 122.

28 *Steed v. Imperial Airlines* (1974) 12 Cal.3d 115, 124, 115 Cal.Rptr. 329, 524 P.2d 801.

29 *Villacampa v. Russell* (1986) 178 Cal.App.3d 906, 910, 224 Cal.Rptr. 73.

30 *Phraner v. Cote Mart, Inc.* (1997) 55 Cal.App.4th 166, 170–171, 63 Cal.Rptr.2d 740.

31 *Levy v. Louisiana* (1968) 391 U.S. 68, 72, 88 S.Ct. 1509, 20 L.Ed.2d 436.

32 *Glona v. American Guarantee Co.* (1968) 391 U.S. 73, 75, 88 S.Ct. 1515, 20 L.Ed.2d 441.

33 *Harrod v. Pacific Southwest Airlines, Inc.* (1981) 118 Cal.App.3d 155, 157–158, 173 Cal.Rptr. 68; *Garcia v. Douglas Aircraft Co.* (1982) 133 Cal.App.3d 890, 894–895, 184 Cal.Rptr. 390.

34 *Nieto v. City of Los Angeles* (1982) 138 Cal.App.3d 464, 471–472, 188 Cal.Rptr. 31.

35 *Brown v. Merlo* (1973) 8 Cal.3d 855, 861, 106 Cal.Rptr. 388, 506 P.2d 212.

36 *Plyler v. Doe* (1982) 457 U.S. 202, 216–218, 102 S.Ct. 2382, 72 L.Ed.2d 786.

37 Cf. *Craig v. Boren* (1976) 429 U.S. 190, 197, 97 S.Ct. 451, 50 L.Ed.2d 397 [classifications based on gender must serve "important governmental objectives" and be "substantially related" to those objectives]. We have found no case subjecting classifications based on marital status to a heightened level of scrutiny. *Norman v. Unemployment Ins. Appeals Bd.* (1983) 34 Cal.3d 1, 9, 192 Cal.Rptr. 134, 663 P.2d 904 suggests the rational basis test applies. The court declined to address the issue in *Smith v. Fair Employment & Housing Com.* (1996) 12 Cal.4th 1143, 1176, footnote 21, 51 Cal.Rptr.2d 700, 913 P.2d 909.

38 See discussion at page 751, *ante*.

39 See cases cited in footnotes 33 and 34, *ante*.

40 *Nieto v. City of Los Angeles, supra,* 138 Cal.App.3d at p. 471, 188 Cal.Rptr. 31; accord, *Garcia v. Douglas Aircraft Co., supra,* 133 Cal.App.3d at p. 895, 184 Cal.Rptr. 390, *Harrod v. Pacific Southwest Airlines, supra,* 118 Cal.App.3d at p. 158, 173 Cal.Rptr. 68.

41 *Nieto v. City of Los Angeles, supra,* 138 Cal.App.3d at page 469, 188 Cal.Rptr. 31.

42 *Elden v. Sheldon* (1988) 46 Cal.3d 267, 273, footnote 3, 250 Cal.Rptr. 254, 758 P.2d 582.

43 Senate Committee on the Judiciary, Report on Assembly Bill Number 25 (2001–2002 Regular Session), July 10, 2001, page 22.

44 Estin, Unmarried Partners and the Legacy of Marvin v. Marvin: Ordinary Cohabitation (2001) 76 Notre Dame L.Rev. 1381, 1384–1385.

45 *Garcia v. Douglas Aircraft Co., supra,* 133 Cal.App.3d at page 895, 184 Cal.Rptr. 390.

46 *Glona v. American Guarantee Co., supra,* 391 U.S. at pages 76, 75, 88 S.Ct. 1515.

47 *Dillon v. Legg* (1968) 68 Cal.2d 728, 737, 69 Cal.Rptr. 72, 441 P.2d 912.

48 See discussion at pages 751–752, *ante*. Thus it is unlikely the defendants in this action would be faced with the possibility of multiple lawsuits by men all claiming they were living with Booth and sharing basic living expenses with her at the time of her death. (Cf. *Parham v. Hughes* (1979) 441 U.S. 347, 357, 99 S.Ct. 1742, 60 L.Ed.2d 269, upholding statute denying wrongful death action to

father who had not legitimated child born out of wedlock. The court expressed concern several men might sue, all claiming to be the decedent's father.)

49 *Nieto v. City of Los Angeles, supra,* 138 Cal.App.3d at page 472, 188 Cal.Rptr. 31, quoting from *Justus v. Atchison, supra,* 19 Cal.3d at page 582, 139 Cal.Rptr. 97, 565 P.2d 122.

50 *Steed v. Imperial Airlines, supra,* 12 Cal.3d at pages 119, 123–124, 115 Cal.Rptr. 329, 524 P.2d 801.

51 *Steed v. Imperial Airlines, supra,* 12 Cal.3d at page 124, 115 Cal.Rptr. 329, 524 P.2d 801.

52 *Steed v. Imperial Airlines, supra,* 12 Cal.3d at page 124, 115 Cal.Rptr. 329, 524 P.2d 801.

53 *Steed v. Imperial Airlines, supra,* 12 Cal.3d at page 124, 115 Cal.Rptr. 329, 524 P.2d 801.

54 Statutes 1975, chapter 334, section 2.

55 Statutes 1977, chapter 792, section 1.

56 See discussion at pages 751–753, *ante.*

57 *Justus v. Atchison, supra,* 19 Cal.3d at pages 580–581, 139 Cal.Rptr. 97, 565 P.2d 122.

58 *Justus v. Atchison, supra,* 19 Cal.3d at page 581, 139 Cal.Rptr. 97, 565 P.2d 122.

59 See discussion at page 751, *ante.*

60 At this point, we have no occasion to consider whether a legislative enactment or constitutional decision authorizing same-sex couples to marry (while also continuing to permit them the alternative of registering as domestic partners) might affect the constitutional analysis in this opinion. We only observe that in such circumstances, opposite-sex couples would appear to have a stronger claim of discriminatory treatment under the existing wrongful death provisions.

61 *Nieto v. City of Los Angeles, supra,* 138 Cal.App.3d at pages 471–472, 188 Cal.Rptr. 31, citation and internal quotation marks omitted.

62 Kraus, Family Law In A Nutshell (2d ed.1986) at pages 68–69.

63 See discussion at pages 751–752, *ante.*

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APPENDIX G

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5336

Chapter 156, Laws of 2007

60th Legislature
2007 Regular Session

DOMESTIC PARTNERSHIPS

EFFECTIVE DATE: 07/22/07

Passed by the Senate March 1, 2007
YEAS 28 NAYS 19

BRAD OWEN

President of the Senate

Passed by the House April 10, 2007
YEAS 63 NAYS 35

FRANK CHOPP

Speaker of the House of Representatives

Approved April 21, 2007, 9:56 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5336** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

April 23, 2007

Secretary of State
State of Washington

SUBSTITUTE SENATE BILL 5336

Passed Legislature - 2007 Regular Session

State of Washington **60th Legislature** **2007 Regular Session**

By Senate Committee on Government Operations & Elections (originally sponsored by Senators Murray, Kohl-Welles, Fairley, Prentice, Regala, Oemig, Tom, Kline, Hobbs, Pridemore, Keiser, Berkey, Franklin, Brown, Weinstein, Rockefeller, Poulsen, Fraser, Jacobsen, Spanel and McAuliffe)

READ FIRST TIME 02/05/07.

AN ACT Relating to protecting individuals in domestic partnerships by granting certain rights and benefits; amending RCW 41.05.065, 7.70.065, 70.02.050, 11.07.010, 11.94.080, 68.32.020, 68.32.030, 68.32.040, 68.32.060, 68.32.110, 68.32.130, 68.50.100, 68.50.101, 68.50.105, 68.50.160, 68.50.200, 68.50.550, 11.04.015, 11.28.120, 4.20.020, 4.20.060, and 11.94.010; adding a new section to chapter 43.07 RCW; adding a new section to chapter 41.05 RCW; adding a new section to chapter 70.58 RCW; and adding a new chapter to Title 26 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** Many Washingtonians are in intimate, committed, and exclusive relationships with another person to whom they are not legally married. These relationships are important to the individuals involved and their families; they also benefit the public by providing a private source of mutual support for the financial, physical, and emotional health of those individuals and their families. The public has an interest in providing a legal framework for such mutually supportive relationships, whether the partners are of the same or different sexes, and irrespective of their sexual orientation.

The legislature finds that same sex couples, because they cannot marry in this state, do not automatically have the same access that married couples have to certain rights and benefits, such as those associated with hospital visitation, health care decision-making, organ donation decisions, and other issues related to illness, incapacity, and death. Although many of these rights and benefits may be secured by private agreement, doing so often is costly and complex.

The legislature also finds that the public interest would be served by extending rights and benefits to different sex couples in which either or both of the partners is at least sixty-two years of age. While these couples are entitled to marry under the state's marriage statutes, some social security and pension laws nevertheless make it impractical for these couples to marry. For this reason, this act specifically allows couples to enter into a state registered domestic partnership if one of the persons is at least sixty-two years of age, the age at which many people choose to retire and are eligible to begin collecting social security and pension benefits.

The rights granted to state registered domestic partners in this act will further Washington's interest in promoting family relationships and protecting family members during life crises. This act does not affect marriage or any other ways in which legal rights and responsibilities between two adults may be created, recognized, or given effect in Washington.

NEW SECTION. **Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "State registered domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by section 4 of this act and who have been issued a certificate of state registered domestic partnership by the secretary.

(2) "Secretary" means the secretary of state's office.

(3) "Share a common residence" means inhabit the same residence. Two persons shall be considered to share a common residence even if:

(a) Only one of the domestic partners has legal ownership of the common residence;

(b) One or both domestic partners have additional residences not shared with the other domestic partner; or

(c) One domestic partner leaves the common residence with the intent to return.

NEW SECTION. **Sec. 3.** A new section is added to chapter 43.07 RCW to read as follows:

(1) The state domestic partnership registry is created within the secretary of state's office.

(2)(a) The secretary shall prepare forms entitled "declaration of state registered domestic partnership" and "notice of termination of state registered domestic partnership" to meet the requirements of sections 1, 2, 4, and 8 of this act.

(b) The "declaration of state registered domestic partnership" form must contain a statement that registration may affect property and inheritance rights, that registration is not a substitute for a will, deed, or partnership agreement, and that any rights conferred by registration may be completely superseded by a will, deed, or other instrument that may be executed by either party. The form must also contain instructions on how the partnership may be terminated.

(c) The "notice of termination of state registered domestic partnership" form must contain a statement that termination may affect property and inheritance rights, including beneficiary designations, and other agreements, such as the appointment of a state registered domestic partner as an attorney in fact under a power of attorney.

(3) The secretary shall distribute these forms to each county clerk. These forms shall be available to the public at the secretary of state's office, each county clerk, and on the internet.

(4) The secretary shall adopt rules necessary to implement the administration of the state domestic partnership registry.

NEW SECTION. **Sec. 4.** To enter into a state registered domestic partnership the two persons involved must meet the following requirements:

(1) Both persons share a common residence;

(2) Both persons are at least eighteen years of age;

(3) Neither person is married to someone other than the party to the domestic partnership and neither person is in a state registered domestic partnership with another person;

(4) Both persons are capable of consenting to the domestic partnership;

(5) Both of the following are true:

(a) The persons are not nearer of kin to each other than second cousins, whether of the whole or half blood computing by the rules of the civil law; and

(b) Neither person is a sibling, child, grandchild, aunt, uncle, niece, or nephew to the other person; and

(6) Either (a) both persons are members of the same sex; or (b) at least one of the persons is sixty-two years of age or older.

NEW SECTION. **Sec. 5.** (1) Two persons desiring to become state registered domestic partners who meet the requirements of section 4 of this act may register their domestic partnership by filing a declaration of state registered domestic partnership with the secretary and paying the filing fee established pursuant to subsection (4) of this section. The declaration must be signed by both parties and notarized.

(2) Upon receipt of a signed, notarized declaration and the filing fee, the secretary shall register the declaration and provide a certificate of state registered domestic partnership to each party named on the declaration.

(3) The secretary shall permanently maintain a record of each declaration of state registered domestic partnership filed with the secretary. The secretary shall provide the state registrar of vital statistics with records of declarations of state registered domestic partnerships.

(4) The secretary shall set by rule and collect a reasonable fee for filing the declaration, calculated to cover the secretary's costs, but not to exceed fifty dollars. Fees collected under this section are expressly designated for deposit in the secretary of state's revolving fund established under RCW 43.07.130.

NEW SECTION. **Sec. 6.** (1)(a) A party to a state registered domestic partnership may terminate the relationship by filing a notice of termination of the state registered domestic partnership with the secretary and paying the filing fee established pursuant to subsection (5) of this section. The notice must be signed by one or both parties

and notarized. If the notice is not signed by both parties, the party seeking termination must also file with the secretary an affidavit stating either that the other party has been served in writing in the manner prescribed for the service of summons in a civil action, that a notice of termination is being filed or that the party seeking termination has not been able to find the other party after reasonable effort and that notice has been made by publication pursuant to (b) of this subsection.

(b) When the other party cannot be found after reasonable effort, the party seeking termination may provide notice by publication in a newspaper of general circulation in the county in which the residence most recently shared by the domestic partners is located. Notice must be published at least once.

(2) The state registered domestic partnership shall be terminated effective ninety days after the date of filing the notice of termination and payment of the filing fee.

(3) Upon receipt of a signed, notarized notice of termination, affidavit, if required, and the filing fee, the secretary shall register the notice of termination and provide a certificate of termination of the state registered domestic partnership to each party named on the notice. The secretary shall maintain a record of each notice of termination filed with the secretary and each certificate of termination issued by the secretary. The secretary shall provide the state registrar of vital statistics with records of terminations of state registered domestic partnerships, except for those state registered domestic partnerships terminated under subsection (4) of this section.

(4) A state registered domestic partnership is automatically terminated if, subsequent to the registration of the domestic partnership with the secretary, either or both the parties enter into a marriage that is recognized as valid in this state, either with each other or with another person.

(5) The secretary shall set by rule and collect a reasonable fee for filing the declaration, calculated to cover the secretary's costs, but not to exceed fifty dollars. Fees collected under this section are expressly designated for deposit in the secretary of state's revolving fund established under RCW 43.07.130.

NEW SECTION. **Sec. 7.** (1)(a) A domestic partnership created by a subdivision of the state is not a state registered domestic partnership for the purposes of a state registered domestic partnership under this chapter. Those persons desiring to become state registered domestic partners under this chapter must register pursuant to section 5 of this act.

(b) A subdivision of the state that provides benefits to the domestic partners of its employees and chooses to use the definition of state registered domestic partner as set forth in section 2 of this act must allow the certificate issued by the secretary of state to satisfy any registration requirements of the subdivision. A subdivision that uses the definition of state registered domestic partner as set forth in section 2 of this act shall notify the secretary of state. The secretary of state shall compile and maintain a list of all subdivisions that have filed such notice. The secretary of state shall post this list on the secretary's web page and provide a copy of the list to each person that receives a certificate of state registered domestic partnership under section 5(2) of this act.

(c) Nothing in this section shall affect domestic partnerships created by any public entity.

(2) Nothing in this act affects any remedy available in common law.

NEW SECTION. **Sec. 8.** A patient's state registered domestic partner shall have the same rights as a spouse with respect to visitation of the patient in a health care facility as defined in RCW 48.43.005.

NEW SECTION. **Sec. 9.** A new section is added to chapter 41.05 RCW to read as follows:

A certificate of domestic partnership issued to a couple of the same sex under the provisions of section 4 of this act shall be recognized as evidence of a qualified same sex domestic partnership fulfilling all necessary eligibility criteria for the partner of the employee to receive benefits. Nothing in this section affects the requirements of same sex domestic partners to complete documentation related to federal tax status that may currently be required by the board for employees choosing to make premium payments on a pretax basis.

Sec. 10. RCW 41.05.065 and 2006 c 299 s 2 are each amended to read as follows:

(1) The board shall study all matters connected with the provision of health care coverage, life insurance, liability insurance, accidental death and dismemberment insurance, and disability income insurance or any of, or a combination of, the enumerated types of insurance for employees and their dependents on the best basis possible with relation both to the welfare of the employees and to the state. However, liability insurance shall not be made available to dependents.

(2) The board shall develop employee benefit plans that include comprehensive health care benefits for all employees. In developing these plans, the board shall consider the following elements:

(a) Methods of maximizing cost containment while ensuring access to quality health care;

(b) Development of provider arrangements that encourage cost containment and ensure access to quality care, including but not limited to prepaid delivery systems and prospective payment methods;

(c) Wellness incentives that focus on proven strategies, such as smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education;

(d) Utilization review procedures including, but not limited to a cost-efficient method for prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers;

(e) Effective coordination of benefits;

(f) Minimum standards for insuring entities; and

(g) Minimum scope and content of public employee benefit plans to be offered to enrollees participating in the employee health benefit plans. To maintain the comprehensive nature of employee health care benefits, employee eligibility criteria related to the number of hours worked and the benefits provided to employees shall be substantially equivalent to the state employees' health benefits plan and eligibility criteria in effect on January 1, 1993. Nothing in this subsection (2)(g) shall prohibit changes or increases in employee point-of-service

payments or employee premium payments for benefits or the administration of a high deductible health plan in conjunction with a health savings account.

(3) The board shall design benefits and determine the terms and conditions of employee and retired employee participation and coverage, including establishment of eligibility criteria subject to the requirements of section 9 of this act. The same terms and conditions of participation and coverage, including eligibility criteria, shall apply to state employees and to school district employees and educational service district employees.

(4) The board may authorize premium contributions for an employee and the employee's dependents in a manner that encourages the use of cost-efficient managed health care systems. During the 2005-2007 fiscal biennium, the board may only authorize premium contributions for an employee and the employee's dependents that are the same, regardless of an employee's status as represented or nonrepresented by a collective bargaining unit under the personnel system reform act of 2002. The board shall require participating school district and educational service district employees to pay at least the same employee premiums by plan and family size as state employees pay.

(5) The board shall develop a health savings account option for employees that conform to section 223, Part VII of subchapter B of chapter 1 of the internal revenue code of 1986. The board shall comply with all applicable federal standards related to the establishment of health savings accounts.

(6) Notwithstanding any other provision of this chapter, the board shall develop a high deductible health plan to be offered in conjunction with a health savings account developed under subsection (5) of this section.

(7) Employees shall choose participation in one of the health care benefit plans developed by the board and may be permitted to waive coverage under terms and conditions established by the board.

(8) The board shall review plans proposed by insuring entities that desire to offer property insurance and/or accident and casualty insurance to state employees through payroll deduction. The board may approve any such plan for payroll deduction by insuring entities holding a valid certificate of authority in the state of Washington and

which the board determines to be in the best interests of employees and the state. The board shall promulgate rules setting forth criteria by which it shall evaluate the plans.

(9) Before January 1, 1998, the public employees' benefits board shall make available one or more fully insured long-term care insurance plans that comply with the requirements of chapter 48.84 RCW. Such programs shall be made available to eligible employees, retired employees, and retired school employees as well as eligible dependents which, for the purpose of this section, includes the parents of the employee or retiree and the parents of the spouse of the employee or retiree. Employees of local governments and employees of political subdivisions not otherwise enrolled in the public employees' benefits board sponsored medical programs may enroll under terms and conditions established by the administrator, if it does not jeopardize the financial viability of the public employees' benefits board's long-term care offering.

(a) Participation of eligible employees or retired employees and retired school employees in any long-term care insurance plan made available by the public employees' benefits board is voluntary and shall not be subject to binding arbitration under chapter 41.56 RCW. Participation is subject to reasonable underwriting guidelines and eligibility rules established by the public employees' benefits board and the health care authority.

(b) The employee, retired employee, and retired school employee are solely responsible for the payment of the premium rates developed by the health care authority. The health care authority is authorized to charge a reasonable administrative fee in addition to the premium charged by the long-term care insurer, which shall include the health care authority's cost of administration, marketing, and consumer education materials prepared by the health care authority and the office of the insurance commissioner.

(c) To the extent administratively possible, the state shall establish an automatic payroll or pension deduction system for the payment of the long-term care insurance premiums.

(d) The public employees' benefits board and the health care authority shall establish a technical advisory committee to provide advice in the development of the benefit design and establishment of underwriting guidelines and eligibility rules. The committee shall

also advise the board and authority on effective and cost-effective ways to market and distribute the long-term care product. The technical advisory committee shall be comprised, at a minimum, of representatives of the office of the insurance commissioner, providers of long-term care services, licensed insurance agents with expertise in long-term care insurance, employees, retired employees, retired school employees, and other interested parties determined to be appropriate by the board.

(e) The health care authority shall offer employees, retired employees, and retired school employees the option of purchasing long-term care insurance through licensed agents or brokers appointed by the long-term care insurer. The authority, in consultation with the public employees' benefits board, shall establish marketing procedures and may consider all premium components as a part of the contract negotiations with the long-term care insurer.

(f) In developing the long-term care insurance benefit designs, the public employees' benefits board shall include an alternative plan of care benefit, including adult day services, as approved by the office of the insurance commissioner.

(g) The health care authority, with the cooperation of the office of the insurance commissioner, shall develop a consumer education program for the eligible employees, retired employees, and retired school employees designed to provide education on the potential need for long-term care, methods of financing long-term care, and the availability of long-term care insurance products including the products offered by the board.

(h) By December 1998, the health care authority, in consultation with the public employees' benefits board, shall submit a report to the appropriate committees of the legislature, including an analysis of the marketing and distribution of the long-term care insurance provided under this section.

Sec. 11. RCW 7.70.065 and 2006 c 93 s 1 are each amended to read as follows:

(1) Informed consent for health care for a patient who is not competent, as defined in RCW 11.88.010(1)(e), to consent may be obtained from a person authorized to consent on behalf of such patient.

(a) Persons authorized to provide informed consent to health care on behalf of a patient who is not competent to consent, based upon a reason other than incapacity as defined in RCW 11.88.010(1)(d), shall be a member of one of the following classes of persons in the following order of priority:

(i) The appointed guardian of the patient, if any;

(ii) The individual, if any, to whom the patient has given a durable power of attorney that encompasses the authority to make health care decisions;

(iii) The patient's spouse or state registered domestic partner;

(iv) Children of the patient who are at least eighteen years of age;

(v) Parents of the patient; and

(vi) Adult brothers and sisters of the patient.

(b) If the health care provider seeking informed consent for proposed health care of the patient who is not competent to consent under RCW 11.88.010(1)(e), other than a person determined to be incapacitated because he or she is under the age of majority and who is not otherwise authorized to provide informed consent, makes reasonable efforts to locate and secure authorization from a competent person in the first or succeeding class and finds no such person available, authorization may be given by any person in the next class in the order of descending priority. However, no person under this section may provide informed consent to health care:

(i) If a person of higher priority under this section has refused to give such authorization; or

(ii) If there are two or more individuals in the same class and the decision is not unanimous among all available members of that class.

(c) Before any person authorized to provide informed consent on behalf of a patient not competent to consent under RCW 11.88.010(1)(e), other than a person determined to be incapacitated because he or she is under the age of majority and who is not otherwise authorized to provide informed consent, exercises that authority, the person must first determine in good faith that that patient, if competent, would consent to the proposed health care. If such a determination cannot be made, the decision to consent to the proposed health care may be made only after determining that the proposed health care is in the patient's best interests.

(2) Informed consent for health care, including mental health care, for a patient who is not competent, as defined in RCW 11.88.010(1)(e), because he or she is under the age of majority and who is not otherwise authorized to provide informed consent, may be obtained from a person authorized to consent on behalf of such a patient.

(a) Persons authorized to provide informed consent to health care, including mental health care, on behalf of a patient who is incapacitated, as defined in RCW 11.88.010(1)(e), because he or she is under the age of majority and who is not otherwise authorized to provide informed consent, shall be a member of one of the following classes of persons in the following order of priority:

(i) The appointed guardian, or legal custodian authorized pursuant to Title 26 RCW, of the minor patient, if any;

(ii) A person authorized by the court to consent to medical care for a child in out-of-home placement pursuant to chapter 13.32A or 13.34 RCW, if any;

(iii) Parents of the minor patient;

(iv) The individual, if any, to whom the minor's parent has given a signed authorization to make health care decisions for the minor patient; and

(v) A competent adult representing himself or herself to be a relative responsible for the health care of such minor patient or a competent adult who has signed and dated a declaration under penalty of perjury pursuant to RCW 9A.72.085 stating that the adult person is a relative responsible for the health care of the minor patient. Such declaration shall be effective for up to six months from the date of the declaration.

(b) A health care provider may, but is not required to, rely on the representations or declaration of a person claiming to be a relative responsible for the care of the minor patient, under (a)(v) of this subsection, if the health care provider does not have actual notice of the falsity of any of the statements made by the person claiming to be a relative responsible for the health care of the minor patient.

(c) A health care facility or a health care provider may, in its discretion, require documentation of a person's claimed status as being a relative responsible for the health care of the minor patient. However, there is no obligation to require such documentation.

(d) The health care provider or health care facility where services are rendered shall be immune from suit in any action, civil or criminal, or from professional or other disciplinary action when such reliance is based on a declaration signed under penalty of perjury pursuant to RCW 9A.72.085 stating that the adult person is a relative responsible for the health care of the minor patient under (a)(v) of this subsection.

(3) For the purposes of this section, "health care," "health care provider," and "health care facility" shall be defined as established in RCW 70.02.010.

Sec. 12. RCW 70.02.050 and 2006 c 235 s 3 are each amended to read as follows:

(1) A health care provider or health care facility may disclose health care information about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is:

(a) To a person who the provider or facility reasonably believes is providing health care to the patient;

(b) To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, actuarial services to, or other health care operations for or on behalf of the health care provider or health care facility; or for assisting the health care provider or health care facility in the delivery of health care and the health care provider or health care facility reasonably believes that the person:

(i) Will not use or disclose the health care information for any other purpose; and

(ii) Will take appropriate steps to protect the health care information;

(c) To any other health care provider or health care facility reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(d) To any person if the health care provider or health care facility reasonably believes that disclosure will avoid or minimize an

imminent danger to the health or safety of the patient or any other individual, however there is no obligation under this chapter on the part of the provider or facility to so disclose;

(e) To immediate family members of the patient, including a patient's state registered domestic partner, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(f) To a health care provider or health care facility who is the successor in interest to the health care provider or health care facility maintaining the health care information;

(g) For use in a research project that an institutional review board has determined:

(i) Is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(ii) Is impracticable without the use or disclosure of the health care information in individually identifiable form;

(iii) Contains reasonable safeguards to protect the information from redisclosure;

(iv) Contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and

(v) Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(h) To a person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(i) To an official of a penal or other custodial institution in which the patient is detained;

(j) To provide directory information, unless the patient has instructed the health care provider or health care facility not to make the disclosure;

(k) To fire, police, sheriff, or another public authority, that brought, or caused to be brought, the patient to the health care facility or health care provider if the disclosure is limited to the patient's name, residence, sex, age, occupation, condition, diagnosis, estimated or actual discharge date, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted;

(l) To federal, state, or local law enforcement authorities and the health care provider, health care facility, or third-party payor believes in good faith that the health care information disclosed constitutes evidence of criminal conduct that occurred on the premises of the health care provider, health care facility, or third-party payor;

(m) To another health care provider, health care facility, or third-party payor for the health care operations of the health care provider, health care facility, or third-party payor that receives the information, if each entity has or had a relationship with the patient who is the subject of the health care information being requested, the health care information pertains to such relationship, and the disclosure is for the purposes described in RCW 70.02.010(8) (a) and (b); or

(n) For payment.

(2) A health care provider shall disclose health care information about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws; or when needed to protect the public health;

(b) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;

(c) To federal, state, or local law enforcement authorities, upon receipt of a written or oral request made to a nursing supervisor, administrator, or designated privacy official, in a case in which the patient is being treated or has been treated for a bullet wound, gunshot wound, powder burn, or other injury arising from or caused by the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which federal, state, or local law enforcement authorities reasonably believe to have been intentionally inflicted upon a person, or a blunt force injury that federal, state, or local law enforcement authorities reasonably believe resulted from a criminal act, the following information, if known:

(i) The name of the patient;

(ii) The patient's residence;

(iii) The patient's sex;

(iv) The patient's age;

(v) The patient's condition;

(vi) The patient's diagnosis, or extent and location of injuries as determined by a health care provider;

(vii) Whether the patient was conscious when admitted;

(viii) The name of the health care provider making the determination in (c)(v), (vi), and (vii) of this subsection;

(ix) Whether the patient has been transferred to another facility; and

(x) The patient's discharge time and date;

(d) To county coroners and medical examiners for the investigations of deaths;

(e) Pursuant to compulsory process in accordance with RCW 70.02.060.

(3) All state or local agencies obtaining patient health care information pursuant to this section shall adopt rules establishing their record acquisition, retention, and security policies that are consistent with this chapter.

Sec. 13. RCW 11.07.010 and 2002 c 18 s 1 are each amended to read as follows:

(1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state

of a decree of dissolution of marriage or a declaration of invalidity or certification of termination of a state registered domestic partnership.

(2)(a) If a marriage is dissolved or invalidated, or a state registered domestic partnership terminated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse or state registered domestic partner, is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse or former state registered domestic partner, failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity or termination of state registered domestic partnership.

(b) This subsection does not apply if and to the extent that:

(i) The instrument governing disposition of the nonprobate asset expressly provides otherwise;

(ii) The decree of dissolution ((~~or~~)), declaration of invalidity, or other court order requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or former state registered domestic partner or children of the marriage, payable on the decedent's death either outright or in trust, and other nonprobate assets of the decedent fulfilling such a requirement for the benefit of the former spouse or former state registered domestic partner or children of the marriage do not exist at the decedent's death; ((~~or~~))

(iii) A court order requires that the decedent maintain a nonprobate asset for the benefit of another, payable on the decedent's death either outright or in a trust, and other nonprobate assets of the decedent fulfilling such a requirement do not exist at the decedent's death; or

(iv) If not for this subsection, the decedent could not have effected the revocation by unilateral action because of the terms of the decree ((~~or~~)), declaration, termination of state registered domestic partnership, or for any other reason, immediately after the entry of the decree of dissolution ((~~or~~)), declaration of invalidity, or termination of state registered domestic partnership.

(3)(a) A payor or other third party in possession or control of a nonprobate asset at the time of the decedent's death is not liable for

making a payment or transferring an interest in a nonprobate asset to a decedent's former spouse or state registered domestic partner, whose interest in the nonprobate asset is revoked under this section, or for taking another action in reliance on the validity of the instrument governing disposition of the nonprobate asset, before the payor or other third party has actual knowledge of the dissolution or other invalidation of marriage or termination of the state registered domestic partnership. A payor or other third party is liable for a payment or transfer made or other action taken after the payor or other third party has actual knowledge of a revocation under this section.

(b) This section does not require a payor or other third party to pay or transfer a nonprobate asset to a beneficiary designated in a governing instrument affected by the dissolution or other invalidation of marriage or termination of state registered domestic partnership, or to another person claiming an interest in the nonprobate asset, if the payor or third party has actual knowledge of the existence of a dispute between the former spouse or former state registered domestic partner, and the beneficiaries or other persons concerning rights of ownership of the nonprobate asset as a result of the application of this section among the former spouse or former state registered domestic partner, and the beneficiaries or among other persons, or if the payor or third party is otherwise uncertain as to who is entitled to the nonprobate asset under this section. In such a case, the payor or third party may, without liability, notify in writing all beneficiaries or other persons claiming an interest in the nonprobate asset of either the existence of the dispute or its uncertainty as to who is entitled to payment or transfer of the nonprobate asset. The payor or third party may also, without liability, refuse to pay or transfer a nonprobate asset in such a circumstance to a beneficiary or other person claiming an interest until the time that either:

(i) All beneficiaries and other interested persons claiming an interest have consented in writing to the payment or transfer; or

(ii) The payment or transfer is authorized or directed by a court of proper jurisdiction.

(c) Notwithstanding subsections (1) and (2) of this section and (a) and (b) of this subsection, a payor or other third party having actual knowledge of the existence of a dispute between beneficiaries or other persons concerning rights to a nonprobate asset as a result of the

application of this section may condition the payment or transfer of the nonprobate asset on execution, in a form and with security acceptable to the payor or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset at the time of the decedent's death or the amount of an adverse claim, whichever is the lesser, or of a similar instrument to provide security to the payor or other third party, indemnifying the payor or other third party for any liability, loss, damage, costs, and expenses for and on account of payment or transfer of the nonprobate asset.

(d) As used in this subsection, "actual knowledge" means, for a payor or other third party in possession or control of the nonprobate asset at or following the decedent's death, written notice to the payor or other third party, or to an officer of a payor or third party in the course of his or her employment, received after the decedent's death and within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge. The notice must identify the nonprobate asset with reasonable specificity. The notice also must be sufficient to inform the payor or other third party of the revocation of the provisions in favor of the decedent's spouse or state registered domestic partner, by reason of the dissolution or invalidation of marriage or termination of state registered domestic partnership, or to inform the payor or third party of a dispute concerning rights to a nonprobate asset as a result of the application of this section. Receipt of the notice for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(4)(a) A person who purchases a nonprobate asset from a former spouse, former state registered domestic partner, or other person, for value and without actual knowledge, or who receives from a former spouse, former state registered domestic partner, or other person payment or transfer of a nonprobate asset without actual knowledge and in partial or full satisfaction of a legally enforceable obligation, is neither obligated under this section to return the payment, property, or benefit nor is liable under this section for the amount of the

payment or the value of the nonprobate asset. However, a former spouse, former state registered domestic partner, or other person who, with actual knowledge, not for value, or not in satisfaction of a legally enforceable obligation, receives payment or transfer of a nonprobate asset to which that person is not entitled under this section is obligated to return the payment or nonprobate asset, or is personally liable for the amount of the payment or value of the nonprobate asset, to the person who is entitled to it under this section.

(b) As used in this subsection, "actual knowledge" means, for a person described in (a) of this subsection who purchases or receives a nonprobate asset from a former spouse, former state registered domestic partner, or other person, personal knowledge or possession of documents relating to the revocation upon dissolution or invalidation of marriage of provisions relating to the payment or transfer at the decedent's death of the nonprobate asset, received within a time after the decedent's death and before the purchase or receipt that is sufficient to afford the person purchasing or receiving the nonprobate asset reasonable opportunity to act upon the knowledge. Receipt of the personal knowledge or possession of the documents for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:

(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account, unless provided otherwise by controlling federal law;

(b) A payable-on-death, trust, or joint with right of survivorship bank account;

(c) A trust of which the person is a grantor and that becomes effective or irrevocable only upon the person's death; or

(d) Transfer on death beneficiary designations of a transfer on death or pay on death security, if such designations are authorized under Washington law.

For the general definition in this title of "nonprobate asset," see RCW 11.02.005(15) and for the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see RCW 11.11.010(7).

(6) This section is remedial in nature and applies as of July 25, 1993, to decrees of dissolution and declarations of invalidity entered after July 24, 1993, and this section applies as of January 1, 1995, to decrees of dissolution and declarations of invalidity entered before July 25, 1993.

Sec. 14. RCW 11.94.080 and 2001 c 203 s 1 are each amended to read as follows:

(1) An appointment of a principal's spouse or state registered domestic partner, as attorney in fact, including appointment as successor or coattorney in fact, under a power of attorney shall be revoked upon entry of a decree of dissolution or legal separation or declaration of invalidity of the marriage or termination of the state registered domestic partnership of the principal and the attorney in fact, unless the power of attorney or the decree provides otherwise. The effect of this revocation shall be as if the spouse or state registered domestic partner, resigned as attorney in fact, or if named as successor attorney in fact, renounced the appointment, as of the date of entry of the decree or declaration or filing of the certificate of termination of the state registered domestic partnership, and the power of attorney shall otherwise remain in effect with respect to appointments of other persons as attorney in fact for the principal or procedures prescribed in the power of attorney to appoint other persons, and any terms relating to service by persons as attorney in fact.

(2) This section applies to all decrees of dissolution and declarations of invalidity of marriage entered after July 22, 2001.

Sec. 15. RCW 68.32.020 and 2005 c 365 s 92 are each amended to read as follows:

The spouse or state registered domestic partner, of an owner of any plot or right of interment containing more than one placement space has

a vested right of placement in the plot and any person thereafter becoming the spouse or state registered domestic partner, of the owner has a vested right of placement in the plot if more than one space is unoccupied at the time the person becomes the spouse or state registered domestic partner, of the owner.

Sec. 16. RCW 68.32.030 and 2005 c 365 s 93 are each amended to read as follows:

No conveyance or other action of the owner without the written consent of the spouse or state registered domestic partner, of the owner divests the spouse or state registered domestic partner, of a vested right of placement. A final decree of divorce between them or certification of termination of the state registered domestic partnership terminates the vested right of placement unless otherwise provided in the decree.

Sec. 17. RCW 68.32.040 and 2005 c 365 s 94 are each amended to read as follows:

If no placement is made in a plot or right of interment, which has been transferred by deed or certificate of ownership to an individual owner, the title descends to the surviving spouse or state registered domestic partner. If there is no surviving spouse or state registered domestic partner, the title descends to the heirs at law of the owner. Following death of the owner, if all remains previously placed are lawfully removed and the owner did not dispose of the plot or right of interment by specific devise or by a written declaration filed and recorded in the office of the cemetery authority, the title descends to the surviving spouse or state registered domestic partner. If there is no surviving spouse or state registered domestic partner, the title descends to the heirs at law of the owner.

Sec. 18. RCW 68.32.060 and 2005 c 365 s 96 are each amended to read as follows:

Whenever an interment of the human remains of a member or of a relative of a member of the family of the record owner or of the remains of the record owner is made in a plot transferred by deed or certificate of ownership to an individual owner and both the owner and the surviving spouse or state registered domestic partner, if any, die

with children then living without making disposition of the plot either by a specific devise, or by a written declaration filed and recorded in the office of the cemetery authority, the plot shall thereafter be held as a family plot and shall be subject to sale only upon agreement of the children of the owner living at the time of sale.

Sec. 19. RCW 68.32.110 and 2005 c 365 s 101 are each amended to read as follows:

In a family plot one right of interment may be used for the owner's interment and one for the owner's surviving spouse or state registered domestic partner, if any. Any unoccupied spaces may then be used by the remaining parents and children of the deceased owner, if any, then to the spouse or state registered domestic partner of any child of the owner, then to the heirs at law of the owner, in the order of death.

Sec. 20. RCW 68.32.130 and 2005 c 365 s 102 are each amended to read as follows:

Any surviving spouse, state registered domestic partner, parent, child, or heir having a right of placement in a family plot may waive such right in favor of any other relative ((~~or~~)), spouse, or state registered domestic partner of a relative of the deceased owner. Upon such a waiver, the remains of the person in whose favor the waiver is made may be placed in the plot.

Sec. 21. RCW 68.50.100 and 2003 c 53 s 307 are each amended to read as follows:

(1) The right to dissect a dead body shall be limited to cases specially provided by statute or by the direction or will of the deceased; cases where a coroner is authorized to hold an inquest upon the body, and then only as he or she may authorize dissection; and cases where the spouse, state registered domestic partner, or next of kin charged by law with the duty of burial shall authorize dissection for the purpose of ascertaining the cause of death, and then only to the extent so authorized: PROVIDED, That the coroner, in his or her discretion, may make or cause to be made by a competent pathologist, toxicologist, or physician, an autopsy or postmortem in any case in which the coroner has jurisdiction of a body: PROVIDED, FURTHER, That the coroner may with the approval of the University of Washington and

with the consent of a parent or guardian deliver any body of a deceased person under the age of three years over which he or she has jurisdiction to the University of Washington medical school for the purpose of having an autopsy made to determine the cause of death.

(2) Every person who shall make, cause, or procure to be made any dissection of a body, except as provided in this section, is guilty of a gross misdemeanor.

Sec. 22. RCW 68.50.101 and 1987 c 331 s 57 are each amended to read as follows:

Autopsy or post mortem may be performed in any case where authorization has been given by a member of one of the following classes of persons in the following order of priority:

(1) The surviving spouse or state registered domestic partner;

(2) Any child of the decedent who is eighteen years of age or older;

(3) One of the parents of the decedent;

(4) Any adult brother or sister of the decedent;

(5) A person who was guardian of the decedent at the time of death;

(6) Any other person or agency authorized or under an obligation to dispose of the remains of the decedent. The chief official of any such agency shall designate one or more persons to execute authorizations pursuant to the provisions of this section.

If the person seeking authority to perform an autopsy or post mortem makes reasonable efforts to locate and secure authorization from a competent person in the first or succeeding class and finds no such person available, authorization may be given by any person in the next class, in the order of descending priority. However, no person under this section shall have the power to authorize an autopsy or post mortem if a person of higher priority under this section has refused such authorization: PROVIDED, That this section shall not affect autopsies performed pursuant to RCW 68.50.010 or 68.50.103.

Sec. 23. RCW 68.50.105 and 1987 c 331 s 58 are each amended to read as follows:

Reports and records of autopsies or post mortems shall be confidential, except that the following persons may examine and obtain copies of any such report or record: The personal representative of

the decedent as defined in RCW 11.02.005, any family member, the attending physician, the prosecuting attorney or law enforcement agencies having jurisdiction, public health officials, or to the department of labor and industries in cases in which it has an interest under RCW 68.50.103.

The coroner, the medical examiner, or the attending physician shall, upon request, meet with the family of the decedent to discuss the findings of the autopsy or post mortem. For the purposes of this section, the term "family" means the surviving spouse, state registered domestic partner, or any child, parent, grandparent, grandchild, brother, or sister of the decedent, or any person who was guardian of the decedent at the time of death.

Sec. 24. RCW 68.50.160 and 2005 c 365 s 141 are each amended to read as follows:

(1) A person has the right to control the disposition of his or her own remains without the predeath or postdeath consent of another person. A valid written document expressing the decedent's wishes regarding the place or method of disposition of his or her remains, signed by the decedent in the presence of a witness, is sufficient legal authorization for the procedures to be accomplished.

(2) Prearrangements that are prepaid, or filed with a licensed funeral establishment or cemetery authority, under RCW 18.39.280 through 18.39.345 and chapter 68.46 RCW are not subject to cancellation or substantial revision by survivors. Absent actual knowledge of contrary legal authorization under this section, a licensed funeral establishment or cemetery authority shall not be held criminally nor civilly liable for acting upon such prearrangements.

(3) If the decedent has not made a prearrangement as set forth in subsection (2) of this section or the costs of executing the decedent's wishes regarding the disposition of the decedent's remains exceeds a reasonable amount or directions have not been given by the decedent, the right to control the disposition of the remains of a deceased person vests in, and the duty of disposition and the liability for the reasonable cost of preparation, care, and disposition of such remains devolves upon the following in the order named:

(a) The surviving spouse or state registered domestic partner.

(b) The surviving adult children of the decedent.

(c) The surviving parents of the decedent.

(d) The surviving siblings of the decedent.

(e) A person acting as a representative of the decedent under the signed authorization of the decedent.

(4) If a cemetery authority as defined in RCW 68.04.190 or a funeral establishment licensed under chapter 18.39 RCW has made a good faith effort to locate the person cited in subsection (3)(a) through (e) of this section or the legal representative of the decedent's estate, the cemetery authority or funeral establishment shall have the right to rely on an authority to bury or cremate the human remains, executed by the most responsible party available, and the cemetery authority or funeral establishment may not be held criminally or civilly liable for burying or cremating the human remains. In the event any government agency provides the funds for the disposition of any human remains and the government agency elects to provide funds for cremation only, the cemetery authority or funeral establishment may not be held criminally or civilly liable for cremating the human remains.

(5) The liability for the reasonable cost of preparation, care, and disposition devolves jointly and severally upon all kin of the decedent in the same degree of kindred, in the order listed in subsection (3) of this section, and upon the estate of the decedent.

Sec. 25. RCW 68.50.200 and 2005 c 365 s 144 are each amended to read as follows:

Human remains may be removed from a plot in a cemetery with the consent of the cemetery authority and the written consent of one of the following in the order named:

(1) The surviving spouse or state registered domestic partner.

(2) The surviving children of the decedent.

(3) The surviving parents of the decedent.

(4) The surviving brothers or sisters of the decedent.

If the required consent cannot be obtained, permission by the superior court of the county where the cemetery is situated is sufficient: PROVIDED, That the permission shall not violate the terms of a written contract or the rules and regulations of the cemetery authority.

Sec. 26. RCW 68.50.550 and 1993 c 228 s 4 are each amended to read as follows:

(1) A member of the following classes of persons, in the order of priority listed, absent contrary instructions by the decedent, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of death, had made an unrevoked refusal to make that anatomical gift:

(a) The appointed guardian of the person of the decedent at the time of death;

(b) The individual, if any, to whom the decedent had given a durable power of attorney that encompassed the authority to make health care decisions;

(c) The spouse or state registered domestic partner, of the decedent;

(d) A son or daughter of the decedent who is at least eighteen years of age;

(e) Either parent of the decedent;

(f) A brother or sister of the decedent who is at least eighteen years of age;

(g) A grandparent of the decedent.

(2) An anatomical gift may not be made by a person listed in subsection (1) of this section if:

(a) A person in a prior class is available at the time of death to make an anatomical gift;

(b) The person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or

(c) The person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(3) An anatomical gift by a person authorized under subsection (1) of this section must be made by (a) a document of gift signed by the person or (b) the person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient of the communication.

(4) An anatomical gift by a person authorized under subsection (1) of this section may be revoked by a member of the same or a prior class

if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.

(5) A failure to make an anatomical gift under subsection (1) of this section is not an objection to the making of an anatomical gift.

Sec. 27. RCW 11.04.015 and 1974 ex.s. c 117 s 6 are each amended to read as follows:

The net estate of a person dying intestate, or that portion thereof with respect to which the person shall have died intestate, shall descend subject to the provisions of RCW 11.04.250 and 11.02.070, and shall be distributed as follows:

(1) Share of surviving spouse or state registered domestic partner. The surviving spouse or state registered domestic partner shall receive the following share:

(a) All of the decedent's share of the net community estate; and

(b) One-half of the net separate estate if the intestate is survived by issue; or

(c) Three-quarters of the net separate estate if there is no surviving issue, but the intestate is survived by one or more of his parents, or by one or more of the issue of one or more of his parents; or

(d) All of the net separate estate, if there is no surviving issue nor parent nor issue of parent.

(2) Shares of others than surviving spouse or state registered domestic partner. The share of the net estate not distributable to the surviving spouse or state registered domestic partner, or the entire net estate if there is no surviving spouse or state registered domestic partner, shall descend and be distributed as follows:

(a) To the issue of the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degree shall take by representation.

(b) If the intestate not be survived by issue, then to the parent or parents who survive the intestate.

(c) If the intestate not be survived by issue or by either parent, then to those issue of the parent or parents who survive the intestate;

if they are all in the same degree of kinship to the intestate, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation.

(d) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents who survive the intestate, then to the grandparent or grandparents who survive the intestate; if both maternal and paternal grandparents survive the intestate, the maternal grandparent or grandparents shall take one-half and the paternal grandparent or grandparents shall take one-half.

(e) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents or by any grandparent or grandparents, then to those issue of any grandparent or grandparents who survive the intestate; taken as a group, the issue of the maternal grandparent or grandparents shall share equally with the issue of the paternal grandparent or grandparents, also taken as a group; within each such group, all members share equally if they are all in the same degree of kinship to the intestate, or, if some be of unequal degree, then those of more remote degree shall take by representation.

Sec. 28. RCW 11.28.120 and 1995 1st sp.s. c 18 s 61 are each amended to read as follows:

Administration of an estate if the decedent died intestate or if the personal representative or representatives named in the will declined or were unable to serve shall be granted to some one or more of the persons hereinafter mentioned, and they shall be respectively entitled in the following order:

(1) The surviving spouse or state registered domestic partner, or such person as he or she may request to have appointed.

(2) The next of kin in the following order: (a) Child or children; (b) father or mother; (c) brothers or sisters; (d) grandchildren; (e) nephews or nieces.

(3) The trustee named by the decedent in an inter vivos trust instrument, testamentary trustee named in the will, guardian of the person or estate of the decedent, or attorney in fact appointed by the decedent, if any such a fiduciary controlled or potentially controlled substantially all of the decedent's probate and nonprobate assets.

(4) One or more of the beneficiaries or transferees of the decedent's probate or nonprobate assets.

(5)(a) The director of revenue, or the director's designee, for those estates having property subject to the provisions of chapter 11.08 RCW; however, the director may waive this right.

(b) The secretary of the department of social and health services for those estates owing debts for long-term care services as defined in RCW 74.39A.008; however the secretary may waive this right.

(6) One or more of the principal creditors.

(7) If the persons so entitled shall fail for more than forty days after the death of the decedent to present a petition for letters of administration, or if it appears to the satisfaction of the court that there is no next of kin, as above specified eligible to appointment, or they waive their right, and there are no principal creditor or creditors, or such creditor or creditors waive their right, then the court may appoint any suitable person to administer such estate.

Sec. 29. RCW 4.20.020 and 1985 c 139 s 1 are each amended to read as follows:

Every such action shall be for the benefit of the wife, husband, state registered domestic partner, child or children, including stepchildren, of the person whose death shall have been so caused. If there be no wife ((~~or~~)), husband, state registered domestic partner, or such child or children, such action may be maintained for the benefit of the parents, sisters, or brothers, who may be dependent upon the deceased person for support, and who are resident within the United States at the time of his death.

In every such action the jury may give such damages as, under all circumstances of the case, may to them seem just.

Sec. 30. RCW 4.20.060 and 1985 c 139 s 2 are each amended to read as follows:

No action for a personal injury to any person occasioning death shall abate, nor shall such right of action determine, by reason of such death, if such person has a surviving spouse, state registered domestic partner, or child living, including stepchildren, or leaving no surviving spouse, state registered domestic partner, or such children, if there is dependent upon the deceased for support and resident within the United States at the time of decedent's death, parents, sisters, or brothers; but such action may be prosecuted, or

commenced and prosecuted, by the executor or administrator of the deceased, in favor of such surviving spouse or state registered domestic partner, or in favor of the surviving spouse or state registered domestic partner and such children, or if no surviving spouse or state registered domestic partner, in favor of such child or children, or if no surviving spouse, state registered domestic partner, or such child or children, then in favor of the decedent's parents, sisters, or brothers who may be dependent upon such person for support, and resident in the United States at the time of decedent's death.

Sec. 31. RCW 11.94.010 and 2005 c 97 s 12 are each amended to read as follows:

(1) Whenever a principal designates another as his or her attorney in fact or agent, by a power of attorney in writing, and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney in fact or agent is exercisable on behalf of the principal as provided notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or the principal's guardian or heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. A principal may nominate, by a durable power of attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification. If a guardian thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the guardian rather than the principal.

The guardian has the same power the principal would have had if the principal were not disabled or incompetent, to revoke, suspend or terminate all or any part of the power of attorney or agency.

(2) Persons shall place reasonable reliance on any determination of disability or incompetence as provided in the instrument that specifies the time and the circumstances under which the power of attorney document becomes effective.

(3)(a) A principal may authorize his or her attorney-in-fact to provide informed consent for health care decisions on the principal's behalf. If a principal has appointed more than one agent with authority to make mental health treatment decisions in accordance with a directive under chapter 71.32 RCW, to the extent of any conflict, the most recently appointed agent shall be treated as the principal's agent for mental health treatment decisions unless provided otherwise in either appointment.

(b) Unless he or she is the spouse, <u>state registered domestic partner,</u> or adult child or brother or sister of the principal, none of the following persons may act as the attorney-in-fact for the principal: Any of the principal's physicians, the physicians' employees, or the owners, administrators, or employees of the health care facility or long-term care facility as defined in RCW 43.190.020 where the principal resides or receives care. Except when the principal has consented in a mental health advance directive executed under chapter 71.32 RCW to inpatient admission or electroconvulsive therapy, this authorization is subject to the same limitations as those that apply to a guardian under RCW 11.92.043(5) (a) through (c).

(4) A parent or guardian, by a properly executed power of attorney, may authorize an attorney in fact to make health care decisions on behalf of one or more of his or her children, or children for whom he or she is the legal guardian, who are under the age of majority as defined in RCW 26.28.015, to be effective if the child has no other parent or legal representative readily available and authorized to give such consent.

(5) A principal may further nominate a guardian or guardians of the person, or of the estate or both, of a minor child, whether born at the time of making the durable power of attorney or afterwards, to continue during the disability of the principal, during the minority of the

child or for any less time by including such a provision in his or her power of attorney.

(6) The authority of any guardian of the person of any minor child shall supersede the authority of a designated attorney in fact to make health care decisions for the minor only after such designated guardian has been appointed by the court.

(7) In the event a conflict between the provisions of a will nominating a testamentary guardian under the authority of RCW 11.88.080 and the nomination of a guardian under the authority of this statute, the most recent designation shall control.

NEW SECTION. **Sec. 32.** A new section is added to chapter 70.58 RCW to read as follows:

Information recorded on death certificates shall include domestic partnership status and the surviving partner's information to the same extent such information is recorded for marital status and the surviving spouse's information.

NEW SECTION. **Sec. 33.** Sections 1, 2, and 4 through 8 of this act constitute a new chapter in Title 26 RCW.

Passed by the Senate March 1, 2007.
Passed by the House April 10, 2007.
Approved by the Governor April 21, 2007.
Filed in Office of Secretary of State April 23, 2007.

APPENDIX H

CERTIFICATION OF ENROLLMENT

SECOND SUBSTITUTE HOUSE BILL 3104

Chapter 6, Laws of 2008

60th Legislature
2008 Regular Session

DOMESTIC PARTNERSHIPS--RIGHTS

EFFECTIVE DATE: 06/12/08 - Except section 1044, which becomes effective 01/01/09; and section 1047, which becomes effective 07/01/09.

Passed by the House February 15, 2008
Yeas 62 Nays 32

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 4, 2008
Yeas 29 Nays 20

BRAD OWEN

President of the Senate

Approved March 12, 2008, 2:16 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 3104** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 13, 2008

Secretary of State
State of Washington

SECOND SUBSTITUTE HOUSE BILL 3104

Passed Legislature - 2008 Regular Session

State of Washington 60th Legislature 2008 Regular Session

By House Finance (originally sponsored by Representatives Pedersen, Hankins, Moeller, Walsh, Linville, Takko, Upthegrove, Kessler, Jarrett, Ericks, Wallace, Grant, Eickmeyer, Quall, Clibborn, Dunshee, Lantz, Sullivan, Simpson, Blake, Hunter, Roberts, Rolfes, Williams, Sells, Schual-Berke, Springer, Eddy, Hunt, Hudgins, Santos, Cody, Seaquist, Fromhold, Nelson, McIntire, Chase, Hasegawa, Appleton, Darneille, Haigh, Sommers, Dickerson, Kirby, Wood, Flannigan, Conway, Goodman, Kenney, Kagi, Ormsby, Loomis, McCoy, Barlow, O'Brien, Pettigrew, Morris, Liias, and VanDeWege)

READ FIRST TIME 02/08/08.

AN ACT Relating to expanding rights and responsibilities of all couples recognized as domestic partners under chapter 26.60 RCW; amending RCW 42.17.241, 42.52.040, 43.03.305, 43.185A.010, 43.20B.080, 70.123.020, 70.129.140, 74.42.070, 4.22.020, 5.60.060, 5.66.010, 7.69.020, 7.69B.010, 26.50.010, 4.08.030, 4.08.040, 4.20.046, 28B.15.621, 73.08.005, 72.36.030, 72.36.040, 72.36.050, 72.36.070, 72.36.110, 73.04.120, 73.36.140, 73.04.010, 73.04.115, 26.16.010, 26.16.020, 26.16.030, 26.16.050, 26.16.060, 26.16.070, 26.16.080, 26.16.090, 26.16.095, 26.16.100, 26.16.120, 26.16.140, 26.16.150, 26.16.180, 26.16.190, 26.16.200, 26.16.205, 26.16.210, 26.16.220, 26.16.230, 26.16.240, 26.16.250, 11.84.030, 64.28.010, 64.28.020, 64.28.030, 64.28.040, 9.46.231, 9A.83.030, 69.50.505, 64.06.010, 6.13.020, 6.13.060, 6.13.080, 6.13.180, 6.13.210, 6.13.220, 6.13.230, 26.16.125, 60.04.211, 82.45.010, 84.38.030, 84.38.070, 84.38.130, 84.38.150, 84.36.381, 84.36.041, 84.36.120, 84.36.383, 84.37.080, 7.36.020, 11.88.010, 11.88.040, 11.88.090, 11.88.125, 11.76.080, 11.92.140, 11.94.090, 11.94.100, 11.94.140, 11.02.005, 11.02.070, 11.02.100, 11.02.120, 11.04.095, 11.08.300, 11.10.010, 11.11.010, 11.12.051, 11.12.095, 11.12.180, 11.28.030, 11.28.131, 11.28.185, 11.54.010, 11.54.020, 11.54.030, 11.54.040, 11.54.050, 11.54.070, 11.62.005, 11.62.010, 11.62.030, 11.68.011, 11.80.130, 11.96A.030,