

HOUSE BILL REPORT

ESSB 6239

As Passed House:
February 8, 2012

Title: An act relating to providing equal protection for all families in Washington by creating equality in civil marriage and changing the domestic partnership laws, while protecting religious freedom.

Brief Description: Concerning civil marriage and domestic partnerships.

Sponsors: Senate Committee on Government Operations, Tribal Relations & Elections (originally sponsored by Senators Murray, Pflug, Hobbs, Litzow, Kohl-Welles, Ranker, Tom, Harper, Pridemore, Keiser, Kline, Regala, Eide, Rolfes, McAuliffe, Brown, Nelson, Chase, Fraser, Frockt, Conway, Kilmer and Prentice; by request of Governor Gregoire).

Brief History:

Committee Activity:

Judiciary: 2/6/12 [DP].

Floor Activity:

Passed House: 2/8/12, 55-43.

Brief Summary of Engrossed Substitute Bill

- Allows couples of the same sex to marry.
- Provides an exemption and immunity for religious organizations, religiously affiliated educational institutions, and ministers, priests, imams, rabbis, and similar officials of religious organizations.
- Provides that a state registered domestic partnership in which the parties are the same sex and under the age of 62 will be merged into a marriage as of June 30, 2014, unless the parties marry or dissolve their domestic partnership before that date.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 7 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Eddy, Hansen, Kirby, Orwall and Roberts.

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 6 members: Representatives Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Klippert, Nealey and Rivers.

Staff: Trudes Tango (786-7384).

Background:

Marriage.

Marriage is a civil contract between a male and a female who have each attained the age of 18 years and who are otherwise capable. A marriage between persons other than a male and a female is prohibited. Judges, court commissioners, and any regularly licensed or ordained minister or any priest of any church or religious denomination may solemnize marriages.

State Registered Domestic Partnerships.

To enter into a state registered domestic partnership the two persons must either be members of the same sex or at least one of the persons is 62 years old or older. For all purposes under state law, registered domestic partners must be treated the same as married persons. Terms such as spouse, marriage, husband, and wife must be interpreted to apply equally to registered domestic partners as to married persons, to the extent the interpretation does not conflict with federal law. The Office of the Secretary of State administers the domestic partnership registry.

Summary of Bill:

Marriage.

Marriage is a civil contract between two persons. The prohibition against marriage when the parties are persons other than a male and a female is removed. The list of persons authorized to solemnize a marriage is amended to specify imams, rabbis, and other similar officials of any religious organization.

Exemptions for Religious Organizations.

No religious organization is required to provide accommodations, facilities, advantages, privileges, services, or goods related to the solemnization or celebration of a marriage. No state agency or local government may base a decision to penalize, withhold benefits from, license, or refuse to contract with a religious organization based on the opposition to or refusal to provide accommodations, facilities, advantages, privileges, services, or goods related to the solemnization or celebration of a marriage.

No religiously affiliated educational institution shall be required to provide accommodations, facilities, advantages, privileges, services, or goods related to the solemnization or celebration of a marriage, including a use of any campus chapel or church.

Religious organizations and religiously affiliated educational institutions shall be immune from a civil claim or cause of action, including claims under the law against discrimination, based on its refusal to provide accommodations, facilities, advantages, privileges, services, or goods related to the solemnization or celebration of a marriage.

No regularly licensed or ordained minister or any priest, imam, rabbi, or similar official of a religious organization is required to solemnize or recognize any marriage. A regularly licensed or ordained minister or any priest, imam, rabbi, or similar official of any religious organization is immune from any civil claim or cause of action based on his or her refusal to solemnize or recognize any marriage. A state agency or local government may not base a decision to penalize, withhold benefits from, or refuse to contract with any religious organization on the refusal of a person associated with that religious organization to solemnize or recognize a marriage.

"Recognize" means to provide religious-based services that: (a) are delivered by a religious organization, or by an individual who is managed, supervised, or directed by a religious organization; and (b) are designed for married couples or couples engaged to be married and are directly related to solemnizing, celebrating, strengthening, or promoting a marriage, such as religious counseling programs, courses, retreats, and workshops.

"Religious organization" includes, but is not limited to, churches, synagogues, mosques, temples, nondenominational ministries, interdenominational and ecumenical organizations, mission organizations, faith-based social agencies, and other entities whose principal purpose is the study, practice, or advancement of religion. "Religious organization" must be interpreted liberally to include faith-based social service organizations involved in social services directed at the larger community.

Child-placing Services.

Nothing in the legislation shall be construed to alter or affect existing law regarding the manner in which a religious or nonprofit organization may be licensed to provide adoption, foster care, or other child-placing services under the adoption and foster care statutes.

State Registered Domestic Partnerships.

To enter into a state registered domestic partnership at least one of the persons must be 62 years of age or older. Thus, a couple of the same sex may not enter into a registered domestic partnership unless at least one of the persons is 62 years old or older.

State registered domestic partners may apply and receive marriage licenses as long as the parties are otherwise eligible to marry and the parties to the marriage are the same as the parties to the domestic partnership. Marriage of the parties dissolves the domestic partnership.

Any state registered domestic partnership in which the parties are the same sex and neither party is 62 years old or older will be automatically merged into a marriage as of June 30, 2014, if the parties have not already married or entered into dissolution as of that date.

Reciprocity.

If two persons in Washington have a legal union, other than a marriage, that was validly formed in another jurisdiction, that provides substantially the same rights and responsibilities as a marriage, and that does not meet the definition of a state registered domestic partnership in Washington, then that legal union will be treated as having the same rights and responsibilities as married spouses in Washington. However, this reciprocity does not apply if the relationship would otherwise be prohibited under Washington's marriage statutes or if

the two persons become permanent residents of Washington and do not marry within one year of becoming permanent residents. A legal union, other than a marriage, of two persons validly formed in another jurisdiction that is substantially equivalent to a state registered domestic partnership in Washington will be recognized in Washington as a registered domestic partnership.

Notice.

The Secretary of State must send two notices to same sex registered domestic partners notifying them of the changes in the law, one within 60 days after the legislation's effective date and the second by May 1, 2014. The notice must clearly state that laws governing same sex registered domestic partners will change and that same sex registered domestic partnerships that are not dissolved prior to June 30, 2014, will be converted to marriage.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 8 and 9, relating to eligibility of persons to enter into registered domestic partnerships, which take effect June 30, 2014, but only if all other provisions of the act are implemented.

Staff Summary of Public Testimony:

(In support) The changes made to the bill by the Senate do not change the policy of the bill, and the Governor remains supportive of the bill as it passed the Senate. Both the House and the Senate have done a good job trying to balance marriage equality and religious freedom. Same sex couples support each other and are supported by families and friends who accept them. Same sex couples serve the community in many ways and they are just like other Washington families. Allowing same sex couples to marry gives recognition of those couples as a family. Marriage provides dignity and the expectation of permanence. There is no other term that defines a relationship the way marriage does. Until gays and lesbians have the same rights as everyone else, bullying and fear-mongering will continue. They will be treated as second class citizens. Families are vulnerable because of the lack of recognition for same sex couples. Washington took an important first step with its domestic partner registry, but marriage is a universal language and easily understood and recognized. Domestic partnerships will never be marriage. Numerous businesses support the bill and view marriage equality as good for the state, good for the economy, and good for the workers. It will help businesses be competitive and will have a positive impact on the state's economy. Unions have bargained with employers to ensure that lesbian and gay workers are treated the same as other workers. People often mistake the term "partner" for a business partner. People still do not know what it means when couples describe themselves as "domestically partnered." Domestic partners are separate and unequal. They must still struggle with educating hospital staff and are still required to provide documents to explain what domestic partnership is. Marriage has had a flexible definition historically. Religious organizations will not be required to marry gays and lesbians.

(Opposed) This bill does not protect the religious beliefs of business owners who do not condone same sex marriage. It encroaches on the religious freedom of people. The religious freedom in states and other countries are being eroded. The bill opens a door for more discrimination. Laws should not be made based on the emotional responses to difficult circumstances. This is not a civil rights issue. The Legislature must consider the far-reaching consequences of this bill. The laws must consider individual rights, but they also must meet the greater needs of the majority of society. Changing the definition of marriage will create purposeful motherless or fatherless families. The state should strengthen the natural family rather than dilute it. Families are the most efficient form of government. Marriage is the cornerstone of society. Marriage combines the qualities of the male with the qualities of the female. The bill is treating marriage as if the roles of the male and female do not matter. Gays and lesbians want recognition and acceptance through a bill, but a bill cannot do that. The truth is absolute and does not evolve. Christians in this nation are facing persecution because they are standing by their truth. The people have a right to vote on this. This bill is not about the children or marriage; it is about gays and lesbians wanting their way. Redefining marriage creates ambiguity. If there are gaps in the law, address those gaps with the domestic partnership laws. The bill endorses unhealthy sexual practices. Strong government and strong society exists only when there are strong families. Marriage pre-dates this Legislature and the state cannot redefine marriage.

Persons Testifying: (In support) Jim Justin, Office of the Governor; Representative Jinkins; Laura Wolf; John McCluskey; Lynn Grotzky; Lori Brown; Charlene Strong; David Ward, Legal Voice; Sarah Cherin, United Food and Commercial Workers Local 21; Brennen Smith; Sandra Mosel; and Matthew Stidham.

(Opposed) Maureen Richardson; Shahram Hadian; Ken Hutcherson, Antioch Bible Church; Cindy Zapotocky, Washington Conservative Coalition; Daniel Kirnok; Bob Higley; Mary Gillmore, Thomas Jefferson Center for Constitutional Restoration; Kennon Forester; Margaret Reich; Allison Vance; Robert Dixon; Jennifer Morris; Cris Shardelman; Heidi Lestelle; and John Geis, Family Policy Institute of Washington.

Persons Signed In To Testify But Not Testifying: Susan Johnson; Margaret Blankenfeld; Rebecca Faust; Jim Zahn; Dan Wesell; Bruce Runyoll; Paula Forester; Victor Morris; Wesley Steinbrink; Roy Hartwell; and Valerie Hartwell.