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## The Civil Rights Act of 2005: Baby Steps for Civil Rights

Patricia L. Eichar

### Code Sections Affected

Civil Code §§ 51, 51.5, 51.7, 51.8, 53 (amended)  
AB 1400 (Laird); 2005 STAT. Ch. 420.

*“All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.”<sup>1</sup>*

### I. INTRODUCTION

Imagine joining a country club and bringing your spouse to golf with you, but the country club will not allow him or her access because you are married. Instead, you have to pay a fee to play, while unmarried members can bring a partner for free. Most Californians cannot imagine such discrimination. But what if the roles are reversed and, instead of bringing a spouse to a country club, you bring your same-sex registered domestic partner?

In 2001, B. Birgit Koebke and her registered domestic partner filed a complaint against Bernardo Heights Country Club because the club refused to grant spousal privileges.<sup>2</sup> Koebke claimed that the club violated her rights under the Unruh Act by discriminating against her based on sexual orientation, gender, and marital status.<sup>3</sup> The trial court granted the country club’s motion for summary judgment, holding that the discrimination was based on marital status, which the California Legislature did not prohibit.<sup>4</sup> The appellate court overruled in part, stating that there was a question of fact regarding disparate treatment based on sexual orientation, but affirmed that the Unruh Act did not cover discrimination based on marital status.<sup>5</sup> In 2005, the California Supreme Court held that, because Koebke and her partner were registered under the Domestic Partner Act, they were protected from arbitrary discrimination on the basis of marital status.<sup>6</sup> Four years after proceedings began, the California Supreme Court remanded the case

1. CAL. CONST. art. 1, § 1.

2. *Koebke v. Bernardo Heights Country Club (Koebke I)*, 116 Cal. App. 4th 791, 797, 10 Cal. Rptr. 3d 757, 761 (2004).

3. *Id.*

4. *Id.*

5. *Id.* at 811-12, 10 Cal. Rptr. 3d at 772-73.

6. *Koebke v. Bernardo Heights Country Club (Koebke II)*, 36 Cal. 4th 824, 846, 115 P.3d 1212, 1219 (2005).

to the trial level for further proceedings.<sup>7</sup> The Legislature enacted Chapter 420 to ameliorate such confusion over the interpretation of the Unruh Act and related provisions.<sup>8</sup>

## II. LEGAL BACKGROUND

### A. Federal Anti-Discrimination Law

The federal government has several anti-discrimination laws; however, these laws do not extend protections to homosexuals or to persons based on their marital status.<sup>9</sup> Federal laws prohibit discrimination in employment,<sup>10</sup> housing,<sup>11</sup> education,<sup>12</sup> voting,<sup>13</sup> and public accommodations,<sup>14</sup> or based on disability<sup>15</sup> or age.<sup>16</sup>

For example, Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on “race, color, religion, sex, or national origin.”<sup>17</sup> Federal courts have concluded that Title VII protection does not extend to discrimination based on sexual orientation because it is not specifically enumerated.<sup>18</sup> For the same reason, Title VII does not protect against discrimination based on marital status.<sup>19</sup>

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7. *Id.* at 854-55, 115 P.3d at 1230.

8. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 1400, at A (March 29, 2004).

9. *See infra* notes 17-27 and accompanying text (addressing the individual anti-discrimination laws).

10. *See* 42 U.S.C.A. § 2000e-2(a)(1) (West 2003) (“It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin.”).

11. *See id.* § 3601 (prohibiting discrimination in the sale or rental of housing against persons based on “race, color, religion, sex, familial status, or national origin”).

12. *See id.* § 2000d (prohibiting exclusion, denial of benefits, or discrimination for programs receiving federal funding on the basis of “race, color, or national origin”); 20 U.S.C.A. § 1681(a) (West 2000) (prohibiting discrimination based on sex in “any education program or activity receiving Federal financial assistance”).

13. *See* 42 U.S.C.A. § 1973(a) (West 2003) (proscribing denial of voting rights based on “race or color”).

14. *See id.* § 2000a (prohibiting segregation and discrimination in places such as inns, restaurants, and theaters on the basis of “race, color, religion, or national origin”).

15. *See id.* § 12112 (West 1995) (prohibiting employment discrimination based on disability against persons who are otherwise capable); 20 U.S.C.A. § 1412 (West 2000) (conditioning federal funding on compliance with a state’s plan to implement educational services for all disabled individuals).

16. 29 U.S.C.A. § 621 (West 1999) (proscribing employment discrimination respecting “compensation, terms, conditions, or privileges of employment” based on age).

17. 42 U.S.C.A. § 2000e-2 (West 2003).

18. *See, e.g.,* Hopkins v. Baltimore Gas & Electric Co., 77 F.3d 745, 750-52 (4th Cir. 1996) (holding that sexual orientation is not protected under Title VII); Williamson v. A.G. Edwards and Sons, Inc., 876 F.2d 69, 70 (8th Cir. 1989) (holding that Title VII does not prohibit discrimination based on sexual orientation); DeSantis v. Pacific Tel. & Tel. Co., 608 F.2d 327, 332 (9th Cir. 1979) (holding that “sex” in Title VII refers to gender and not sexual orientation).

19. *See, e.g.,* Coleman v. B-G Maint. Mgmt of Colo., Inc., 108 F.3d 1199, 1204 (10th Cir. 1997)

Title IX of the Education Amendments of 1972 prohibits discrimination in schools based on sex.<sup>20</sup> No courts have held that Title IX protection extends to discrimination based on sexual orientation.<sup>21</sup> Similarly, the Equal Pay Act prohibits discrimination in wages to employees based on sex,<sup>22</sup> but does not extend to marital status.<sup>23</sup> The Equal Credit Opportunity Act prohibits any creditor from discriminating against applicants based on “race, color, religion, national origin, sex or marital status, or age.”<sup>24</sup> Although the Act explicitly covers marital status, it does not apply to discrimination based on sexual orientation.<sup>25</sup> Title II of the Civil Rights Act of 1964 prohibits discrimination in places of public accommodation, but the scope is limited<sup>26</sup> to those classes enumerated in the statute: “race, color, religion, or national origin.”<sup>27</sup> The common thread among all federal civil rights statutes is that a class of persons is not protected unless specifically named by the statute.

## B. California Anti-Discrimination Law

### 1. Civil Rights Statutes

The California Legislature enacted the Unruh Act in 1905 to ensure that business establishments provide equal treatment to all persons in California.<sup>28</sup> Currently, the Act entitles all persons to all “accommodations, advantages, facilities, privileges, or services” of business establishments.<sup>29</sup> Prior to Chapter 420, the Unruh Act explicitly provided protection against discrimination based on “sex, color, race, religion, ancestry, national origin, disability, or medical

(holding that marital status is not protected under Title VII); *Fisher v. Vassar Coll.*, 70 F.3d 1420, 1447 (2nd Cir. 1995) (holding that discrimination based on marital status is insufficient to create a cause of action under Title VII absent gender-based discrimination).

20. See 20 U.S.C.A. § 1681 (West 2000) (“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal assistance.”).

21. *But see Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996) (holding that failure to respond to a homosexual male student’s complaints of harassment fell under Title IX where the school allegedly responded to female student’s complaints, construing the complaint as one of discrimination based on gender and not based on sexual orientation).

22. 29 U.S.C.A. § 206(d) (West 1998).

23. *Willett v. Emory & Henry Coll.*, 569 F.2d 212, 213 (4th Cir. 1978).

24. 15 U.S.C.A. § 1691 (West 1998).

25. See *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213, 215 (1st Cir. 2000) (holding that a bank’s refusal to give a credit application to a man dressed in women’s clothes, based on the belief that the man was homosexual, was insufficient to create a cause of action under the Equal Credit Opportunity Act).

26. See, e.g., *Seidenberg v. McSorleys’ Old Ale House, Inc.*, 308 F. Supp. 1253, 1255 (S.D.N.Y. 1969) (holding that Title II does not provide protection from discrimination based on sex).

27. 42 U.S.C.A. § 2000a (West 2003).

28. CAL. CIV. CODE § 51(b) (West 2000 & Supp. 2005).

29. *Id.* § 51(b) (West 2000).

condition.”<sup>30</sup> Furthermore, franchisors could not grant or refuse franchises solely on the basis of race, color, religion, sex, national origin, or disability.<sup>31</sup>

California also has civil rights statutes related to the Unruh Act.<sup>32</sup> The Civil Rights Amendments of 1999<sup>33</sup> prohibit discrimination in business, including boycotting and refusing to do business, based on a person’s actual or perceived characteristics related to “race, creed, religion, color, national origin, sex, disability, or medical condition.”<sup>34</sup> The Ralph Civil Rights Act of 1976 declares that individuals have a right to be free from violence or threats of violence based on race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, position in a labor dispute, or perceived characteristics of those classes.<sup>35</sup>

The Attorney General, a district or city attorney, or the victim of discrimination may bring a civil action for violations of the Unruh Act and the Civil Rights Amendments of 1999.<sup>36</sup> A business establishment or franchise that is found guilty of discrimination is liable to the person discriminated against in the amount of the actual damage, with a minimum award of \$4,000.<sup>37</sup> The Attorney General or a district or city attorney may intervene on behalf of the State of California in any such action if the action seeks relief for denial of equal protection under the Fourteenth Amendment.<sup>38</sup>

California Legislation also provides a cause of action against violators of the Ralph Act.<sup>39</sup> The victim, the Attorney General, a city, or district attorney may bring an action for a violation of the Ralph Act.<sup>40</sup> A jury may determine the actual and exemplary damage award for the victim.<sup>41</sup> Further, the statute allows for a civil penalty of \$25,000 for each violation<sup>42</sup> and permits recovery of attorneys’ fees.<sup>43</sup>

Prior to enactment of Chapter 420, other provisions related to the Unruh Act prohibited transfers of property limited by “sex, race, color, religion, ancestry, national origin, [or] disability.”<sup>44</sup> The law voided provisions in a conveyance that

30. *Id.* § 51(b) (West 2000 & Supp. 2005).

31. *Id.* § 51.8.

32. *See id.* §§ 51.2-51.8 (covering age discrimination, blacklisting and boycotting, and gender discrimination).

33. *Id.* § 51.5 (West 2000).

34. *Id.* § 51.5(a) (West 2000 & Supp. 2005).

35. *Id.* § 51.7 (West 2000).

36. *Id.* § 52(c).

37. *Id.* § 52(a).

38. *Id.* § 52(d).

39. *Id.* § 52(b).

40. *Id.* § 52(c).

41. *Id.* § 52(b), 52(b)(1).

42. *Id.* § 52(b)(2).

43. *Id.* § 52(b)(3).

44. *Id.* §§ 51(b), 53.

restricted a future conveyance, encumbrance, lease, or mortgage,<sup>45</sup> as well as any real covenant restricting use, occupation, or transfer of title based on those classes.<sup>46</sup>

## 2. Judicial Interpretation

California courts have had ample opportunity to determine the breadth of the Unruh Act and related provisions.<sup>47</sup> In 1970 the California Supreme Court held that the enumerated list in the Unruh Act is “illustrative rather than restrictive” of the prohibited discrimination.<sup>48</sup> Since that decision, California courts have prohibited discrimination based on sexual orientation<sup>49</sup> and marital status.<sup>50</sup> In 1991, the defendants in *Harris v. Capital Growth Investors*, a case brought under the Unruh Act, requested that the California Supreme Court limit the scope of the Unruh Act to the enumerated classes.<sup>51</sup> The court in *Harris* held that the Unruh Act’s scope was sufficiently broad to cover more than the enumerated classes, so long as the discrimination is based on “personal characteristics,” including sexual orientation but not financial status.<sup>52</sup> However, some lower courts have held that the scope does not cover marital status.<sup>53</sup> In August of 2005, the California Supreme Court held that the Unruh Act protects those registered under the Domestic Partner Act<sup>54</sup> from arbitrary discrimination on the basis of marital

45. *Id.* § 53(a).

46. *Id.* § 53(b).

47. *See, e.g., In re Cox*, 3 Cal. 3d 205, 474 P.2d 992 (1970) (stating that the Unruh Act protects against all arbitrary discrimination); *Rolon v. Kulwitzky*, 153 Cal. App. 3d 289, 200 Cal. Rptr. 217 (1984) (holding that homosexuals are protected under Unruh Act); *Hubert v. Williams*, 133 Cal. App. 3d Supp. 1, 184 Cal. Rptr. 161 (Cal. App. Dep’t Super. Ct. 1982) (absent a compelling societal interest, Unruh Act prohibits arbitrary discrimination against all individuals).

48. *Cox*, 3 Cal. 3d at 212, 474 P.2d at 995.

49. *See Rolon*, 153 Cal. App. 3d at 292, 200 Cal. Rptr. at 218-19 (holding that discrimination against homosexuals violates the Unruh Act); *Hubert*, 133 Cal. App. 3d Supp. at 5, 184 Cal. Rptr. at 163 (holding that the Unruh Act protects homosexuals from arbitrary discrimination).

50. *See Marina Point, Ltd. v. Wolfson*, 30 Cal. 3d 721, 736, 640 P.2d 115, 124 (1982) (recognizing that the protections afforded under the Unruh Act are not reserved for the enumerated classes and include marital status, occupation, and students).

51. 52 Cal. 3d 1142, 1154, 805 P.2d 873, 878 (1991).

52. *Id.* at 1160-1161, 805 P.2d at 883; *see also Stoumen v. Reilly*, 37 Cal. 2d 713, 715-716, 234 P.2d 969, 970-971 (1951) (holding that a patron may not be arbitrarily refused service because of sexual orientation).

53. *See Koebke v. Bernardo Heights Country Club (Koebke I)*, 116 Cal. App. 4th 791, 10 Cal. Rptr. 3d 757 (2004) (holding that the refusal to afford the same country club membership benefits of married couples to lesbian registered domestic partners did not violate the Unruh Act because the discrimination was based on marital status); *Beaty v. Truck Ins. Exch.*, 6 Cal. App. 4th 1455, 8 Cal. Rptr. 2d 593 (1992) (holding that discrimination against a homosexual couple was based on marital status and therefore did not violate the Unruh Act); *see also Smith v. Fair Emp. & Hous. Comm’n*, 12 Cal. 4th 1143, 1160, 913 P.2d 909, 918 (1996) (refusing to extend the definition of the Unruh Act).

54. CAL. FAM. CODE §§ 297-97.5 (West 2004 & Supp. 2005).

status.<sup>55</sup> Assembly Member John Laird introduced AB 1400, enacted as Chapter 420, to clarify the scope of the Unruh Act.<sup>56</sup>

### III. CHAPTER 420

Chapter 420, titled “The Civil Rights Act of 2005,” amends the Unruh Act and related provisions to extend anti-discrimination laws to explicitly protect persons based on marital status and sexual orientation.<sup>57</sup> Under Chapter 420, California recognizes that all persons are equal regardless of “sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation.”<sup>58</sup> Chapter 420 further defines “sex” to include gender identity.<sup>59</sup> In passing Chapter 420, the Legislature expressly states their intent that the classes listed in the Unruh Act and related provisions be illustrative rather than restrictive, allowing for expansion where necessary.<sup>60</sup>

### IV. ANALYSIS OF CHAPTER 420

#### A. *The Practical Effects of Chapter 420*

The author of Chapter 420 claims that it simply codifies existing case law interpreting the Unruh Act.<sup>61</sup> The author argues that businesses and courts assume that the bases of discrimination not listed in the statute are not protected classes.<sup>62</sup> One proponent, Lambda Legal Defense and Education Fund, Inc., has received many calls from persons having difficulty enforcing the Unruh Act’s prohibition of discrimination based on sexual orientation because it is not explicitly stated in the statute.<sup>63</sup> The Lambda Help Desk reported fifty complaints of discrimination in public accommodations based on sexual orientation, marital status, HIV status, or gender identity between January 2004 and June 2005.<sup>64</sup> Lambda emphasizes that those numbers are based only on those persons who know of Lambda Legal and who were motivated to contact the group.<sup>65</sup> By clarifying the Unruh Act,

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55. *Koebke v. Bernardo Heights Country Club (Koebke II)*, 36 Cal. 4th 824, 846, 115 P.3d 1212, 1219 (2005).

56. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 1400, at D (March 29, 2004).

57. *Id.* at A.

58. CAL. CIV. CODE § 51(b) (amended by Chapter 420).

59. *Id.* § 51(e)(4).

60. 2005 Cal. Stat. ch. 420 § 2(c).

61. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 1400, at 5-6 (June 17, 2005).

62. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 1400, at D (March 29, 2004).

63. See Letter from Jennifer C. Pizer, Senior Couns., Lambda Legal Def. & Educ. Fund, Inc., to Senator Joseph Dunn, Cal. State Senate (June 9, 2005) (on file with the *McGeorge Law Review*) (stating that its Help Desk telephone counseling line has received many calls because of business owners denying responsibility and the need to brief superior court judges on the scope of the Unruh Act).

64. *Id.*

65. See *id.* (“[I]t is impossible to know the full scope of the harassment and exclusion that persists

supporters hope to avoid unnecessary litigation based on the erroneous assumption that sexual orientation, gender identity, and marital status are not protected classes.<sup>66</sup>

Some Chapter 420 supporters believe that Chapter 420 will affirm equality for everyone.<sup>67</sup> One Chapter 420 supporter, the Stonewall Young Democrats, argues, “the Act continues a crucial moral dialogue in our State about the meaning and realization of full equality for all persons.”<sup>68</sup>

On the other hand, opponents of Chapter 420 argue that the new law creates “special rights” solely based on a person’s sexual behavior.<sup>69</sup> Opponents believe that protecting persons based on sexual orientation and marital status will undermine the importance of marriage and will condone immorality.<sup>70</sup> However, California courts already recognize that the Unruh Act and related provisions protect persons from discrimination on the basis of sexual orientation. Therefore, this argument contradicts not only Chapter 420, but also California’s longstanding tradition<sup>71</sup> of protecting homosexuals as a class.<sup>72</sup>

### B. Effect on California Case Law

Chapter 420 also implicates the California decisions in *Harris v. Capital Growth Investors*<sup>73</sup> and *Koebke v. Bernardo Heights Country Club*.<sup>74</sup> In *Harris*, the California Supreme Court established three criteria for courts to use in determining whether a member of a particular class may bring a claim under the Unruh Act: 1) discrimination based on a personal characteristic similar to the

despite California’s longstanding and sincere commitment to making this state a place in which everyone is treated equally, without arbitrary discrimination, by commercial enterprises.”).

66. Equality California, AB 1400 Fact Sheet, May 23, 2005, available at <http://www.eqca.org> (follow “Legislative Center: 2005 Legislation” hyperlink, then follow “AB 1400 – Civil Rights Act of 2005” hyperlink, then follow “AB 1400 Factsheet” hyperlink) (on file with the *McGeorge Law Review*).

67. See, e.g., Letter from Howard Jacobs, Dir. of Pub. Aff. & Gov’t Rel., Gay & Lesbian Adolescent Social Servs., Inc., to Assembly Member Dave Jones, Cal. State Assembly (Apr. 11, 2005) (on file with the *McGeorge Law Review*) (arguing that Chapter 420 will help legitimize homosexual children in foster care).

68. Letter from John M. Cleary, President, Stonewall Young Democrats, to Assembly Member John Laird, Cal. State Assembly (Mar. 25, 2005) (on file with the *McGeorge Law Review*).

69. Letter from Penny P. Harrington, Legis. Liaison, Concerned Women for Am., to Assembly Member Dave Jones, Cal. State Assembly (Mar. 28, 2005) (on file with the *McGeorge Law Review*).

70. See *id.* (arguing that adding “sexual orientation” to the Unruh Act and related provisions actually discriminates against persons with “traditional views of morality”); Letter from Amy J. Koons, Legis. Liaison, Cap. Res. Inst., to Assembly Judiciary Comm. (Mar. 21, 2005) (on file with the *McGeorge Law Review*) (arguing that the bill specifically targets “persons of faith”).

71. See *supra* notes 47-56 and accompanying text (discussing previous California court decisions regarding the Unruh Act).

72. See, e.g., Fair Employment and Housing Act, CAL. GOV’T CODE § 12900-06 (West 2005) (declaring public policy against discrimination in housing and employment based on “race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation”).

73. 52 Cal. 3d 1142, 805 P.2d 873 (1991).

74. *Koebke v. Bernardo Heights Country Club* (*Koebke I*), 116 Cal. App. 4th 791, 10 Cal. Rptr. 3d 757 (2004).

Unruh enumerated classes, 2) existence of a legitimate business interest justifying limitations, and 3) the consequences of allowing claims regarding the alleged basis of discrimination.<sup>75</sup> The appellate court in *Koebke* concluded that marital status did not fit within the three criteria from *Harris* for establishing a cause of action under Unruh.<sup>76</sup> In determining whether marital status was similar to enumerated classes in the Unruh Act, the court relied on an earlier California Court of Appeals decision that determined “expanding Unruh to include ‘marital status’ discrimination would be contrary to the ‘strong policy in this state in favor of marriage.’”<sup>77</sup>

However, the author of Chapter 420 argues that marital status meets each of the criteria.<sup>78</sup> In the author’s opinion, marital status is a characteristic protected from discrimination under a number of other California statutes.<sup>79</sup> The author further argues that no legitimate business interest justifies refusing benefits to a couple simply because they are not married to one another.<sup>80</sup> The author believes that no adverse consequences will result from prohibiting businesses from discriminating based on marital status.<sup>81</sup>

## V. CONCLUSION

Chapter 420, the California Civil Rights Act of 2005, does not seem to do much; it simply codifies existing law.<sup>82</sup> However, businesses and private individuals inquiring into the state of the law in California will be better able to understand the breadth of the Unruh Act and related provisions.

Nevertheless, the California Civil Rights Act of 2005 may encounter some problems. Prior to Chapter 420, a number of California cases held that marital status is not protected under the Unruh Act or related provisions.<sup>83</sup> In a majority of those cases, the plaintiffs were same-sex domestic partners.<sup>84</sup> Some question whether the Civil Rights Act of 2005 simply makes an attempt to move toward

75. *Harris*, 52 Cal. 3d at 1159-69, 805 P.2d at 882-89.

76. *Koebke I*, 116 Cal. App. 4th at 796, 10 Cal. Rptr. 3d at 760.

77. *Id.* at 810, 10 Cal. Rptr. 3d at 772 (quoting *Beaty v. Truck Ins. Exch.*, 6 Cal. App. 4th 1455, 8 Cal. Rptr. 2d 593 (1992)).

78. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF AB 1400, at E-F (March 29, 2004).

79. *Id.* at E.

80. *See id.* at E-F (providing an example from *Smith v. Fair Employment & Hous. Comm’n*, 12 Cal. 4th 1143, 1160, 913 P.2d 909, 918 (1996), of discrimination found unjustified in the context of fair housing where a landlord refused to rent to a couple because they were not married to each other).

81. *Id.* at F.

82. *Id.* at B-C.

83. *See, e.g., Koebke v. Bernardo Heights Country Club (Koebke I)*, 116 Cal. App. 4th 791, 10 Cal. Rptr. 3d 757 (2004); *Beaty v. Truck Ins. Exch.*, 6 Cal. App. 4th 1455, 8 Cal. Rptr. 2d 593 (1992); *Smith*, 12 Cal. 4th at 1160, 913 P.2d at 918.

84. *See, e.g., Koebke I*, 116 Cal. App. 4th at 791, 10 Cal. Rptr. 3d at 757; *Beaty*, 6 Cal. App. 4th at 1455, 8 Cal. Rptr. 2d at 593; *Smith*, 12 Cal. 4th at 1160, 913 P.2d at 918.

elimination of judicial and governmental discrimination of homosexuals in the guise of marital status discrimination.<sup>85</sup> Even so, will the decision to add marital status to the Unruh Act and related provisions force businesses to offer marital discounts to any two persons who request them, regardless of commitment to one another? Although supporters of Chapter 420 focus on marital status as related to sexual orientation, the new law may reach more broadly.

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85. See, e.g., *Koebke I*, 116 Cal. App. 4th at 811-12, 10 Cal. Rptr. 3d at 772 (“In the final analysis, plaintiffs’ real quarrel is with the California Legislature if they wish to legitimize the status of a homosexual partner. Plaintiffs may achieve the reform they seek here only by attacking [the law that] defines marriage to be a civil contract ‘between a man and a woman,’” quoting *Beary*, 6 Cal. App. 4th 1455, 8 Cal. Rptr. 2d 593.).