

SENATE BILL REPORT

2SHB 3104

As Reported By Senate Committee On:
Government Operations & Elections, February 25, 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: 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: Passed House: 2/15/08, 62-32.

Committee Activity: Government Operations & Elections: 2/25/08 [DP, DNP].

SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass.

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

Minority Report: Do not pass.

Signed by Senators Roach, Ranking Minority Member; Benton and Swecker.

Staff: Sharon Swanson (786-7447)

Background: The issue of rights for domestic partners has been addressed by some cities and other states. At least three states have statewide domestic partnership laws that provide some of the same rights to domestic partners as are provided to spouses. A number of state laws provide automatic rights and powers to spouses.

In 2007 the Washington State Legislature passed SSB 5336, creating the state domestic partnership registry. The legislation allows individuals to enter into a state registered domestic partnership so long as the individuals meet established criteria. Certain powers and rights granted to spouses were granted to domestic partners, such as health care facility visitation rights, ability to grant informed consent for health care for a patient who is not competent, title and rights to cemetery plots, and automatic termination of power of attorney upon termination of the partnership.

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.

Since the legislation was enacted into law, approximately 3,245 couples have registered as domestic partners, according to the Secretary of State.

Summary of Bill: 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; service 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, which applies from the date of the parties' registration. 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 must 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 homes, 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.

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 of 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 of State 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.

Termination of Domestic Partnership. 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 of State.

Parties may use a non-judicial termination process by filing a notice of termination with the Secretary of State if, at the time of filing notice:

- both parties desire that the domestic partnership be terminated, and both have signed the notice of termination;
- neither party has minor children, whether born or adopted before or after the domestic partner registration, and neither party is pregnant;
- the domestic partnership is not more than five years in duration;
- 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);
- 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);
- 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);
- the parties have executed an agreement establishing the division of assets and debts and have executed any documents to effectuate the agreement; and
- 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.

Reciprocity. A legal union, other than a marriage, from another state that is substantially equivalent to a Washington domestic partnership must be recognized in this state, regardless of whether it is called a domestic partnership.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect ninety 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 which takes effect January 1, 2009; and section 1047, relating to family court programs, which takes effect July 1, 2009.

Staff Summary of Public Testimony on Second Substitute Bill: PRO: Over 3,300 couples have registered since last year, and they come from every district and county in the state. Domestic partnerships will be more stable with this legislation. The families of domestic partners will be safer with this legislation. 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. There are many inequities for domestic partners. When domestic partners buy a house together, they are required to pay extra taxes on the purchase. Married couples are not required to pay that extra tax. If domestic partners had children together but later split up, there are no mechanisms available in the court system to provide for custody, child support, visitation. Domestic partners should have the same protections and responsibilities as everyone else.

CON: Marriage has always been between one man and one woman. The Legislature should not weaken marriage by allowing this bill to pass. The proponents of this legislation have been very clear that their objective is to allow same-sex marriage. Marriage is designed to promote stable families, which in turn produce a stable society. This bill violates the spirit of DOMA (the Defense of Marriage Act).

Persons Testifying: PRO: Representative Pedersen, prime sponsor; Jennine Devenuti, citizen.

CON: Antonio Cube, Washington State Catholic Conference.