96TH GENERAL ASSEMBLY
State of Illinois
2009 and 2010
HB0178

Introduced 1/14/2009, by Rep. Greg Harris

SYNOPSIS AS INTRODUCED:

New Act
750 ILCS 5/201 from Ch. 40, par. 201
750 ILCS 5/209 from Ch. 40, par. 209
750 ILCS 5/212 from Ch. 40, par. 212
750 ILCS 5/213.1 rep.

Creates the Religious Freedom and Marriage Fairness Act. Makes legislative findings: same-sex couples are denied equal access to civil marriage benefits; the current marriage law is discriminatory and harms same-sex couples; and there is no compelling interest or rational basis to deny same-sex couples those benefits. Provides that the Act does not interfere with any religious beliefs about marriage. Provides that the Act's purpose is to provide eligible same-sex and opposite-sex couples with the same treatment as those in a civil marriage. Provides that parties to a marriage of the same sex are included in the terms "spouse", "immediate family", "dependent", and related matters. Provides that domestic relations, probate, and family law shall apply equally to parties to a marriage of the same sex. Provides that benefits apply equally to same-sex marriages in these areas: causes of actions related to spousal status, for wrongful death, emotional distress, and loss of consortium; adoption; family leave; group insurance for State and municipal employees; accident and health insurance protections tied to former spouses and dependents; and taxes and tax deductions based on marital status. Provides that a civil marriage is prohibited between siblings or between an uncle and a nephew or an aunt and a niece. Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that nothing in the Act should be construed to interfere or regulate any religious practice concerning marriage and no religion is required to solemnize a marriage to which it objects. Provides that a marriage is between 2 persons (rather than, a man and a woman) licensed, solemnized, and registered under the Act. Effective immediately.
AN ACT concerning civil law.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Religious Freedom and Marriage Fairness Act.

Section 5. Declaration of policy. With this Act, Illinois builds on a long tradition of respect for religious freedom, individual rights and responsibilities, the commitments of married couples to each other and their families, and equal protection of the laws. Accordingly, it is the public policy of this State:

   (a) Religious freedom. To respect the guarantees of the First Amendment of the United States Constitution and of Article I, Section 3 of the Illinois Constitution of 1970 to free exercise of religion and enjoyment of religion without discrimination or preference.

   (b) Freedom from unlawful discrimination. To secure for all individuals within Illinois the freedom from discrimination against any individual because of his or her sex or sexual orientation in connection with the benefits, protections, and responsibilities that are otherwise provided only through civil marriage in Illinois.

   (c) Public health, welfare and safety. To promote the
public health, welfare, and safety by protecting the
interest of all people in Illinois in maintaining personal
dignity, in realizing their full productive capacities,
and in furthering their interests, rights, and privileges
as citizens of this State in connection to the benefits,
protections, and responsibilities that are currently
associated only with civil marriage in Illinois.

(d) Equal protection. To continue Illinois' history as
a state in affording equal treatment and respect for all
residents of Illinois as embodied in Article I, Sections 2

Section 10. Legislative findings. The General Assembly
finds that:

(a) Civil marriage is a legal institution recognized by
the State in order to promote stable relationships and to
protect individuals who are in those relationships. The
institution of civil marriage also provides important
protections for the families of those who are married,
including not only any children or other dependents they
may have, but also members of their extended families.

(b) The benefits, protections, and responsibilities
that are associated with civil marriage in Illinois are
currently available only to opposite-sex couples. Thus,
same-sex couples and their children are denied equal access
to these benefits, protections, and responsibilities.
(c) Legal recognition of civil marriage by Illinois is the primary and, in a number of instances, the exclusive source of numerous benefits, responsibilities, and protections under the laws of Illinois for parties to a marriage and their children. Without the legal protections, benefits, and responsibilities currently associated only with civil marriage, same-sex couples in Illinois suffer numerous obstacles and hardships.

(d) Other jurisdictions have chosen to treat as valid or otherwise recognize marriages between same-sex couples. Illinois' discriminatory marriage law therefore also harms Illinois' same-sex couples when they travel to other jurisdictions by preventing them from having access to the benefits, protections, and responsibilities those jurisdictions provide to all couples.

(e) By excluding same-sex couples from marriage, Illinois' marriage law discriminates against members of same-sex couples based on their gender and based on their sexual orientation. The exclusion of same-sex couples from marriage is based in significant part on, and perpetuates, gender stereotypes about the roles of men and women in families and society.

(f) Illinois' discriminatory exclusion of same-sex couples from marriage harms same-sex couples and their families by denying those couples and their families specific benefits, protections, and responsibilities under
State law and by depriving members of those couples and their families of a legal basis to challenge (28 U.S.C. § 1738C) federal laws that deny access to the many important federal benefits and obligations provided only to spouses (1 U.S.C. §7). Those federal benefits include the right to file joint federal tax returns, the right to sponsor a partner for immigration status, the right to social security survivor's benefits, the right to family and medical leave, and many other substantive benefits and obligations.

(g) The exclusion of same-sex couples from Illinois' marriage law further harms same-sex couples and their families by denying them the unique public recognition and validation that marriage confers.

(h) Illinois has a strong interest in promoting stable and lasting families, including families headed by a same-sex couple. The benefits that accrue to the general community when couples undertake the mutual obligations of marriage accrue regardless of the gender or sexual orientation of the partners. Notwithstanding longstanding social and economic discrimination, many gay and lesbian residents of Illinois have formed lasting, committed, caring, and faithful relationships with a person of the same sex. These couples share lives together and participate in their communities together, and many rear children and care for other dependent family members.
together. Permitting same-sex couples to marry would further Illinois' interests in promoting family relationships and protecting family members during life crises. Lesbian, gay, and bisexual residents of Illinois have the same interests in marriage and in personal autonomy and privacy, including marrying the person of one's choice, as other residents of Illinois.

(i) There is neither a compelling interest nor a rational basis for Illinois to deny same-sex couples the benefits, responsibilities, and protections afforded spouses under Illinois law.

(j) It is the public policy of the State to allow and to respect the private decision of all its residents to bind themselves to the obligation of and rights related to family relationships that are codified under Illinois law.

(k) It is the intent of the General Assembly in enacting this Act to end the practice of marriage discrimination in Illinois. The harms caused by prohibiting same-sex couples from marrying in Illinois cannot be remedied, as required by the Illinois Constitution, by any measure short of permitting same-sex couples to marry in Illinois.

(l) This Act is in no way intended to alter Section 216 of the Illinois Marriage and Dissolution of Marriage Act, which prohibits Illinois from treating as valid or otherwise recognizing marriages solemnized outside of
Illinois if such a marriage is prohibited or declared void by the laws of this State.

Section 20. Purposes; rules of construction. This Act shall be liberally construed and applied to promote its underlying purpose, which is to provide both eligible same-sex and opposite-sex couples the opportunity to obtain the same benefits, protections, and responsibilities afforded by the laws of Illinois to parties to a civil marriage.

Section 30. Formalities.

(a) Notwithstanding any other provision of State law, a marriage between two persons of either the same-sex or opposite-sex licensed, solemnized, and registered as provided in the Illinois Marriage and Dissolution of Marriage Act is valid in this State.

(b) All laws of the State of Illinois, whether they derive from statute, administrative or court rule, policy, common law or any other source of civil or criminal law, applicable to marriage shall also be applicable to parties to marriage of the same sex.

(c) Parties to a marriage of the same sex shall have all the same benefits, protections, and responsibilities under law, whether they derive from statute, administrative or court rule, policy, common law or any other source of civil or criminal law, as are granted to parties to a marriage of
(d) Parties to a marriage of the same sex shall be included in any definition or use of the terms "spouse", "family", "immediate family", "dependent", "next of kin", "husband", "wife", "out of wedlock", and other terms that denote the spousal relationship, as those terms are used throughout the law.

(e) The term marriage as it is used throughout the law, whether in statutes, administrative or court rule, policy, common law or any other source of civil or criminal law, without limitation shall be read, interpreted, and understood to include parties to a marriage of the same sex.

(f) The whole of this State's law concerning domestic relations, probate, and family law shall apply equally to parties to a marriage of the same sex as parties to a marriage of the opposite sexes.

(g) The following is a nonexclusive list of legal benefits, protections, and responsibilities of parties to a marriage, which shall apply in like manner to parties to a marriage of the same sex:

(1) Law and procedure relating to title, tenure, descent, and distribution in estate succession, or transfer by purchase, legacy or descent of real or personal property as provided in Chapter 755 of the Illinois Compiled Statutes.

(2) Probate law and procedure as provided in the
Probate Act of 1975.

(3) Causes of actions related to or dependent upon spousal status, including actions for wrongful death, emotional distress, loss of consortium or other torts, or actions under contract related to or dependent upon spousal status.

(4) Family law and procedure as provided in Chapter 750 of the Illinois Compiled Statutes.

(5) Group insurance for State and municipal employees under the State Employees Group Insurance Act of 1971.

(6) Accident and health insurance protections tied to former spouses, dependents, and immediate family provided in Article XX of the Illinois Insurance Code.

(7) Veteran benefits as provided in Chapter 330 of the Illinois Compiled Statutes and the Department of Veterans Affairs Act.

(8) Workers' compensation as provided by the Workers' Compensation Act and the Workers' Occupational Diseases Act.

(9) Assignment of wages as provided in the Illinois Wage Assignment Act.

(10) Trust and fiduciaries laws and procedures as provided in Chapter 760 of the Illinois Compiled Statutes.

(11) Property law and procedures as provided in Chapter 765 of the Illinois Compiled Statutes.

(12) Order of protection law and procedures as provided

(13) Antenuptial and premarital agreements as provided in the Illinois Uniform Premarital Agreement Act and Section 503 of the Illinois Marriage and Dissolution of Marriage Act.

(14) Declaration of invalidity, legal separation, and dissolution law and procedures as provided in the Illinois Marriage and Dissolution of Marriage Act.

(15) Adoption laws and procedures as provided in the Adoption Act.

(16) Address confidentiality law and procedures as provided in the Address Confidentiality for Victims of Domestic Violence Act.

(17) The rights of spouses to be sued and sue each other under the Rights of Married Persons Act.

(18) Marital communications privilege afforded under Section 115-16 of the Code of Criminal Procedure of 1963.

(h) The rights of parties to marriage of the same sex, with respect to a child of whom either becomes the natural parent during the term of the civil union, shall be the same as those of parties to a marriage of opposite sexes, with respect to a child of whom either spouse becomes the natural parent during the marriage.

(i) To the extent any of the laws of Illinois adopt, refer to, or rely upon provisions of federal law as applicable to the State, parties to a marriage of the same sex shall be treated
under the law of the State as if federal law recognized the marriages of same-sex couples in the same manner as the law of the State.

Section 40. Construction. This Act and the rules now or hereafter applicable thereto shall be liberally construed to secure to eligible couples the option of a legal status with all the attributes and effects, benefits, and protections of civil marriage. Parties to a marriage of the same sex shall have all the same benefits, protections, and responsibilities under State law, whether derived from statute, administrative or court rule, policy, common law, or any other source of civil or criminal law, as granted to parties to a marriage of the opposite sexes. Further, this Act is intended to extend to parties to a marriage of the same sex the benefits, protections, and responsibilities that flow from a marriage with parties of the opposite sex.

Section 45. Severability Clause. If any part of this Act or its application to any person or circumstance is adjudged invalid, such adjudication or application shall not affect the validity of the Act as a whole or of any other part.

Section 50. The Illinois Marriage and Dissolution of Marriage Act is amended by changing Sections 201, 209, and 212 as follows:
Sec. 201. Formalities.) A marriage between two persons a man and a woman licensed, solemnized and registered as provided in this Act is valid in this State.

(Source: P.A. 80-923.)

Sec. 209. Solemnization and Registration.)

(a) A marriage may be solemnized by a judge of a court of record, by a retired judge of a court of record, unless the retired judge was removed from office by the Judicial Inquiry Board, except that a retired judge shall not receive any compensation from the State, a county or any unit of local government in return for the solemnization of a marriage and there shall be no effect upon any pension benefits conferred by the Judges Retirement System of Illinois, by a judge of the Court of Claims, by a county clerk in counties having 2,000,000 or more inhabitants, by a public official whose powers include solemnization of marriages, or in accordance with the prescriptions of any religious denomination, Indian Nation or Tribe or Native Group, provided that when such prescriptions require an officiant, the officiant be in good standing with his or her religious denomination, Indian Nation or Tribe or Native Group. Either the person solemnizing the marriage, or, if no individual acting alone solemnized the marriage, both
parties to the marriage, shall complete the marriage
certificate form and forward it to the county clerk within 10
days after such marriage is solemnized.

(a) Nothing in this Act shall be construed to interfere
or regulate religious practice of the many faiths in Illinois
that grant status, sacrament, and blessing of marriage under
wholly separate religious rules, practices, or traditions of
such faiths. And, nothing in this Act shall be construed as to
require any religious denomination, Indian Nation or Tribe or
Native Group to solemnize any marriage to which it objects.
Instead, any religious denomination, Indian Nation or Tribe or
Native Group is free to choose which marriage it will
solemnize.

(b) The solemnization of the marriage is not invalidated by
the fact that the person solemnizing the marriage was not
legally qualified to solemnize it, if either party to the
marriage believed him or her to be so qualified or by the fact
that the marriage was inadvertently solemnized in a county in
Illinois other than the county where the license was issued.
(Source: P.A. 95-775, eff. 1-1-09.)

(750 ILCS 5/212) (from Ch. 40, par. 212)
Sec. 212. Prohibited Marriages.
(a) The following marriages are prohibited:

(1) a marriage entered into prior to the dissolution of

an earlier marriage of one of the parties;
(2) a marriage between an ancestor and a descendant or between siblings a brother and a sister, whether the relationship is by the half or the whole blood or by adoption;

(3) a marriage between an uncle and a niece, between an uncle and a nephew, or between an aunt and a nephew, or between an aunt and a niece whether the relationship is by the half or the whole blood;

(4) a marriage between cousins of the first degree; however, a marriage between first cousins is not prohibited if:

   (i) both parties are 50 years of age or older; or
   (ii) either party, at the time of application for a marriage license, presents for filing with the county clerk of the county in which the marriage is to be solemnized, a certificate signed by a licensed physician stating that the party to the proposed marriage is permanently and irreversibly sterile;

(5) (Blank). a marriage between 2 individuals of the same sex.

(b) Parties to a marriage prohibited under subsection (a) of this Section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

(c) Children born or adopted of a prohibited or common law marriage are the lawful children of the parties.
Section 90. The Illinois Marriage and Dissolution of Marriage Act is amended by repealing Section 213.1.

Section 99. Effective date. This Act takes effect upon becoming law.