**Franchise Tax Board**

# ANALYSIS OF ORIGINAL BILL

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| Author: | Migden | Analyst: | William Koch | Bill Number: | SB 1066 |
| Related Bills: | See Legislative History | Telephone: | 845-4372 | Introduced Date: | January 10, 2008 |
| | | Attorney: | Patrick Kusiak | Sponsor: | |

**SUBJECT**: Domestic Partnerships

## SUMMARY

This bill would broaden eligibility for registered domestic partnerships to include all opposite-sex partners.

## PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill is to provide equality for modern-day families that choose not to marry.

## EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative on January 1, 2009.

## POSITION

Pending.

## ANALYSIS

<u>FEDERAL/STATE LAW</u>

Under current state law, the Family Code permits the establishment of Registered Domestic Partnerships (RDPs). California law grants RDPs the same rights, such as community property rights, and obligations that are granted to and imposed upon spouses in a civil marriage.

To qualify to register, at the time of filing a Declaration of Domestic Partnership with the Secretary of State, the two persons must:

- Have a common residence;
- Not be married to someone else or in a domestic partnership with someone else;
- Not be related by blood in a way that would prevent them from being married;
- Be at least 18 years old;
- Be of the same sex or one or both are over 62 years old and meet the eligibility requirements for old age benefits under the Social Security Act; and
- Be capable of consenting to a domestic partnership.

| Board Position: | | | Department Director | Date |
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Effective for taxable years beginning in 2007, RDPs are required to file a California personal income tax return jointly or separately by applying the standards applicable to married couples under federal income tax law. (SB 1827, Migden, Stats. 2006, Ch. 802)

The exceptions to RDPs being treated as spouses for California purposes are as follows:

1. Where treatment would result in a different classification of a business entity for California purposes from federal purposes,
2. Where treatment would result in the disqualification of a federally qualified deferred compensation plan under the rules established by the Internal Revenue Service, and
3. Where treatment would result in the creation of a California only tax-favored account that would not be qualified for federal income tax purposes.

Pursuant to the federal Defense of Marriage Act, members of a same-sex marriage or civil union are not recognized as spouses for federal purposes. For federal income tax purposes, each individual in a same-sex marriage or civil union, such as an RDP, may use only the filing status of single or head-of-household, as applicable.

## THIS BILL

This bill would amend the Family Code to eliminate the requirement that to become an RDP the persons must either be of the same-sex or be over 62 years of age and meet the eligibility requirements for old age benefits under the Social Security Act. This change would allow opposite-sex couples, where each individual is at least 18 years old and meets the other requirements discussed previously, to file a Declaration of Domestic Partnership with the Secretary of State beginning January 1, 2009. In addition, this bill would make a conforming change to a related provision of the Family Code.

## IMPLEMENTATION CONSIDERATIONS

Federal law does not recognize members of a same-sex marriage or civil union as spouses for federal income tax purposes. It is unclear whether members of opposite-sex California RDPs would be recognized as spouses for purposes of reporting federal income taxes.

RDPs have a different filing status for their federal income tax returns than for their California income tax returns. Preparation of tax returns is more complicated for RDPs because they must prepare their federal return one way for the federal government and prepare a pro forma federal return as married filing jointly to begin preparing their California return. This issue arises because RDPs are not recognized as spouses for purposes of federal law, but are for California income tax purposes. Assuming opposite-sex RDPs are not treated as spouses for purposes of reporting federal income tax, to the extent more couples register as domestic partners because of this bill, the number of taxpayers impacted by the tax preparation issue would increase accordingly.

**LEGISLATIVE HISTORY**

SB 11 (Migden, 2007/2008) was nearly identical to this bill. SB 11 failed to pass out of the Assembly Appropriations Committee by the constitutional deadline.

SB 105 (Migden, Stats. 2007, Ch. 426) revised the rules with respect to how RDPs calculate their joint federal adjusted gross income to complete their California tax returns.

SB 1827 (Migden, Stats. 2006, Ch. 802) requires RDPs to file personal income tax returns using the same rules applicable to married couples. In addition, this bill eliminated a provision that made a distinction between earned and unearned income of an RDP for purposes of applying community property rules for state income tax purposes.

AB 205 (Goldberg, Stats. 2003, Ch. 421) gave RDPs the same rights, such as community property rights, and obligations that are granted to and imposed upon spouses in a civil marriage, with some exceptions. It also added language that required the same filing status on a state income tax return as used on the federal income tax return and provided that earned income is not community property for state income tax purposes.

AB 25 (Migden, Stats. 2001, Ch. 893) allowed several existing taxpayer benefits for medical expenses and health insurance benefits to be made available to a taxpayer’s domestic partner as the taxpayer’s spouse.

AB 26 (Migden, Stats. 1999, Ch. 588) allowed the establishment of domestic partnerships for couples meeting specified conditions.

**OTHER STATES’ INFORMATION**

*New Jersey* limits domestic partnerships to same-sex couples or opposite-sex couples; in either instance both people must be at least 62 years old. In addition to domestic partnerships, *New Jersey* permits civil unions for same-sex couples only. *Washington* limits domestic partnerships to same-sex couples or opposite-sex couples where at least one person is at least 62 years old. *Vermont*, *Connecticut*, *Hawaii and Oregon* permit civil unions or domestic partnerships for same-sex couples only. *Maine* permits domestic partnerships regardless of gender. No other states permit civil unions or domestic partnerships.

**FISCAL IMPACT**

Department staff anticipates, should this bill become law, an increase in customer service contacts from taxpayers seeking clarification of tax return filing requirements. Staff also anticipates additional manual processing or review of returns as a result of tax preparation errors due to the differences in filing status between federal and state income tax returns. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

**ECONOMIC IMPACT**

Revenue Estimate

Based on data and assumptions discussed below, the PIT revenue loss from this bill would be as follows:

| Estimated Revenue Impact of SB 1066<br>Effective On Or After January 1, 2009<br>Enactment Assumed After June 30, 2008<br>($ in Millions) | | | |
|---|---|---|---|
| Registered | 2009-10 | 2010-11 | 2011-12 |
| Domestic Partners | -$3 | -$5 | -$6 |

This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

The revenue impact of this bill is dependent upon the number of opposite sex couples who would choose to register as domestic partners, and would thus be required to file an income tax return as RDP filing jointly. This estimate is lower than SB 11, as introduced December 4, 2006. In this analysis, it is assumed that 5% of the unmarried opposite-sex co-habitators who remain unmarried after 5 years would register as domestic partners.

The current number (as of March 12, 2008) of RDPs is 48,600, according to the California Secretary of State. Census 2000 information was used to estimate the population who would be affected by this bill. California has over 90,000 same-sex partner households. The tax liability change of these partners was approximated by using a sample of Census 2000 data records with reported incomes for each partner. Households with tax reductions made up 59% of the total households. Households with tax increases made up 12% of the total. The remainder (29%) had little or no tax change. The average tax reduction was -$473 and the average tax increase was $755.

Census 2000 counted 4.9 million different-sex unmarried partner households in the United States. The California population represents 12% of the U.S. total. Assuming California has 12% of different-sex unmarried partner households, there would be 588,000 such households (4.9 million x 12%). A 2000 study in the Annual Review of Sociology shows that 10% of different-sex unmarried partners remain in an unmarried relationship for 5 years or longer. The 10% figure was reduced to 5% to estimate the number of different sex partners who may register as Domestic Partners. (588,000 x 5% = 29,400.) It was also assumed that Seniors receiving Social Security would make up 10% of the current population of RDPs, further reducing the projected population to 26,460 (29,400 reduced by 10% equals 26,460).

The 2000 figure of 26,460 households was grown out to 2009 using the state population growth rate to arrive at an estimated 30,224 households that could be affected by this bill. The average tax reduction ($473), tax increase ($755), and household percentages (59% and 12%) for same-sex partners (see above) were applied to the 2009 projected numbers of RDPs. The revenue loss for 2009 was calculated as follows:

30,224 x 59% (% with tax reduction) x $473 (ave. tax reduction) = -$8.5 million
30,224 x 12% (% with tax increase) x $755 (ave. tax increase) = $2.7 million
= -$5.8 million

Under this bill, a three-year implementation period is assumed. That is, in the first year, half the eligible population would register; in the second year, up to 70%; in the third year, up to 90%. Applying these implementation percentages reduces the estimated impact to -$3 million in 2009, and -$4 million in 2010. The revenue losses were converted to fiscal years for the Tax Revenue Estimate table above. The 2009-10 fiscal year includes half of 2009 and half of 2010 for a total revenue loss of -$3 million.

**LEGISLATIVE STAFF CONTACT**


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