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**SENATE BILL 5674**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senators Murray, McDermott, Kohl-Welles, Regala, Pridemore, Keiser, Kline, and Jacobsen

Read first time 01/28/09. Referred to Committee on Judiciary.

1       AN ACT Relating to civil marriage equality, recognizing the right  
2 of all citizens of Washington state, including couples of the same  
3 gender, to obtain civil marriage licenses; amending RCW 26.04.010 and  
4 26.04.020; and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6       NEW SECTION.   **Sec. 1.**   (1) Civil marriage is a legal institution  
7 recognized by the state in order to promote stable relationships and to  
8 protect individuals who are in those relationships. Civil marriage is  
9 based on a civil contract between two persons and does not require the  
10 sanction or involvement of religious institutions. Civil marriage  
11 provides important protections for the families of those who are  
12 married, including not only children and other dependents they may  
13 have, but also members of their extended families. The legislature and  
14 the people of the state of Washington find that strong, healthy  
15 families promote social stability and economic growth, and that these  
16 families are supported and protected by the contractual obligations and  
17 benefits conferred by civil marriage licenses. On these bases, the  
18 state therefore has a compelling state interest in ending

1 discrimination against otherwise qualified applicants for a civil  
2 marriage license, including discrimination on the basis of gender or  
3 sexual orientation of the applicants.

4 (2) The legislature finds and declares as follows:

5 (a) Despite longstanding social and economic discrimination, many  
6 gay and lesbian Washingtonians have formed lasting, committed, caring,  
7 and mutually supportive relationships with persons of their same  
8 gender. These couples live together, participate in their communities  
9 together, and many raise children and care for family members together,  
10 just as do heterosexual couples who have the option to marry under  
11 Washington law.

12 (b) The state of Washington has a proud tradition of respect for  
13 the principle that no human being should be denied his or her full  
14 rights and responsibilities under the law.

15 (c) According to the 2000 census, Washington state is home to at  
16 least sixteen thousand same gender couples, ranking ninth among the  
17 fifty states in the number of same gender couples. Seattle ranks  
18 second among large cities in the United States in the percentage of  
19 couples who are of the same gender. Same gender couples live in all  
20 thirty-nine counties in Washington, and nearly one in four of these  
21 couples is raising children. While some of these couples may have  
22 domestic partner registries in their jurisdictions, such arrangements  
23 do not offer the same scope and depth of rights, responsibilities,  
24 privileges, and protections offered by civil marriages, nor do they  
25 provide any legal standing outside the jurisdiction in which they  
26 occur.

27 (d) Marriage laws support the core values of commitment and  
28 responsibility. Washington's discriminatory exclusion of same gender  
29 couples from marriage harms those couples and their families by denying  
30 those couples and their families specific and equal rights and  
31 responsibilities under state and federal law. At least four hundred  
32 twenty-three Washington state statutes conferred either rights,  
33 benefits, or obligations depending upon marital status, nearly all of  
34 which are currently unavailable to Washington's same sex couples.  
35 These include the right to bring a wrongful death action, the right to  
36 inherit property when there is no will, the right to invoke the  
37 evidentiary privilege not to testify against a spouse, the right to  
38 certain employment and pension benefits as well as other specific

1 benefits, and the right to transfer property between spouses without  
2 paying the real estate excise tax. The federal benefits withheld  
3 include the right to file joint federal income tax returns, the right  
4 to sponsor a partner for immigration to the United States, the right to  
5 social security survivor benefits, the right to family and medical  
6 leave, and many other substantial benefits and obligations.

7 (e) Washington's discriminatory exclusion of same gender couples  
8 from marriage further harms same gender couples and their families by  
9 denying them the unique public recognition and affirmation that civil  
10 marriage confers on other couples, and the opportunity to express their  
11 mutual dedication through the uniquely recognized rituals of marriage.

12 (f) The legislature has an interest in encouraging and supporting  
13 loving, stable, committed, caregiving relationships regardless of the  
14 gender or sexual orientation of the partners. The benefits that accrue  
15 to the general community and to the state's economy when couples  
16 undertake the mutual obligations of marriage accrue regardless of the  
17 gender or sexual orientation of the partners.

18 (g) The highest courts in four states have held that denying the  
19 legal rights and obligations of marriage to same gender couples is  
20 constitutionally suspect or impermissible under their respective state  
21 Constitutions. These states are Hawaii, Vermont, Massachusetts, and  
22 New Jersey. In 2005, both houses of the California legislature  
23 approved a bill, "The Religious Freedom and Civil Marriage Protection  
24 Act," which would have ensured that the right to marry in California  
25 applied to all of its citizens. In so doing, the California  
26 legislature determined that ending the exclusion of lesbian and gay  
27 couples from marriage is necessary to fulfill the state constitution's  
28 guarantees of due process, privacy, equality, and free expression.  
29 While challenges to the discriminatory exclusion from marriage continue  
30 around the United States, countries such as Canada, the Netherlands,  
31 Belgium, Spain, and South Africa have ended the denial of marriage to  
32 same sex couples and provide full marriage equality to all of their  
33 citizens.

34 (h) No official of any religious denomination or nonprofit  
35 institution authorized to solemnize marriages shall be required to  
36 solemnize any marriage in violation of his or her right to free  
37 exercise of religion guaranteed by the First Amendment to the United  
38 States Constitution or by the Washington state Constitution.

1 (i) It is the intent of this act to end discrimination in marriage  
2 based on gender and sexual orientation in Washington, to ensure that  
3 all persons in this state may enjoy the freedom to marry on equal  
4 terms, while also respecting the religious freedom rights of clergy and  
5 religious institutions to determine for whom to perform marriage  
6 ceremonies and which marriages to recognize for religious purposes.

7 **Sec. 2.** RCW 26.04.010 and 1998 c 1 s 3 are each amended to read as  
8 follows:

9 (1) Marriage is a civil contract between ~~((a male and a female))~~  
10 two persons who have each attained the age of eighteen years, and who  
11 are otherwise capable.

12 (2) Every marriage entered into in which either ~~((the husband or~~  
13 ~~the wife))~~ person has not attained the age of seventeen years is void  
14 except where this section has been waived by a superior court judge of  
15 the county in which one of the parties resides on a showing of  
16 necessity.

17 (3) Where necessary to implement the rights and responsibilities of  
18 spouses under the law, gender specific terms such as husband and wife  
19 shall be construed to be gender neutral, except with respect to chapter  
20 26.26 RCW.

21 **Sec. 3.** RCW 26.04.020 and 1998 c 1 s 4 are each amended to read as  
22 follows:

23 (1) Marriages in the following cases are prohibited:

24 (a) When either party thereto has a ~~((wife or husband))~~ spouse  
25 living at the time of such marriage; or

26 (b) When the ~~((husband and wife))~~ spouses are nearer of kin to each  
27 other than second cousins, whether of the whole or half blood computing  
28 by the rules of the civil law~~((; or~~

29 ~~(c) When the parties are persons other than a male and a female))~~.

30 (2) It is unlawful for ~~((any man))~~ a person to marry his ~~((father's~~  
31 ~~sister, mother's sister, daughter, sister, son's daughter, daughter's~~  
32 ~~daughter, brother's daughter or sister's daughter; it is unlawful for~~  
33 ~~any woman to marry her father's brother, mother's brother, son,~~  
34 ~~brother, son's son, daughter's son, brother's son or sister's son))~~ or  
35 her sibling, child, grandchild, aunt, uncle, niece, or nephew.

1           (3) A marriage between two persons that is recognized as valid in  
2 another jurisdiction is valid in this state only if the marriage is not  
3 prohibited or made unlawful under subsection (1)(a)(~~(1)(e)~~) or (2)  
4 of this section.

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