AMENDED IN ASSEMBLY MAY 12, 2005

AMENDED IN ASSEMBLY APRIL 21, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

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 Berg, Calderon, Chan, Chu, Dymally, Evans, Hancock, Jones, *Klehs,* Levine, Montanez, Nation, Oropeza, Ridley-Thomas, Ruskin, Saldana, and Yee)
(Coauthors: Senators Alarcon, Alquist, Cedillo, Simitian, and Speier)

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 amended, 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~~ *Proposition 22, the California Defense of Marriage Act,* further provides that only marriage between a man and a woman is valid or recognized in this state.

This bill would enact the ~~"Religious~~ *Religious* Freedom and Civil Marriage Protection ~~Act,"~~ *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

by the state; it is a fundamental right of free men...Legislation infringing such rights must be based upon more than prejudice and must be free from oppressive discrimination to comply with the constitutional requirements of due process and equal protection of the laws" (Perez v. Sharp (1948) 32 Cal.2d 711, 714-15).

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

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

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

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

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

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

(j) The Legislature has an interest in encouraging stable relationships regardless of the gender or sexual orientation of the partners. 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.

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

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

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

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

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

301. Two unmarried persons of the age of 18 years or older, who are not otherwise disqualified, are capable of consenting to and consummating marriage.

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

302. An unmarried person under the age of 18 years is capable of consenting to and consummating marriage if each of the following documents is filed with the county clerk issuing the marriage license:

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

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

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

403. No priest, minister, or rabbi of any religious denomination, and no official of any nonprofit religious institution authorized to solemnize marriages, shall 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 Section 4 of Article I of the California Constitution.

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

SEC. 8. The Legislature finds and declares that this act does not amend or modify Section 308.5 of the Family Code, as enacted by an initiative measure, to the extent that Section 308.5 addresses only marriages from other jurisdictions. The Legislature further finds that Sections 300 and 308.5 of the Family Code have been declared unconstitutional by a state coordination trial judge appointed by the Judicial Council, and the Legislature declares that the purpose of this act is to correct the constitutional infirmities of Section 300, which was enacted by the Legislature. The Legislature further finds that the constitutional infirmities of Section 308.5 of the Family Code, which was enacted through the initiative process, cannot be corrected by the Legislature and that the California Supreme Court is the governmental body that has authority to make a final determination regarding the meaning, validity, or invalidity of Section 308.5.

SEC. 9. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made

1 pursuant to Part 7 (commencing with Section 17500) of Division
2 4 of Title 2 of the Government Code.

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