

HOUSE BILL REPORT

SSB 5336

As Reported by House Committee On:
Judiciary

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: Senate Committee on Government Operations & Elections (originally sponsored by 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:

Judiciary: 3/16/07, 3/23/07 [DP].

Brief Summary of Substitute Bill

- Creates a domestic partnership registry in the Office of the Secretary of State.
- Provides certain rights to state registered domestic partners to the same extent those rights are provided to spouses.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 7 members: Representatives Lantz, Chair; Goodman, Vice Chair; Flannigan, Kirby, Moeller, Pedersen and Williams.

Minority Report: Do not pass. Signed by 4 members: Representatives Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern and Ross.

Staff: Trudes Tango (786-7384).

Background:

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.

The issue of rights for domestic partners has been addressed by some cities and other states. Three states have statewide domestic partnership laws that provide some of the same rights to domestic partners as are provided to spouses. Many of these rights involve issues with health care, incapacity, and death.

In Washington, a spouse may provide informed consent for health care for a patient who is not competent to consent. Health care providers may disclose a patient's health care information without the patient's consent to immediate family members, which includes a spouse, or other individuals with whom the patient is known to have a close personal relationship. Spouses have certain rights regarding cemetery plots and burial in family plots. Spouses have the authority to consent to autopsies and make anatomical gifts. If a person dies without a will, his or her spouse has certain inheritance rights and rights to administer the decedent's estate.

Many cities and some states offer domestic partnership benefits to their employees. In Washington, the same sex domestic partner of a state employee is eligible to participate in the Public Employees Benefits Board (PEBB) insurance coverage if the partners have been together continuously for a minimum of six months, share the same regular and permanent residence, have a close personal relationship, have agreed to be jointly responsible for basic living expenses, and meet other conditions.

Under the federal Social Security laws, a person 62 years of age or older may be eligible to collect retirement benefits on a former spouse's social security record. The person loses former spouse benefits if the person remarries.

Summary of Bill:

A domestic partnership registry is created in the Office of the Secretary of State (Secretary). The Secretary's office must create the necessary forms. The forms must be made available at the Secretary's office, through the county clerks, and on the internet.

Eligibility: Two persons seeking to enter into a state registered domestic partnership must:

- share a common residence;
- be at least 18 years old;
- not be married to someone other than the other party to the domestic partnership and not be in a state registered domestic partnership with another person;
- be capable of consenting to the domestic partnership;
- not be nearer of kin than second cousins nor be a sibling, child, grandchild, aunt, uncle, niece, or nephew of the other person; and
- either be members of the same sex or at least one person is at least 62 years old.

Registration: Persons who meet the eligibility requirements may file a signed, notarized declaration of state registered domestic partnership with the Secretary and pay a filing fee. The Secretary must provide a certificate of state registered domestic partnership to each party. The Secretary must permanently maintain records of filed declarations and provide records of

declarations to the state registrar of vital statistics. The Secretary shall establish the filing fee to cover its costs, provided the fee does not exceed \$50.

Domestic Partnerships Created by Other Public Entities: Domestic partnerships created by subdivisions of the state are not affected by, nor considered to be, state registered domestic partnerships. If a subdivision chooses, it may use the declaration of state registered domestic partnership to satisfy the subdivision's registration requirements and shall notify the Secretary of its decision. The Secretary shall compile a list of all subdivisions using the state's requirements, post the list on its website, and provide a copy of the list to registering partners.

Termination: A state registered domestic partnership may be terminated by either party filing a signed, notarized notice of termination with the Secretary and paying a filing fee. If the notice of termination is not signed by both parties, the party seeking termination must also file an affidavit stating either: (a) the other party has been served in writing that a termination notice is being filed; or (b) the other party could not be found after reasonable effort and notice was made by publication in a newspaper of general circulation in the county where the residence most recently shared by the partners is located.

Upon receipt of the notice of termination, filing fee, and affidavit (if required), the Secretary shall register the notice of termination and provide a certificate of termination to each party. The termination is effective 90 days after the date of filing the notice and paying the filing fee. A state registered domestic partnership is automatically terminated if either party subsequently enters into a marriage that is recognized as valid in this state.

Rights Extended to State Registered Domestic Partners: State registered domestic partners have the same rights as spouses regarding:

- visitation rights in health care facilities;
- the ability to provide informed consent for health care when the patient is not competent;
- the right to receive health care information about a patient without the patient's authorization when the health care provider finds it necessary to disclose such information;
- title and rights to cemetery plots and rights of interment;
- the ability to authorize dissection and autopsy of deceased partner;
- the right to receive autopsy reports and to request to meet with the coroner to discuss autopsy findings;
- the ability to control the disposition of remains when no pre-death arrangements were made by the deceased;
- the ability to make anatomical gifts;
- inheritance rights if a partner dies without a will;
- administration of a deceased partner's estate if there is no will or the personal representative in the will declines or is unable to serve;
- the right to bring a wrongful death action; and
- the right of a surviving domestic partner to be recognized on a death certificate.

Regarding a power of attorney, the appointment of one domestic partner as the other partner's attorney in fact is revoked when the domestic partnership is terminated. In addition, a

domestic partner who is the principal's physician, physician's employee, or owner, administrator, or employee of a health care facility treating the principal may still be the principal's attorney in fact, just as spouses can be. A designation of a partner as the beneficiary to the other partner's nonprobate asset is revoked upon the termination of the domestic partnership, unless a court order requires otherwise.

For state employees, a certificate of state registered domestic partnership satisfies the eligibility requirements for same sex domestic partner benefits under the PEBB.

Nothing in the act affects any remedy available in common law.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) There are many older couples in situations where if they marry they put themselves in financial difficulties. Same sex couples should be allowed to be there for each other during times of crisis. It is distressing for same sex couples, who have exchanged vows, become parents, and are in committed relationships, to not have the same protections as married people. Some same sex couples have legal documents to allow one partner to make decisions for the other, but it is impractical to have to bring those documents to the hospital in emergencies or to have those documents on hand when traveling. The bill gives a fraction of the rights that married people have. Forbidding families to love and care for each other does not strengthen marriage. The bill does not repeal the Defense of Marriage Act. The current law discriminates, and this bill will remedy some of that discrimination.

(Opposed) The bill discriminates against other citizens who are not able to marry, and should be amended to include siblings and other blood relations that could benefit from the care-taking provisions in the bill. It is reasonable and fair to extend protections to other people and it will help multi-generational families and immigrant families who care for each other. The state should not subsidize behavior that should be discouraged. The bill creates a civil arrangement that is an alternative to marriage for heterosexual seniors. It undermines and will eventually rival marriage as the rights under the bill are expanded. The bill is not needed because gays are not discriminated against today. This bill is an advancement of the homosexual agenda and will justify behavior that is against God.

Persons Testifying: (In support) Alan Fuller; Dave Horn, Lambda Legal; Andrea Jessee; Carolyn Peterson, United Methodist Clergy; and Kim Merriman.

(Opposed) Renee Lizee; Gloria Mayoh; Cheryl Haskins, Allies for Marriage and Children; Rick Forcier, Christian Coalition; Antonio Cube, Washington State Catholic Conference; Bob Higley, Positive Christian Agenda; and Diane Eaton.

Persons Signed In To Testify But Not Testifying: None.