

SENATE BILL REPORT

SB 5336

As Reported By Senate Committee On:
Government Operations & Elections, February 1, 2007

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: Senators Murray, Kohl-Welles, Fairley, Prentice, Regala, Oemig, Tom, Kline, Hobbs, Pridemore, Keiser, Berkey, Franklin, Brown, Weinstein, Rockefeller, Poulsen, Fraser, Jacobsen, Spanel and McAuliffe.

Brief History:

Committee Activity: Government Operations & Elections: 1/25/07, 2/01/07 [DPS, DNP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: That Substitute Senate Bill No. 5336 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fairley, Chair; Oemig, Vice Chair; Kline and Pridemore.

Minority Report: Do not pass.

Signed by Senators Benton, Roach and Swecker.

Staff: Mac Nicholson (786-7445)

Background: A number of state laws provide automatic rights and powers to spouses. In the health care context, health care providers can secure informed consent for a patient who is not competent from the patient's spouse, and disclose information about a patient without the patient's authorization to immediate family members of the patient and other individuals with whom the patient is known to have a close personal relationship.

Upon dissolution or invalidation of a marriage, the designation of a spouse as the beneficiary for various nonprobate assets is automatically revoked. Similarly, when a person has granted his or her spouse power of attorney, that power is revoked upon dissolution, legal separation, or invalidation of the marriage.

Spouses have the authority to consent to autopsies and make anatomical gifts. Spouses enjoy protections regarding the title to cemetery plots and rights of interment. If an individual dies

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intestate, or without a will, his or her spouse has certain inheritance rights and rights to administer the decedent's estate.

Same-sex domestic partners of public employees are eligible to participate in Public Employees Benefits Board (PEBB) insurance coverage. In order to qualify, same-sex domestic partners must meet PEBB eligibility rules and submit a declaration of same-sex domestic partnership.

Summary of Bill: The state domestic partnership registry is created in the office of the Secretary of State (OSOS). The OSOS is directed to prepare separate forms for the declaration and the termination of a state registered domestic partnership. The forms must contain statements that registration and termination may affect property and inheritance rights and that rights conferred by registration may be superseded by a will, deed, or other instrument.

Individuals seeking to enter into a state registered domestic partnership must:

- share a common residence;
- be at least 18 years of age;
- not be married to, nor be in a state registered domestic partnership with, someone other than the person with whom they are entering into a domestic partnership;
- be capable of consenting to the partnership;
- not be nearer of kin than second cousins nor be a sibling, child, grandchild, aunt, uncle, niece, or nephew to the other person; and
- be members of the same sex, or one of the persons must be at least 62 years of age.

Domestic partnerships created by subdivisions of the state are not state registered domestic partnerships. Domestic partnerships, civil unions, and reciprocal beneficiary relationships registered with other states shall be recognized in Washington as partnerships, provided the persons meet Washington eligibility requirements.

Registration: Declarations of state registered domestic partnerships are filed with the OSOS along with a filing fee as set by the OSOS to cover costs, provided the fee does not exceed \$50. The declarations must be notarized and signed by both parties. The OSOS must provide a certificate of state registered domestic partnership to each party on the declaration, maintain a permanent record of each declaration, and submit a copy of the declaration and certificate to the state registrar of vital statistics.

Termination: State registered domestic partnerships can be terminated by either party filing a notice of termination with the OSOS and paying the accompanying filing fee. The termination notice must be notarized and signed by at least one party. If the notice is not signed by both parties, the party seeking termination must file an affidavit stating that the other party has been served notice of the termination, or that the other party could not be located after a reasonable effort including publication of the termination notice in a newspaper of general circulation in the county where the residence most recently shared by the partners is located. The effective date of the termination is 90 days after the date the notice was filed.

Partnerships are automatically terminated if either or both parties enter into a marriage that is recognized as valid in this state. The OSOS must provide a certificate of termination to each

party, maintain a record of each termination, and submit a copy of the certificate of termination to the state registrar of vital statistics.

Extension of rights to domestic partners: Certain powers and rights granted to spouses are granted to domestic partners as follows:

- health care facility visitation rights;
- ability to grant informed consent for health care for a patient who is not competent;
- authority of health care providers to disclose information about a patient without the patient's authorization to the patient's state registered domestic partner;
- automatic revocation of the designation of a domestic partner as the beneficiary for nonprobate assets upon termination of the partnership;
- automatic revocation of power of attorney granted to domestic partner upon termination of the partnership;
- title and rights to cemetery plots and rights of interment;
- ability to authorize autopsies and request copies of autopsy reports and records;
- right to control the disposition of the remains of a deceased person;
- ability to consent to removal of human remains from a cemetery plot;
- ability to make anatomical gifts;
- inheritance rights when the domestic partner dies without a will; and
- administration of an estate if the domestic partner died without a will or if the representative named in the will declined or was unable to serve.

PEBB Benefits: A certificate of domestic partnership issued by the OSOS fulfills eligibility requirements for the partner of the public employee to receive benefits.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Government Operations & Elections): The OSOS must provide records of the declarations to the state registrar of vital statistics rather than copies. This allows the OSOS to provide the records in an electronic format. Filing fees collected by the OSOS under this bill are deposited in the OSOS revolving fund. The provision that recognized partnerships, civil unions, and reciprocal beneficiary relationships that were created in another state is removed.

The OSOS is required to maintain a list of jurisdictions that have notified the OSOS that the jurisdiction is using the definition of domestic partnership created in the bill in order to provide benefits to its employees. The OSOS is required to post this list on the web page and send a copy of the list to partners along with the certificate of domestic partnership.

A provision is added that states nothing in the act affects any remedy available in common law. Domestic partners are added as beneficiaries of wrongful death actions such that lawsuits for wrongful death can be brought on behalf of the surviving domestic partner. A domestic partner who is the other partner's physician or an owner, administrator, or employee of a health care facility where the principal receives care can be the partner's attorney-in-fact.

Information recorded on death certificates must include domestic partnership status and the surviving partner's information to the same extent that such information is recorded for marital status and the surviving spouse's information.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Lesbian and gay families need protection. Partners provide support just like spouses, but partners receive none of the protections that spouses receive. This bill protects rights to visit each other and the right of a surviving partner to bury the other. Sibling and care giver relationships are not the same as relationships between gay and lesbian couples. This bill provides protection for those who don't have money or time to engage in complicated legal processes to protect rights that are given to spouses. After suffering a loss, partners should not have to suffer the indignities of not being able to make hospital visits or funeral arrangements. Partners deserve equality and first class citizenship under the law. Domestic partnerships are a safety net the state ought to provide to its people. Partners have to buy rights by hiring a lawyer to draw up documents, but having to stop and get those papers on route to the emergency room would be emotionally impossible. People shouldn't have to pay hundreds of dollars for one right, when some people get hundreds of rights for a \$54 marriage license. Single, elderly individuals who find the love of their life struggle about their options to be together but not lose their benefits.

CON: This bill unjustly discriminates against people in the state. Many other kinds of relationships don't get the same benefits as domestic partners. A great variety of bonded relationships exist outside marriage, and they face the same emotionally challenging issues that are addressed in this bill. These people should be entitled to the same benefits granted to same sex couples under this bill. The bill is too narrow in its focus and has serious constitutional flaws. The bill creates intentionally discriminating classifications. The bill should apply to all adults who cannot marry. Many rights in this bill can be obtained in an easy and uncomplicated manner. This is the first step towards legalizing same sex marriage, and this bill should be opposed. It is the highest and best good for children to be raised in a family with their mother and father, and this needs to be protected. This bill establishes a new category of relationships which water down the commitment to marriage.

OTHER: The Office of the Secretary of State has some suggestions for the administration of the registry created in the bill.

Persons Testifying: PRO: Senator Murray, prime sponsor; Charlene Strong; Beth Reis; Barbara Steele; Lynn Grotzky; Reverend Carolyn Peterson; Jeff Kingsbury, Olympia City Council; Rick Bartholomew, Washington State Bar Association.

CON: Bishop Joseph Tyson, Washington State Catholic Conference; Mercy Sobrevilla; Jeff Smith, and Cheryl Haskins, Allies for Marriage and Children; Jeff Kemp, Families Northwest; Bob Higley, Positive Christian Agenda.

OTHER: Mike Ricchio and Shane Hamlin, Office of the Secretary of State.

Signed in, Unable to Testify & Submitted Written Testimony: PRO: Dave Horn, Lambda Legal.

CON: Jennifer Jarrett and Meledie Knopf, Family Leader Network; Rachel Schober, citizen.