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California Insurance Equality Act: Providing Equal Insurance Coverage to Domestic Partners

Meredith A. Felde

Code Sections Affected

Insurance Code § 381.5 (new), § 10121.7 (amended); Health and Safety Code § 1374.58 (amended).
SB 2208 (Kehoe); 2004 Stat. ch. 488.

I. INTRODUCTION

On September 19, 2003, Governor Gray Davis approved the California Domestic Partner Rights and Responsibilities Act of 2003.¹ This legislation requires that registered domestic partners² “have the same rights, protections, and benefits . . . as are granted to . . . spouses.”³ Prior to Chapter 488, certain provisions of the Health and Safety Code⁴ and the Insurance Code⁵ required that domestic partners receive insurance equal to dependents rather than spouses. Confusion in the law as to the definition of a “dependent”⁶ resulted in disparate treatment of domestic partners.⁷ Chapter 488 was introduced to eliminate this confusion and provide domestic partners with protection against discrimination as guaranteed under the Domestic Partners Rights and Responsibilities Act of 2003.⁸

II. LEGAL BACKGROUND

Under California law, registered domestic partners are “two adults who have chosen to share one another’s lives in an intimate and committed relationship.”⁹ The California Domestic Partner Rights and Responsibilities Act of 2003¹⁰ requires that registered domestic partners be provided the same rights,

1. 2003 Cal. Stat. ch. 421.

2. *See id.* (defining the elements of a domestic partnership as requiring that both parties file a Declaration of Domestic Partnership, both share a common residence, neither is married or a member of another domestic partnership, the parties are not related by blood, both are 18 or older, and either both are members of the same sex, or at least one is eligible for old-age benefits from Social Security).

3. CAL. FAM. CODE § 297.5 (West Supp. 2004).

4. CAL. HEALTH & SAFETY CODE § 1374.58(a) (West Supp. 2004).

5. CAL. INS. CODE § 10121.7(a) (West Supp. 2004).

6. *See infra* notes 33-35 and accompanying text.

7. *See infra* note 35 and accompanying text.

8. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2208, at 3 (Apr. 27, 2004).

9. CAL. FAM. CODE § 297(a) (West Supp. 2004).

10. 2003 Cal. Stat. ch. 421.

protections, and benefits as spouses and also be subject to the same responsibilities, obligations, and duties under law.¹¹

Prior law required group health care insurance plans and policies of group disability insurance to offer coverage for the domestic partner of an employee or insured to the same extent as coverage provided to a dependent.¹² The domestic partner was enrolled in the plan or policy as a dependent, subject to all the terms and conditions under the plan or policy, including coordination of benefits.¹³

Under prior law, a health care service plan or group health insurance policy could require an employee or insured to verify the domestic partnership and notify of a termination of the partnership.¹⁴ The Knox-Keene Health Care Service Plan Act of 1975¹⁵ specifies that a violation of Chapter 2.2 of the Health and Safety Code, upon conviction, is punishable by a fine of up to \$10,000, up to one year in prison, or both.¹⁶

III. CHAPTER 488

Chapter 488 requires that a group health care service plan provide coverage to a registered domestic partner equal to the coverage available to a spouse¹⁷ and extends the same requirement to all group health insurance policies.¹⁸ A plan or policy may not offer or provide coverage to a registered domestic partner that is not equal to the coverage provided to a spouse of an employee or insured.¹⁹ Under Chapter 488, a registered domestic partner must be enrolled in the plan or policy with the same terms and conditions that apply to spouses, including coordination of benefits.²⁰ Chapter 488 only permits verification of a domestic partnership or notification of termination of a domestic partnership if the plan or policy would also require the same verification from a married couple.²¹

11. *Id.* §297.5(a).

12. CAL. HEALTH & SAFETY CODE § 1374.58(a) (West Supp. 2004); CAL. INS. CODE § 10121.7(a) (West Supp. 2004).

13. CAL. HEALTH & SAFETY CODE § 1374.58(b) (West Supp. 2004); CAL. INS. CODE § 10121.7(b) (West Supp. 2004).

14. CAL. HEALTH & SAFETY CODE § 1374.58(d) (West Supp. 2004); CAL. INS. CODE § 10121.7(d) (West Supp. 2004).

15. CAL. HEALTH & SAFETY CODE § 1340 (West 2000). The Knox-Keene Health Care Services Plan Act was enacted in 1975 to regulate health care service plans in the State of California. *Id.* §§ 1340, 1342. California Health and Safety Code section 1374.58, as amended by Chapter 488, falls within the Knox-Keene Health Services Plan Act. *Id.* § 1340.

16. *See Id.* § 1390 (stating that a violation of section 1374.58 is punishable under section 1390.).

17. CAL. HEALTH & SAFETY CODE § 1374.58 (amended by Chapter 488).

18. CAL. INS. CODE § 10121.7 (amended by Chapter 488).

19. CAL. HEALTH & SAFETY CODE § 1374.58 (amended by Chapter 488); CAL. INS. CODE § 10121.7 (amended by Chapter 488).

20. CAL. HEALTH & SAFETY CODE § 1374.58 (amended by Chapter 488); CAL. INS. CODE § 10121.7 (amended by Chapter 488).

21. CAL. HEALTH & SAFETY CODE § 1374.58 (amended by Chapter 488); CAL. INS. CODE § 10121.7 (amended by Chapter 488).

In addition to health plans and policies, Chapter 488 mandates that every insurance policy provide coverage to a registered domestic partner equal to the coverage provided to spouses under the policy and subject to the same terms and conditions.²² The policy may not offer coverage to a registered domestic partner that is not equal to that provided to spouses.²³ This requirement applies to all forms of insurance regulated by the Insurance Code.²⁴

Any insurance policy issued, amended, delivered, or renewed on or after January 1, 2005, or a health plan or policy issued, amended, delivered, or renewed on or after January 2, 2005, is deemed to provide coverage to a registered domestic partner equal to the coverage provided to a spouse.²⁵ Chapter 488 is not intended to conflict with "differential treatment of domestic partners and spouses under federal law."²⁶

IV. ANALYSIS OF CHAPTER 488

Chapter 488 brings sections of the Insurance Code and the Health and Safety Code in line with the California Domestic Partners Rights and Responsibilities Act of 2003.²⁷ Chapter 488 requires a group health care service plan or group health insurance provider to provide coverage to a domestic partner equal to the coverage provided to a spouse²⁸ and extends this requirement to all insurance policies regulated by the Insurance Code.²⁹

The California Domestic Partners Rights and Responsibilities Act of 2003 requires that registered domestic partners be provided the same benefits as spouses,³⁰ including protection against discrimination. By specifically requiring group health plans and all insurance providers to provide coverage to registered domestic partners equal to that provided to spouses, Chapter 488 prevents insurance companies and providers from discriminating against registered domestic partners.³¹

22. CAL. INS. CODE § 381.5 (enacted by Chapter 488).

23. *Id.*

24. *Id.*; *see generally* CAL. INS. CODE Div. 2, Pt. 1 (addressing the following types of insurance: fire, marine, earthquake, health, life, worker's compensation, casualty, motor clubs, title, mortgage, disability, and home protection).

25. CAL. HEALTH & SAFETY CODE § 1374.58 (amended by Chapter 488); CAL. INS. CODE § 10121.7 (amended by Chapter 488); CAL. INS. CODE § 381.5 (enacted by Chapter 488).

26. CAL. INS. CODE § 381.5 (enacted by Chapter 488).

27. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2208, at 3 (Apr. 27, 2004).

28. CAL. HEALTH & SAFETY CODE § 1374.58 (amended by Chapter 488); CAL. INS. CODE § 10121.7 (amended by Chapter 488).

29. CAL. INS. CODE § 381.5 (enacted by Chapter 488); *See generally* CAL. INS. CODE Div. 2, Pt. 1 (addressing the following types of insurance: fire, marine, earthquake, health, life, worker's compensation, casualty, motor clubs, title, mortgage, disability, and home protection).

30. CAL. FAM. CODE § 297.5(a) (West Supp. 2004).

31. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2208, at 4 (Apr. 20, 2004).

Prior law required that domestic partners only be treated as dependents in the area of health insurance.³² However, the term “dependent” has no uniform definition in California law.³³ Without a uniform definition, confusion often resulted in the area of health insurance³⁴ and domestic partners were routinely denied benefits and coverage, or were forced to pay higher premiums.³⁵ As a result, domestic partners were forced to purchase insurance from other providers or go without certain types of coverage.³⁶ By replacing the term “dependent” with “spouse,” Chapter 488 “establishes a necessary and consistent standard of non-discrimination in insurance.”³⁷

Organizations opposing Chapter 488 believe the bill forces private businesses to pay the same health insurance costs for domestic partnerships as marriages,³⁸ that businesses in California “cannot afford to bear the costs associated with this bill,”³⁹ and that the bill “infringes upon the freedom and conscience of private businesses” both morally and financially.⁴⁰ These organizations argue that domestic partners are at greater risk of developing diseases and other health problems than are heterosexual couples,⁴¹ and private businesses will bear the burden of the resulting increase to healthcare costs.⁴²

32. CAL. HEALTH & SAFETY CODE § 1374.58(a) (West Supp. 2004); CAL. INS. CODE § 10121.7(a) (West Supp. 2004).

33. Compare CAL. LAB. CODE § 3503 (West 2003) (defining dependent as “a member of the family or household of the employee” including spouses, children, step-children, parents, and mothers and fathers in-law), with CAL. HEALTH & SAFETY CODE § 1357(a) (West 2000 & Supp. 2004) and CAL. INS. CODE § 10700(e) (West Supp. 2004) (defining dependent as “spouse or child” only).

34. Letter from Jennifer C. Pizer, Senior Staff Attorney, Lambda Legal Defense and Education Fund, to Assembly Member Christine Kehoe, California State Assembly (Mar. 29, 2004) (on file with *McGeorge Law Review*).

35. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 2208, at 4 (Apr. 20, 2004).

36. Letter from Steve Hansen, Legislative Advocate, Equality California, to Assembly Member Christine Kehoe, California State Assembly (Mar. 22, 2004) (on file with *McGeorge Law Review*).

37. Letter from John Garamendi, Insurance Commissioner, State of California, to Assembly Member Christine Kehoe, California State Assembly (Mar. 17, 2004) (on file with *McGeorge Law Review*).

38. Letter from Amy J. Koons, Legislative Liaison, Capitol Resource Institute, to Assembly Health Committee Members (Mar. 24, 2004) (on file with *McGeorge Law Review*).

39. *Id.* (emphasis in original).

40. Letter from Erik Hartstrom, Legislative Analyst, Campaign for California Families, to Members of the California State Assembly (May 19, 2004) (on file with *McGeorge Law Review*); see also Letter from Penny P. Harrington, Legislative Liaison, Concerned Women for America, to Assembly Member Judy Chu, California State Assembly (May 7, 2004) (on file with *McGeorge Law Review*) (arguing Chapter 488 creates a moral cost by disallowing businesses to create policies based on their moral and religious beliefs); Letter from Amy J. Koons, Legislative Liaison, Capitol Resource Institute, to Assembly Health Committee Members (Mar. 24, 2004) (on file with *McGeorge Law Review*) (stating “this bill is disrespectful and intolerant of those who believe that homosexuality is wrong”).

41. See Letter from Penny P. Harrington, Legislative Liaison, Concerned Women for America, to Assembly Member Judy Chu, California State Assembly (May 7, 2004) (on file with *McGeorge Law Review*) (suggesting homosexual couples are more likely than heterosexual couples to contract sexually transmitted diseases, as well as alcohol abuse, domestic violence, and mental illness).

42. Letter from Penny P. Harrington, Legislative Liaison, Concerned Women for America, to Assembly Member Judy Chu, California State Assembly (May 7, 2004) (on file with *McGeorge Law Review*); Letter from Amy J. Koons, Legislative Liaison, Capitol Resource Institute, to Assembly Health Committee Members (Mar. 24, 2004) (on file with *McGeorge Law Review*).

Supporters of Chapter 488 highlight the fact that employers are already required to treat registered domestic partners equal to spouses under the Domestic Partners Rights and Responsibilities Act of 2003.⁴³ Supporters also argue the financial burden on California businesses will be minimal.⁴⁴ Annually, California employers pay an average of \$3,163 per person for benefits.⁴⁵ Under Chapter 488, medium sized businesses (those with 100-499 employees) will likely have one or two new domestic partners apply for coverage, increasing costs \$3,163 to \$6,326 per year.⁴⁶ Employers with one thousand employees or more can expect an average of five new domestic partners to enroll for health benefits at an expected cost of \$15,815 per year.⁴⁷ Only 0.2% of California businesses have one thousand employees or more and those businesses likely already provided insurance to domestic partners before Chapter 488.⁴⁸

V. CONCLUSION

Under California law, domestic partners are guaranteed the same protection against discrimination as spouses.⁴⁹ Chapter 488 furthers these protections by requiring that registered domestic partners be treated as spouses for purposes of insurance coverage.⁵⁰ Prior to Chapter 488, domestic partners received unequal treatment in the area of insurance.⁵¹ Opponents of Chapter 488 fear the bill forces businesses to pay the same costs for domestic partners as married couples and that small businesses cannot bear this burden.⁵² Supporters respond that businesses are already required by law to treat domestic partners the same as spouses, and the resulting costs will be minimal.⁵³ By replacing the term "dependent" with the term "spouse," Chapter 488 minimizes confusion in the area of insurance⁵⁴ and prevents discrimination against domestic partners.⁵⁵

43. See Response to Conservative Group Concerns, Office of Assembly Member Christine Kehoe (on file with *McGeorge Law Review*) (explaining Family Code section 297.5 requires that domestic partners and spouses receive the same protection against discrimination based on relationship status).

44. See *id.* (hypothesizing that most small businesses will see no increase in expense, and that most large businesses already provide coverage to domestic partners).

45. Professor Brad Sears, Testimony on AB 2208, at 1 (May 12, 2004) (on file with *McGeorge Law Review*) (Professor Sears is the Executive Director for The Williams Project on Sexual Orientation Law and Public Policy at the University of California, Los Angeles School of Law).

46. *Id.*

47. *Id.* at 5.

48. Brad Sears and Lee Badgett, *Domestic-Partners Bill Won't be Burden to Business*, ORANGE COUNTY REG., Apr. 18, 2004, available at <http://www.law.ucla.edu/williamsproj/press/NoBurden.html>. (on file with the *McGeorge Law Review*).

49. See *supra* note 30 and accompanying text.

50. See *supra* note 31 and accompanying text.

51. See *supra* notes 34-35 and accompanying text.

52. See *supra* notes 38-42 and accompanying text.

53. See *supra* notes 43-48 and accompanying text.

54. See *supra* note 37 and accompanying text.

55. See *supra* note 31 and accompanying text.