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Though They Can't Wed, Gays May Now Divorce

- Law expanding rights and responsibilities for state's domestic partners takes effect today.

By Lee Romney, Times Staff Writer

SAN FRANCISCO — Gays and lesbians still can't marry in California. But starting today, the more than 26,000 couples registered with the state as domestic partners will have to divorce if they split up.

If they have children, they will automatically receive a wide array of parental rights. Community property suddenly applies, just as for married spouses.

The changes are part of a law, put on the books by the Legislature and former Gov. Gray Davis in September 2003 but going into effect only now, that greatly expands California's 5-year-old experiment with domestic partnerships.

The law's supporters and opponents agree that it makes domestic partnership in California equivalent to marriage in almost all but name.

That puts the state once again at the forefront of the legal battles over gay unions. Same-sex couples affected by the law vastly outnumber those covered by Vermont's system of civil unions or those who have wed in Massachusetts, the only state that allows gay marriages.

In sickness and in health, in separation and in death, California's registered domestic partners now share hundreds of state rights and responsibilities formerly granted only to married spouses:

To split, partners must legally divorce. Alimony could be ordered by a court. All assets acquired during the partnership are carved down the middle. Debts are shared too. Both partners automatically receive the legal protections of parents along with the right to custody and the duty to pay child support. "California is way ahead of the curve," said Aimee Gelnaw, executive director for the Washington-based Family Pride Coalition, which promotes the interests of gay families.

"The result of this in terms of national impact is that people will see that no one is hurt — that it's in the best interest of all of us that parents and children and families are protected."

Conservative organizations agree with her about the law's sweep, but not about its desirability. Robert Tyler, an attorney for the Alliance Defense Fund, a Christian legal group, calls it a "counterfeit marriage statute." His group sued to block the law. It has lost so far but has an appeal pending.

"It is really marriage, in that it provides all of the rights and benefits that the state can grant that have always been preserved for the marital union," he said. That, he said, is a "backdoor attempt by a radical Legislature that is willing to disregard the will of the people in order to promote the desire of a few."

To Olivia Higgins, 30, and Jackie Kiang, 35, the law has practical consequences. It means that Higgins can place the baby Kiang is expecting in a few weeks on her health insurance at work, even though she is not the birth mother.

When Kiang, a physician, has the baby, Higgins' name will go on the birth certificate as the second parent, although the state has yet to print gender-neutral forms. The couple's recently purchased home in Oakland, their incomes and pensions are shared in the eyes of the law. Kiang's more than \$200,000 in medical school debt probably is too, although the legal status of student loan debts remains uncertain.

The law can't confer any federal benefits or obligations; not even Massachusetts' gay marriages have done that. Neither does California's law permit couples to file state income tax jointly. But it does provide that registered domestic partners receive "the same [state] rights, protections and benefits and shall be subject to the same responsibilities, obligations and duties" as married spouses.

All that is more than some couples bargained for when they registered their partnerships. In recent months, the number of couples getting off the state's registry has increased.

Oakland attorney Frederick Hertz and his partner decided to terminate their registered partnership in November. Both are professionals with their own health insurance and other benefits, and they have worked out their financial relationship through other legal agreements. They have no children. The possibility of unforeseen tax consequences from the new law motivated their decision, said Hertz, the coauthor of a legal guide for gay men and lesbians who has been advising clients on the new law.

There are other reasons why remaining registered may no longer make sense, legal experts said.

Many state benefit programs — MediCal, for example — are available only to people with low incomes. Until now, if someone on the registry applied, the state could not consider the partner's income. Now, both incomes will count, just as for a married couple.

The law does not apply to federal benefits, however. Although the domestic partner registry was created mostly for same-sex couples, it has also been open to opposite-sex couples with at least one partner age 62 and over, — a boon to retirees who avoid marriage to protect Social Security and other benefits. Under the new law, their federal benefits will be unchanged, but their state benefits could be jeopardized.

Though some couples worry about benefits, others, particularly if one or both partners are

wealthy, worry about the state's community property law, which mandates equal division of assets and debts.

For those with stark economic disparities or rocky unions, the sudden need to make decisions about joint assets and future spousal support has forced uncomfortable conversations.

"I get calls from people and they say, 'Is this good for us?' " Hertz said. "I have to say, 'Actually this isn't an "us" question. This is a "me" question, and there are two mes out there.' "

The law, he suggested, may be evolving faster than social psychology. Many dependent gay male partners, for example, do not believe they are entitled to spousal benefits, he said.

Sociologists have suggested that the rights and responsibilities of marriage benefit both partners, Hertz said: If you are liable for your partner's debts, you may pay more attention to his spending patterns, and if you are entitled to half his income, you may be more supportive of his long work hours.

"What's going to be interesting is to see if the application of marital laws to gay people starts fostering the same kind of behavior in the gay community," he said.

The reason the law did not take effect until now — 16 months after it was signed — was to give registered couples time to consider whether to remain on the list.

The secretary of state's office, which maintains the domestic partnership registry, has sent three letters to each couple's last known address informing them of the changes.

How many received or read the notices remains unclear, but the roughly 26,000 couples who have not removed themselves from the registry by today can dissolve their partnerships only through legal divorce. They do, however, have until June 30 to craft retroactive preregistration agreements, the equivalent of prenuptial agreements.

For those on the registry, uncertainties remain. Although earned income of both partners is community property under the law, it is unclear how each partner should report that income on tax forms because they must file separately.

Whether a couple's home can be reassessed when a partner dies or the union is dissolved is also unclear. (Proposition 13 exempts married spouses from such reassessments.)

A separate law that also takes effect today requires insurance companies to treat registered domestic partners and married spouses the same way.

That law, signed by Gov. Arnold Schwarzenegger, applies to health plans and all forms of insurance regulated by the state insurance department, including auto, life, rental and

disability plans.

But there are differing views on whether other private parties — those offering family discounts, for example — must recognize domestic partners as legal spouses. And, of course, partners' rights differ if they leave California.

"It is very, very confusing. We need lawyers to figure out what to do," said Kiang, who attended a forum on the law with Higgins. "And I think we're fairly savvy."

Many of the gray areas will be tested in the courts, said Jon Davidson, legal director of Lambda Legal, an advocacy group that helped craft the legislation. The complexities underscore why a separate legal system for same-sex couples is inferior to marriage, he and other gay advocates say.

But by imposing many of the same rules on domestic partners that married spouses face, he said, hundreds of other court disputes over custody, property and more will probably be avoided.

"The whole goal ... was to protect our families, and it does that," said Assemblywoman Jackie Goldberg (D-Los Angeles), the law's primary author.

"If you have children and you are a lesbian or gay couple, you live afraid," said Goldberg, who has raised a son with her partner of 29 years. "That's the truth. After [today] you won't live afraid."

Gay advocates are celebrating the law. Still, after a year unexpectedly dominated by a fervent push for same-sex marriage, the beginning of broader domestic partnership rights seems starkly inadequate to some. Higgins and Kiang were among the 4,000 couples who married in San Francisco last spring after Mayor Gavin Newsom authorized gay unions.

The congratulations from family, co-workers and friends far exceeded anything that followed their commitment ceremony, a societal recognition they say is missing from the current scheme.

They joined the state domestic partner registry after the California Supreme Court deemed their marriage licenses "null and void."

And although the new law will provide them many benefits, "the reality is it's not marriage, and until it is, we're not going to have equal rights," Higgins said.

"People aren't going to look at it the same."

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Evolution of partnership rights in state

California's new domestic partnership law marks the fourth major expansion of partnership rights in the state. When California established the nation's first statewide domestic partner benefits in 1999, the law offered hospital visitation rights and health benefits for partners of state or local government workers.

- Then came the right to stay in senior housing with a domestic partner.
- In 2002, another law added the right to step-parent adoption of a partner's child, the ability to collect unemployment insurance after relocating with a partner, and the right to make medical decisions for an incapacitated partner.
- Next came certain inheritance rights.
- The step that takes effect today involves assistance of the courts in managing breakups, community property and matters related to child-rearing.

Source: Times staff reports