

# HOUSE BILL REPORT

## 2SHB 3104

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**As Passed House:**

February 15, 2008

**Title:** An act relating to expanding rights and responsibilities of all couples recognized as domestic partners under chapter 26.60 RCW.

**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, Lias and VanDeWege).

**Brief History:**

**Committee Activity:**

Judiciary: 1/29/08, 1/30/08 [DPS];

Finance: 2/6/08 [DP2S].

**Floor Activity:**

Passed House: 2/15/08, 62-32.

**Brief Summary of Second Substitute Bill**

- Grants to state registered domestic partners rights and responsibilities given to spouses in areas of law dealing with: dissolutions; community property; estate planning; taxes; court process; services to indigent veterans and other public assistance; conflicts of interest for public officials; and guardianships.

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**HOUSE COMMITTEE ON JUDICIARY**

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Lantz, Chair; Goodman, Vice Chair; Flannigan, Kirby, Moeller, Pedersen and Williams.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Do not pass. Signed by 4 members: Representatives Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern and Ross.

**Staff:** Trudes Tango (786-7384).

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## HOUSE COMMITTEE ON FINANCE

**Majority Report:** The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 6 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Conway, Ericks, McIntire and Santos.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Orcutt, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Roach.

**Staff:** Rick Peterson (786-7150).

### **Background:**

Last year the Legislature created a domestic partnership registry in the Office of the Secretary of State (Secretary), specified eligibility requirements for same-sex couples and some 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; rights and responsibilities related to the death of a domestic partner; and other provisions.

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 of Second Substitute Bill:**

Various rights and responsibilities that are granted to spouses are granted 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 shall 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. 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 desire that the domestic partnership 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 in excess of \$25,000 (adjusted for inflation);
- (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 recognized in this state with another person.

### **Rights and Responsibilities**

Rights and responsibilities granted 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 summary description of some of the changes made in each category.

#### *Dissolution, Parenting Plans, 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.
- A domestic partner's property is obligated to family expenses and education of the children.
- The slayer statute prohibits inheritance by domestic partner perpetrator.

- 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, and contributory fault of a domestic partner is not imputed to the other domestic partner in civil actions.
- 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 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 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.
- An abused same-sex domestic partner is considered a "victim" for purposes of services provided by domestic violence shelters.

#### Veterans

- State colleges and universities shall 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 veteran's home, are available to veterans' domestic partners.

#### Guardianship and Powers of Attorney

- Procedures under guardianship laws, including who is entitled to notice, apply to domestic partners of incapacitated persons.
- Domestic partners may file a petition to determine effectiveness of power of attorney, receive an accounting, and request other information from power of attorney.

#### Probate and Trust Law

- 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 decedent's domestic partner for purposes of family support and the award is exempt from creditors.

**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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed, except section 1043, which reinstates prior law related to mediation in family law cases after a scheduled expiration and takes effect January 1, 2009, and section 1047, relating to family court programs, which takes effect July 1, 2009.

**Staff Summary of Public Testimony:** (Judiciary)

(In support) Over 3,300 couples have registered since last year, and they come from every district in the state. The bill addresses the injustice to same-sex couples who are not allowed to marry. Domestic partnerships will be more stable and secure under this bill. This bill does not amend the marriage statutes and does not eliminate the Defense of Marriage Act. Providing a dissolution process for domestic partners is important when domestic partners have children together and share assets, and the current dissolution process is a well-known system already in place. Currently there is no legal roadmap for courts to follow when same-sex couples separate and the process of figuring it out in court is costly and confusing. The state should honor all of its veterans equally. The veterans rights are limited in scope and would apply to different-sex domestic partners too. There are rights and responsibilities that cannot be obtained by private contract, such as homestead exemptions and community property laws. Domestic partners should be able to stay together in long-term care facilities and should be treated with the same respect and fairness as married couples. This bill is about loyalty and commitment.

(Opposed) This bill is a movement to normalize abnormal behavior. It is unhealthy for the culture. Polls show that the majority of citizens in Washington do not want same-sex marriage. This issue should be a referendum to the people to let them decide. Although all people are valued, this bill would be destructive to traditional marriage. Marriage is designed to promote stable families, which in turn produce stable societies. The Legislature should not weaken marriage, which historically has always been between a man and a woman. This bill

is a step towards legalizing same-sex marriage and the proponents are very clear that is the goal. The bill violates the spirit of the Defense of Marriage Act.

**Staff Summary of Public Testimony:** (In Support) The bill will allow transfer of the home title to a domestic partner without real estate excise tax applying. For purposes of a loan, banks will not take into consideration the income of a domestic partner unless that person is on the title. The property tax deferral provisions are important. They will allow a domestic partner to take over a property tax deferral and remain in the home in case of a financial emergency. This bill is an essential step toward achieving equal treatment for all families.

(Opposed) The bill will be financially destructive to all families in Washington. It will be destructive to state and county. Many countries in Western Europe are ahead of us in approving domestic partnerships. Not a single county in Europe has a fertility rate that can sustain their own population. Financially and taxwise this bill undermines, and does not undergird, the concept of marriage and relationships. It will not make marriage more stable.

**Persons Testifying:** (Judiciary) (In support) Representative Pedersen, prime sponsor; Leah Shultz; Andrew Kamins; Mark Anderson; Judy Fleissner; and Carol McKinley.

(Opposed) Yoshe Revelle; Arne Walker, Family Policy Institute of Washington; Bob Higley; and Tony Cube, Washington Catholic Conference.

**Persons Testifying:** (Finance) Representative Pedersen, prime sponsor; Jan Abbott Lighty; Hank Balson; and Bill Bubay.

(Opposed) Don Crawford and Arne Walker, Family Policy Institute of Washington.

**Persons Signed In To Testify But Not Testifying:** (Judiciary) None.

**Persons Signed In To Testify But Not Testifying:** (Finance) None.