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HOUSE BILL 1963

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State of Washington

62nd Legislature

2011 Regular Session

**By** Representatives Moeller, Hasegawa, Kenney, Hudgins, Appleton, Pedersen, Eddy, Lias, Takko, McCoy, Jinkins, Reykdal, Fitzgibbon, Moscoso, Ladenburg, Cody, Pettigrew, Sequist, Finn, Ormsby, Roberts, Sells, Springer, Jacks, Upthegrove, Carlyle, Kirby, Clibborn, Haigh, Dunshee, Darneille, Hunt, Tharinger, Probst, Blake, Billig, Maxwell, Frockt, Dickerson, Kagi, Santos, Rolfes, and Stanford

Read first time 02/15/11. 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 sex,  
3 to obtain civil marriage licenses; amending RCW 26.04.010, 26.04.020,  
4 and 26.60.010; 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 mutual obligations and  
17 benefits conferred by civil marriage licenses. On these bases, the  
18 state therefore has a strong interest in ending discrimination against

1 otherwise qualified applicants for a civil marriage license, including  
2 discrimination on the basis of sex or sexual orientation of the  
3 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 sex.  
8 These couples live together, participate in their communities together,  
9 and many raise children and care for family members together, just as  
10 do heterosexual couples who have the option to marry under Washington  
11 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 sex couples, ranking ninth among the fifty  
17 states in the number of same sex couples. Same sex couples live in all  
18 thirty-nine counties in Washington, and nearly one in four of these  
19 couples is raising children. While some of these couples may have  
20 domestic partner registrations, such arrangements do not offer the same  
21 scope and depth of rights, responsibilities, privileges, and  
22 protections offered by civil marriages, nor do they provide any legal  
23 standing outside the jurisdiction in which they occur.

24 (d) Marriage laws support the core values of commitment and  
25 responsibility. Washington's discriminatory exclusion of same sex  
26 couples from marriage harms those couples and their families by denying  
27 those couples and their families specific and equal rights and  
28 responsibilities under state and federal law. At least four hundred  
29 twenty-three Washington state statutes confer rights, benefits, or  
30 obligations depending upon marital status, many of which are currently  
31 unavailable to Washington's same sex couples even with Washington's  
32 domestic partnership law.

33 (e) Washington's domestic partnership laws have provided limited  
34 relief for same sex couples, but the state's discriminatory exclusion  
35 of same sex couples from marriage harms same sex couples and their  
36 families by denying them the unique public recognition and affirmation  
37 that civil marriage confers on other couples, and the opportunity to

1 express their mutual dedication through the uniquely recognized rituals  
2 of marriage.

3 (f) Most states do not recognize civil marriage between same sex  
4 couples, but some of those states may have domestic partnership laws  
5 and may recognize domestic partnerships created in Washington. In  
6 addition, Washington's reciprocity statute recognizes domestic  
7 partnerships created in other states. Therefore, to protect Washington  
8 citizens traveling to other states and to allow Washington to continue  
9 recognizing domestic partnerships created in other states, the  
10 legislature intends to retain Washington's domestic partnership  
11 statutes until there is consistency throughout the states that provide  
12 adequate protection for Washington's citizens.

13 (g) The legislature has an interest in encouraging and supporting  
14 loving, stable, committed, caregiving relationships through civil  
15 marriage regardless of the sex or sexual orientation of the partners.

16 (h) No official of any religious denomination or nonprofit  
17 institution authorized to solemnize marriages shall be required to  
18 solemnize any marriage in violation of his or her right to free  
19 exercise of religion guaranteed by the First Amendment to the United  
20 States Constitution or by the Washington state Constitution.

21 (3) It is the intent of this act to end discrimination in marriage  
22 based on sex and sexual orientation in Washington, to ensure that all  
23 persons in this state may enjoy the freedom to marry on equal terms,  
24 while also respecting the religious freedom rights of clergy and  
25 religious institutions to determine for whom to perform marriage  
26 ceremonies and which marriages to recognize for religious purposes.

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

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

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

1        (3) Where necessary to implement the rights and responsibilities of  
2 spouses under the law, gender specific terms such as husband and wife  
3 shall be construed to be gender neutral.

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

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

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

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

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

13        (2) It is unlawful for any man to marry his father's sister,  
14 mother's sister, daughter, sister, son's daughter, daughter's daughter,  
15 brother's daughter or sister's daughter; it is unlawful for any woman  
16 to marry her father's brother, mother's brother, son, brother, son's  
17 son, daughter's son, brother's son or sister's son.

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

22        **Sec. 4.** RCW 26.60.010 and 2007 c 156 s 1 are each amended to read  
23 as follows:

24        Many Washingtonians are in intimate, committed, and exclusive  
25 relationships with another person to whom they are not legally married.  
26 These relationships are important to the individuals involved and their  
27 families; they also benefit the public by providing a private source of  
28 mutual support for the financial, physical, and emotional health of  
29 those individuals and their families. The public has an interest in  
30 providing a legal framework for such mutually supportive relationships,  
31 whether the partners are of the same or different sexes, and  
32 irrespective of their sexual orientation.

33        (~~The legislature finds that same sex couples, because they cannot~~  
34 ~~marry in this state, do not automatically have the same access that~~  
35 ~~married couples have to certain rights and benefits, such as those~~  
36 ~~associated with hospital visitation, health care decision-making, organ~~

1 ~~donation decisions, and other issues related to illness, incapacity,~~  
2 ~~and death. Although many of these rights and benefits may be secured~~  
3 ~~by private agreement, doing so often is costly and complex.))~~

4 The legislature ((also)) finds that the public interest would be  
5 served by extending rights and benefits to different sex couples in  
6 which either or both of the partners is at least sixty-two years of  
7 age. While these couples are entitled to marry under the state's  
8 marriage statutes, some social security and pension laws nevertheless  
9 make it impractical for these couples to marry. For this reason,  
10 chapter 156, Laws of 2007 specifically allows couples to enter into a  
11 state registered domestic partnership if one of the persons is at least  
12 sixty-two years of age, the age at which many people choose to retire  
13 and are eligible to begin collecting social security and pension  
14 benefits.

15 The rights granted to state registered domestic partners in chapter  
16 156, Laws of 2007 will further Washington's interest in promoting  
17 family relationships and protecting family members during life crises.  
18 Chapter 156, Laws of 2007 does not affect marriage or any other ways in  
19 which legal rights and responsibilities between two adults may be  
20 created, recognized, or given effect in Washington.

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