

HOUSE BILL REPORT

HB 1351

As Reported by House Committee On: Judiciary

Title: An act relating to protecting individuals in domestic partnerships by granting certain rights and benefits.

Brief Description: Protecting individuals in domestic partnerships by granting certain rights and benefits.

Sponsors: Representatives McDermott, Jarrett, Pedersen, Moeller, Upthegrove, Clibborn, Darneille, Simpson, Schual-Berke, Williams, Hasegawa, Dickerson, Hunt, Kenney, Sommers, McIntire, McCoy, Roberts, Hudgins, Ormsby, Sells, Kirby, Fromhold, Blake, Eickmeyer, Haigh, Lovick, Ericks, Dunshee, B. Sullivan, P. Sullivan, Wallace, Kagi, Flannigan, Kessler, Pettigrew, Wood, Quall, Conway, Hankins, Chase, O'Brien, Eddy, Appleton, Hunter, Lantz, Springer, Walsh, Grant, Takko, Goodman, Morris, Cody, Santos, Miloscia and Linville.

Brief History:

Committee Activity:

Judiciary: 1/31/07, 2/7/07 [DPS].

Brief Summary of Substitute Bill

- Creates a domestic partnership registry in the Office of the Secretary of State.
- Provides certain rights to state registered domestic partners to the same extent those rights are provided to spouses.

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.

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).

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.

Background:

The issue of rights for domestic partners has been addressed by some cities and other states. Three states have statewide domestic partnership laws that provide some of the same rights to domestic partners as are provided to spouses. Many of these rights involve issues with health care, incapacity, and death.

In Washington, a spouse may provide informed consent for health care for a patient who is not competent to consent. Health care providers may disclose a patient's health care information without the patient's consent to immediate family members, which includes a spouse, or other individuals with whom the patient is known to have a close personal relationship. Spouses have certain rights regarding cemetery plots and burial in family plots. Spouses have the authority to consent to autopsies and make anatomical gifts. If a person dies without a will, his or her spouse has certain inheritance rights and rights to administer the decedent's estate.

Many cities and some states offer domestic partnership benefits to their employees. In Washington, the same sex domestic partner of a state employee is eligible to participate in the Public Employees Benefits Board (PEBB) insurance coverage if the partners have been together continuously for a minimum of six months, share the same regular and permanent residence, have a close personal relationship, have agreed to be jointly responsible for basic living expenses, and meet other conditions.

Under the federal social security laws, a person 62 years of age or older may be eligible to collect retirement benefits on a former spouse's social security record. The person loses former spouse benefits if the person remarries.

Summary of Substitute Bill:

A domestic partnership registry is created in the Office of the Secretary of State (Secretary). The Secretary's office must create the necessary forms. The forms must be made available at the Secretary's office, through the county clerks, and on the internet.

Eligibility: Two persons seeking to enter into a state registered domestic partnership must:

- share a common residence;
- be at least 18 years old;
- not be married to someone other than the other party to the domestic partnership and not be in a state registered domestic partnership with another person;
- be capable of consenting to the domestic partnership;
- not be nearer of kin than second cousins nor be a sibling, child, grandchild, aunt, uncle, niece, or nephew of the other person; and
- either be members of the same sex or at least one person is at least 62 years old.

Registration: Persons who meet the eligibility requirements may file a signed, notarized declaration of state registered domestic partnership with the Secretary and pay a filing fee. The

Secretary must provide a certificate of state registered domestic partnership to each party. The Secretary must permanently maintain records of filed declarations and provide records of declarations to the state registrar of vital statistics. The Secretary shall establish the filing fee to cover its costs, provided the fee does not exceed \$50.

Domestic Partnerships Created by Other Public Entities: Domestic partnerships created by subdivisions of the state are not affected by, nor considered to be, state registered domestic partnerships. If a subdivision chooses, it may use the declaration of state registered domestic partnership to satisfy the subdivision's registration requirements and shall notify the Secretary of its decision. The Secretary shall compile a list of all subdivisions using the state's requirements, post the list on its website, and provide a copy of the list to registering partners.

Termination: 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 either: (a) the other party has been served in writing that a termination notice is being filed; or (b) the other party could not be found after reasonable effort and notice was made by publication in a newspaper of general circulation in the county where the residence most recently shared by the partners is located.

Upon receipt of the notice of termination, filing fee, and affidavit (if required), the Secretary shall 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 and paying the filing fee. A state registered domestic partnership is automatically terminated if either party subsequently enters into a marriage that is recognized as valid in this state.

Rights Extended to State Registered Domestic Partners: State registered domestic partners have the same rights as spouses regarding:

- visitation rights in health care facilities;
- the ability to provide informed consent for health care when the patient is not competent;
- the right to receive health care information about a patient without the patient's authorization when the health care provider finds it necessary to disclose such information;
- title and rights to cemetery plots and rights of interment;
- the ability to authorize dissection and autopsy of deceased partner;
- the right to receive autopsy reports and to request to meet with the coroner to discuss autopsy findings;
- the ability to control the disposition of remains when no pre-death arrangements were made by the deceased;
- the ability to make anatomical gifts;
- inheritance rights if partner dies without a will;
- administration of a deceased partner's estate if there is no will or the personal representative in the will declines or is unable to serve;
- the right to bring a wrongful death action; and
- the right of a surviving domestic partner to be recognized on a death certificate.

Regarding a power of attorney, the appointment of one domestic partner as the other partner's attorney in fact is revoked when the domestic partnership is terminated. In addition, a domestic partner who is the principal's physician, physician's employee, or owner, administrator, or employee of a health care facility treating the principal may still be the principal's attorney in fact, just as spouses can be. A designation of a partner as the beneficiary to the other partner's nonprobate asset is revoked upon the termination of the domestic partnership, unless a court order requires otherwise.

For state employees, a certificate of state registered domestic partnership satisfies the eligibility requirements for same sex domestic partner benefits under the PEBB.

Nothing in the act affects any remedy available in common law.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes:

- eliminates the provisions recognizing domestic partnerships, civil unions, and reciprocal beneficiary relationships created in another state as Washington domestic partnerships;
- allows a surviving domestic partner to sue for the wrongful death of a partner;
- requires death certificates to recognize domestic partnerships to the same extent as marital relationships;
- adds a provision stating that nothing in the act affects any remedy available in common law;
- requires that when only one party has signed the notice of termination, the other party must be served with notice in the same manner as a summons in a civil action;
- allows the Secretary of State (SOS) to provide records electronically to the state registrar of vital statistics;
- provides that fees collected by the SOS are deposited in the SOS Revolving Fund;
- requires the SOS to compile a list of subdivisions that use the state's domestic partnership criteria and requires the SOS to provide that list to domestic partners;
- replaces the term "public entity other than the state" with "subdivision of the state" for the purposes of describing other entities who elect to use the state's domestic partnership criteria as their own;
- provides that, in a power of attorney, a domestic partner who is also the principal's physician, physicians' employee, or the owners, administrators, or employees of health care facilities where the principal receives care can be the principal's attorney in fact just as spouses could be; and
- amends language regarding nonprobate assets, to provide that the automatic revocation does not apply if a court order requires the nonprobate asset be kept for the benefit of another.

Appropriation: None.

Fiscal Note: Requested on January 18, 2007.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) Same sex partners experience indignity when they are denied access to their partners in hospitals during a crisis or when they are denied the right to make funeral arrangements for their partners. It is insulting and distressing when hospitals bar a partner from access. A domestic partnership bill is better than nothing, but same sex couples should be given the right to marry and given full equality under the law. This bill provides a safety net for domestic partners who cannot marry. Without the bill, same sex couples are denied the right to be legal kin. The bill would be diluted if it is amended to add siblings and grandparents, as those people are already kin. Not everyone can afford attorneys to create powers of attorneys or wills and not everybody is lucky enough to have understanding family members who respect a person's partnership. Not all rights can be bought and not everyone can afford to buy rights. The person who should be making health care decisions for a patient is the person the patient wants. For spouses that is easy, but for unmarried couples, there is legal limbo. Hospitals are forced to figure out who to consult and sometimes must mediate difficult family disputes. This bill would bring clarity to the situation hospitals face. Married people never have to prove they are married and they are granted hundreds of rights. If a spouse was denied visitation in a hospital, it would be an outrage. There is no rational or humane reason to exclude same sex couples from the protections in this bill. This bill is about civil rights, fairness, and family. Same sex couples do not threaten marriage. As a society, we should value and embrace all types of families.

(Neutral w/ amendments) It would be more efficient and effective if the Secretary can submit electronic data to the registrar of vital statistics. The fees collected by the Secretary should be deposited into the Secretary's Revolving Fund.

(Opposed) The bill is too narrow in its focus and is discriminatory. There is a wide social need to expand the benefits offered in this bill to other bonded relationships, like a grandchild and grandparent, who face the same issues regarding health care and visitation in health care facilities. The bill should be inclusive of the many different types of relationships deserving social support. The bill has nothing to do with civil rights and that claim is offensive to African Americans who fought for civil rights. This bill is really a step towards legalizing same sex marriage. The benefitted class in the bill is poorly defined, but they are granted many benefits. There is no requirement that the two partners be in a committed relationship. The bill makes it trivial to enter into and terminate a domestic partnership. The vast majority of these rights can be obtained by contract, making this bill unnecessary. It violates the privileges and immunities clause of the state Constitution. This bill is an advancement of the homosexual agenda, which is corrupting our culture. This teaches our children that homosexual behavior is okay. Most people want traditional families with a man and a woman raising children.

Persons Testifying: (In support) Representative McDermott, prime sponsor; Charlene Strong; Beth Reis; Barbara Steele; Kim Merriman; Cassie Sauer, Washington State Hospital Association; Patrick Nagle, Legal Marriage Association of Washington; and Bree Davidson.

(Neutral w/ amendments) Mike Ricchio, Office of the Secretary of State.

(Opposed) Diane Eaton; Father Thomas Nathe, Washington State Catholic Conference; Carla Campbell; Kyle Netterfield, and Cheryl Haskins, Allies for Marriage and Children; Rachel Schober; Marlyn Jensen; Sharon Shimp, Washington Family Leader Network; and Bob Higley.

Persons Signed In To Testify But Not Testifying: None.