

ASSEMBLY BILL

No. 19

**Introduced by Assembly Members Leno, Nunez, Goldberg,
Koretz, Laird, and Lieber**

(Principal coauthors: Senators Kehoe, Kuehl, and Migden)

**(Coauthors: Assembly Members Calderon, Chan, Chu, Dymally,
Evans, Hancock, Jones, Levine, Montanez, Nation,
Ridley-Thomas, Ruskin, Saldana, and Yee)**

(Coauthors: Senators Cedillo and Simitian)

December 6, 2004

An act to amend Sections 300, 301, and 302 of, and to add Section 403 to, the Family Code, relating to marriage.

LEGISLATIVE COUNSEL'S DIGEST

AB 19, as introduced, Leno. Gender-neutral marriage.

Existing law provides that marriage is a personal relation arising out of a civil contract between a man and a woman. Existing law provides for the issuance of marriage licenses and imposes duties on county clerks in that connection, as specified. Existing law further provides that only marriage between a man and a woman is valid or recognized in this state.

This bill would enact the "Religious Freedom and Civil Marriage Protection Act," which would instead provide that marriage is a personal relation arising out of a civil contract between 2 persons. The bill would make conforming changes with regard to the consent to, and solemnization of, marriage, and would make related findings and declarations.

By adding to the duties of county employees, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 “Religious Freedom and Civil Marriage Protection Act.”
3 SEC. 2. It is the intent of the Legislature that this act be
4 interpreted consistently with the guarantees of the First
5 Amendment to the United States Constitution and of Section 4 of
6 Article I of the California Constitution to free exercise of religion
7 and enjoyment of religion without discrimination or preference.
8 SEC. 3. The Legislature finds and declares as follows:
9 (a) Civil marriage is a legal institution recognized by the state
10 in order to promote stable relationships and to protect individuals
11 who are in those relationships. The institution of marriage also
12 provides important protections for the families of those who are
13 married, including not only any children or other dependents they
14 may have, but also members of their extended families.
15 (b) From 1850 to 1977, the statutory definition of marriage in
16 California was gender-neutral, containing no reference to “man”
17 or “woman.”
18 (c) In 1948, the California Supreme Court became the first
19 state court in the country to strike down a law prohibiting
20 interracial marriage. It was the only state supreme court to do so
21 before the United States Supreme Court invalidated all those
22 laws in 1967. The California Supreme Court held that “marriage
23 is . . . something more than a civil contract subject to regulation
24 by the state; it is a fundamental right of free men...Legislation
25 infringing such rights must be based upon more than prejudice
26 and must be free from oppressive discrimination to comply with
27 the constitutional requirements of due process and equal

1 protection of the laws” (Perez v. Sharp (1948) 32 Cal.2d 711,
2 714-15).

3 (d) In 1977, the Legislature amended the state's marriage law
4 to specify that, as a matter of state law, the gender-neutral
5 definition of marriage could permit same-sex couples to marry
6 and have access to equal rights and therefore would be changed.
7 The gender-specific definition of marriage that the Legislature
8 adopted specifically discriminated in favor of different-sex
9 couples and, consequently, discriminated and continues to
10 discriminate against same-sex couples.

11 (e) The highest courts in three states have held that denying
12 the legal rights and obligations of marriage to same-sex couples
13 is constitutionally suspect or impermissible under their respective
14 state constitutions. These states are Hawaii, Vermont, and
15 Massachusetts. The highest courts in seven Canadian provinces
16 have similarly ruled that marriage laws that discriminate in favor
17 of different-sex couples to the exclusion of same-sex couples
18 violate the rights of same-sex couples and cannot stand.

19 (f) California's discriminatory exclusion of same-sex couples
20 from marriage violates the California Constitution's guarantee of
21 due process, privacy, equal protection of the law, and free
22 expression, by arbitrarily denying equal marriage rights to
23 lesbian, gay, and bisexual Californians.

24 (g) California's discriminatory exclusion of same-sex couples
25 from marriage harms same-sex couples and their families by
26 denying those couples and their families specific legal rights and
27 responsibilities under state law and by depriving members of
28 those couples and their families of a legal basis to challenge
29 federal laws that deny access to the many important federal
30 benefits and obligations provided only to spouses. Those federal
31 benefits include the right to file joint federal income tax returns,
32 the right to sponsor a partner for immigration to the United
33 States, the right to social security survivor's benefits, the right to
34 family and medical leave, and many other substantial benefits
35 and obligations.

36 (h) Other jurisdictions have chosen to treat as valid or
37 otherwise recognize marriages between same-sex couples.
38 California's discriminatory marriage law therefore also harms
39 California's same-sex couples when they travel to other
40 jurisdictions by preventing them from having access to the rights,

1 benefits, and protections those jurisdictions provide only to
2 married couples.

3 (i) California's discriminatory exclusion of same-sex couples
4 from marriage further harms same-sex couples and their families
5 by denying them the unique public recognition and affirmation
6 that marriage confers on heterosexual couples.

7 (j) The Legislature has an interest in encouraging stable
8 relationships regardless of the gender or sexual orientation of the
9 partners. The benefits that accrue to the general community when
10 couples undertake the mutual obligations of marriage accrue
11 regardless of the gender or sexual orientation of the partners.

12 (k) It is the intent of the Legislature in enacting this act to end
13 the pernicious practice of marriage discrimination in California.
14 This act is in no way intended to alter Section 308.5 of the
15 Family Code, which prohibits California from treating as valid or
16 otherwise recognizing marriages of same-sex couples solemnized
17 outside of California.

18 SEC. 4. Section 300 of the Family Code is amended to read:

19 300. (a) Marriage is a personal relation arising out of a civil
20 contract between ~~a man and a woman~~ *two persons*, to which the
21 consent of the parties capable of making that contract is
22 necessary. Consent alone does not constitute marriage. Consent
23 must be followed by the issuance of a license and solemnization
24 as authorized by this division, except as provided by Section 425
25 and Part 4 (commencing with Section 500).

26 (b) *Where necessary to implement the rights and*
27 *responsibilities of spouses under the law, gender-specific terms*
28 *shall be construed to be gender-neutral, except with respect to*
29 *Section 308.5.*

30 SEC. 5. Section 301 of the Family Code is amended to read:

31 301. ~~An~~ *Two* unmarried ~~male~~ *persons* of the age of 18 years
32 or older, ~~and an unmarried female of the age of 18 years or older,~~
33 ~~and~~ *who are* not otherwise disqualified, are capable of consenting
34 to and consummating marriage.

35 SEC. 6. Section 302 of the Family Code is amended to read:

36 302. An unmarried ~~male or female~~ *person* under the age of 18
37 years is capable of consenting to and consummating marriage if
38 each of the following documents is filed with the county clerk
39 issuing the marriage license:

1 (a) The written consent of the parents of each underage
2 person, or of one of the parents or the guardian of each underage
3 person.

4 (b) A court order granting permission to the underage person
5 to marry, obtained on the showing the court requires.

6 SEC. 7. Section 403 is added to the Family Code, to read:

7 403. No priest, minister, or rabbi of any religious
8 denomination, and no official of any nonprofit religious
9 institution authorized to solemnize marriages, shall be required to
10 solemnize any marriage in violation of his or her right to free
11 exercise of religion guaranteed by the First Amendment to the
12 United States Constitution or by Section 4 of Article I of the
13 California Constitution.

14 SEC. 8. The Legislature finds and declares that this act does
15 not amend or modify Section 308.5 of the Family Code, which
16 addresses marriages from other jurisdictions, as enacted by an
17 initiative measure.

18 SEC. 9. If the Commission on State Mandates determines that
19 this act contains costs mandated by the state, reimbursement to
20 local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.