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HOUSE BILL 2516

State of Washington 62nd Legislature 2012 Regular Session

By Representatives Pedersen, Walsh, Moeller, Jinkins, Tharinger, Upthegrove, Van De Wege, Seaquist, McCoy, Billig, Morris, Carlyle, Darneille, Ladenburg, Maxwell, Moscoso, Stanford, Fitzgibbon, Pollet, Hudgins, Finn, Eddy, Springer, Ormsby, Wylie, Goodman, Appleton, Pettigrew, Takko, Roberts, Ryu, Cody, Hasegawa, Hunter, Hunt, Haigh, Lytton, Santos, Orwall, Hansen, Sullivan, Kenney, Reykdal, Dickerson, Kagi, Sells, Clibborn, Dunshee, Liias, and Chopp; by request of Governor Gregoire

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; amending RCW 26.04.010, 26.04.020, 26.04.050, 26.04.060, 26.04.070, 26.60.010, 26.60.030, 26.60.090, and 1.12.080; adding new sections to chapter 26.04 RCW; adding a new section to chapter 26.60 RCW; creating new sections; and providing a contingent effective date.

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

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

(2) No official of any religious denomination or nonprofit institution authorized to solemnize marriages may be required to solemnize any marriage in violation of his or her right to free

exercise of religion guaranteed by the First Amendment to the United States Constitution or by the Washington state Constitution.

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

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

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

(3) Where necessary to implement the rights and responsibilities of spouses under the law, gender specific terms such as husband and wife used in any statute, rule, or other law must be construed to be gender neutral and applicable to spouses of the same sex.

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

(1) Marriages in the following cases are prohibited:

(a) When either party thereto has a ((~~wife or husband~~)) spouse or registered domestic partner living at the time of such marriage, unless the registered domestic partner is the other party to the marriage; or

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

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

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

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

(4) A legal union, other than a marriage, between two individuals that was validly formed in another state or jurisdiction and that provides substantially the same rights, benefits, and responsibilities as a marriage, does not prohibit those same two individuals from obtaining a marriage license in Washington.

Sec. 4. RCW 26.04.050 and 2007 c 29 s 1 are each amended to read as follows:

(1) The following named officers and persons, active or retired, are hereby authorized to solemnize marriages, to wit: Justices of the supreme court, judges of the court of appeals, judges of the superior courts, supreme court commissioners, court of appeals commissioners, superior court commissioners, any regularly licensed or ordained minister or any priest, imam, rabbi, or similar official of any church or religious denomination, and judges of courts of limited jurisdiction as defined in RCW 3.02.010.

(2) No regularly licensed or ordained minister or any priest, imam, rabbi, or similar official of any church or religious denomination is required to solemnize any marriage. A refusal to solemnize any marriage under this section by a regularly licensed or ordained minister or priest, imam, rabbi, or similar official of any church or religious denomination does not create a civil claim or cause of action. No state agency or local government may base a decision to penalize, withhold benefits from, or refuse to contract with any church or religious denomination on the refusal of a person associated with such church or religious denomination to solemnize a marriage under this section.

Sec. 5. RCW 26.04.060 and 1975-'76 2nd ex.s. c 42 s 25 are each amended to read as follows:

A marriage solemnized before any person professing to be a minister or a priest ((~~of any~~)), imam, rabbi, or similar official of any church or religious denomination in this state or professing to be an authorized officer thereof, is not void, nor shall the validity thereof be in any way affected on account of any want of power or authority in such person, if such marriage be consummated with a belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Sec. 6. RCW 26.04.070 and Code 1881 s 2383 are each amended to read as follows:

In the solemnization of marriage no particular form is required, except that the parties thereto shall assent or declare in the presence of the minister, priest, imam, rabbi, or similar official of any church or religious denomination, or judicial officer solemnizing the same, and in the presence of at least two attending witnesses, that they take each other to be husband and wife.

NEW SECTION. **Sec. 7.** A new section is added to chapter 26.04 RCW to read as follows:

(1) Consistent with the law against discrimination, chapter 49.60 RCW, no religious organization is required to provide accommodations, facilities, advantages, privileges, services, or goods related to the solemnization or celebration of a marriage unless the organization offers admission, occupancy, or use of those accommodations or facilities to the public for a fee, or offers those advantages, privileges, services, or goods to the public for sale.

(2) A refusal by any religious organization to provide accommodations, facilities, advantages, privileges, services, or goods related to the solemnization or celebration of a marriage does not create a civil claim or cause of action unless the organization offers those accommodations, facilities, advantages, privileges, services, or goods to the public in transactions governed by law against discrimination, chapter 49.60 RCW.

Sec. 8. RCW 26.60.010 and 2007 c 156 s 1 are each amended to read as follows:

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

((~~The legislature finds that same sex couples, because they cannot marry in this state, do not automatically have the same access that married couples have to certain rights and benefits, such as those associated with hospital visitation, health care decision-making, organ donation decisions, and other issues related to illness, incapacity, and death. Although many of these rights and benefits may be secured by private agreement, doing so often is costly and complex.~~))

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

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

Sec. 9. RCW 26.60.030 and 2007 c 156 s 4 are each amended to read as follows:

To enter into a state registered domestic partnership the two persons involved must meet the following requirements:

(1) Both persons share a common residence;

(2) Both persons are at least eighteen years of age and at least one of the persons is sixty-two years of age or older;

(3) Neither person is married to someone other than the party to the domestic partnership and neither person is in a state registered domestic partnership with another person;

(4) Both persons are capable of consenting to the domestic partnership; and

(5) Both of the following are true:

(a) The persons are not nearer of kin to each other than second cousins, whether of the whole or half blood computing by the rules of the civil law; and

(b) Neither person is a sibling, child, grandchild, aunt, uncle, niece, or nephew to the other person((~~; and~~

~~(6) Either (a) both persons are members of the same sex; or (b) at least one of the persons is sixty-two years of age or older~~)).

NEW SECTION. **Sec. 10.** A new section is added to chapter 26.60 RCW to read as follows:

(1) Partners in a state registered domestic partnership may apply and receive a marriage license and have such marriage solemnized pursuant to chapter 26.04 RCW, so long as the parties are otherwise eligible to marry, and the parties to the marriage are the same as the parties to the state registered domestic partnership.

(2) A state registered domestic partnership is dissolved by operation of law by any marriage of the same parties to each other, as of the date of the marriage stated in the certificate.

(3)(a) Except as provided in (b) of this subsection, any state registered domestic partnership in which the parties are the same sex, and neither party is sixty-two years of age or older, that has not been dissolved or converted into a marriage by the parties by June 30, 2014, is automatically merged into a marriage and is deemed a marriage as of June 30, 2014.

(b) If the parties to a state registered domestic partnership have proceedings for dissolution, annulment, or legal separation pending as of June 30, 2014, the parties' state registered domestic partnership is not automatically merged into a marriage and the dissolution, annulment, or legal separation of the state registered domestic partnership is governed by the provisions of the statutes applicable to state registered domestic partnerships in effect before June 30, 2014. If such proceedings are finalized without dissolution, annulment, or legal separation, the state registered domestic partnership is automatically merged into a marriage and is deemed a marriage as of June 30, 2014.

(4) For purposes of determining the legal rights and responsibilities involving individuals who had previously had a state registered domestic partnership and have been issued a marriage license

or are deemed married under the provisions of this section, the date of the original state registered domestic partnership is the legal date of the marriage. Nothing in this subsection prohibits a different date from being included on the marriage license.

NEW SECTION. **Sec. 11.** A new section is added to chapter 26.04 RCW to read as follows:

If two persons in Washington have a legal union, other than a marriage, that:

(1) Was validly formed in another state or jurisdiction;

(2) Provides substantially the same rights, benefits, and responsibilities as a marriage; and

(3) Does not meet the definition of domestic partnership in RCW 26.60.030,

then they shall be treated as having the same rights and responsibilities as married spouses in this state, unless:

(a) Such relationship is prohibited by RCW 26.04.020 (1)(a) or (2); or

(b) They become permanent residents of Washington state and do not enter into a marriage within one year after becoming permanent residents.

Sec. 12. RCW 26.60.090 and 2011 c 9 s 1 are each amended to read as follows:

A legal union, other than a marriage, of two persons ((~~of the same sex~~)) that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under this chapter, shall be recognized as a valid domestic partnership in this state and shall be treated the same as a domestic partnership registered in this state regardless of whether it bears the name domestic partnership.

Sec. 13. RCW 1.12.080 and 2011 c 9 s 2 are each amended to read as follows:

For the purposes of this code and any legislation hereafter enacted by the legislature or by the people, with the exception of chapter 26.04 RCW, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in

state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, unless the legislation expressly states otherwise and to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009 and this act, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships and spouses of the same sex.

NEW SECTION. **Sec. 14.** (1) Within sixty days after the effective date of this section, the secretary of state shall send a letter to the mailing address on file of each same-sex domestic partner registered under chapter 26.60 RCW notifying the person that Washington's law on the rights and responsibilities of state registered domestic partners will change in relation to certain same-sex registered domestic partners.

(2) The notice must provide a brief summary of the new law and must clearly state that provisions related to certain same-sex registered domestic partnerships will change as of the effective dates of this act, and that those same-sex registered domestic partnerships that are not dissolved prior to June 30, 2014, will be converted to marriage as an act of law.

(3) The secretary of state shall send a second similar notice to the mailing address on file of each domestic partner registered under chapter 26.60 RCW by May 1, 2014.

NEW SECTION. **Sec. 15.** Sections 8 and 9 of this act take effect June 30, 2014, but only if all other provisions of this act are implemented.

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