

1 SECTION 89. 321.62 (11) (a) of the statutes, as affected by 2007 Wisconsin Act  
2 200, is amended to read:

3 321.62 (11) (a) No eviction may be made during the period of state active duty  
4 in respect to any premises for which the agreed rent does not exceed the amount  
5 specified in 50 USC App. 531 occupied chiefly for dwelling purposes by the spouse,  
6 children, state-registered domestic partner under s. 770.05, or other dependents of  
7 a service member who is in state active duty, except upon order of a court in an action  
8 affecting the right of possession.

9 SECTION 90. 342.14 (3m) of the statutes, as affected by 2007 Wisconsin Act 33,  
10 is amended to read:

11 342.14 (3m) Upon filing an application under sub. (1) or (3), a supplemental  
12 title fee of \$7.50 by the owner of the vehicle, except that this fee shall be waived with  
13 respect to an application under sub. (3) for transfer of a decedent's interest in a  
14 vehicle to his or her surviving spouse or state-registered domestic partner under s.  
15 770.05. The fee specified under this subsection is in addition to any other fee  
16 specified in this section. This subsection does not apply to an application for a  
17 certificate of title for a neighborhood electric vehicle.

18 SECTION 91. 342.17 (4) (b) 1. (intro.) and c. and 4. of the statutes are amended  
19 to read:

20 342.17 (4) (b) 1. (intro.) The department shall transfer the decedent's interest  
21 in any vehicle to his or her surviving spouse or state-registered domestic partner  
22 under s. 770.05 upon receipt of the title executed by the surviving spouse or domestic  
23 partner and a statement by the spouse or domestic partner which shall state:

24 c. That the spouse or domestic partner is personally liable for the decedent's  
25 debts and charges to the extent of the value of the vehicle, subject to s. 859.25.



1           (1) Each individual is at least 18 years old and capable of consenting to the  
2 domestic partnership.

3           (2) Neither individual is married to, or in a state-registered domestic  
4 partnership with, another individual.

5           (3) The 2 individuals share a common residence. Two individuals may share  
6 a common residence even if any of the following applies:

7           (a) Only one of the individuals has legal ownership of the residence.

8           (b) One or both of the individuals have one or more additional residences not  
9 shared with the other individual.

10          (c) One of the individuals leaves the common residence with the intent to  
11 return.

12          (4) The 2 individuals are not nearer of kin to each other than 2nd cousins,  
13 whether of the whole or half blood or by adoption.

14          (5) Either of the following is true:

15          (a) Both individuals are members of the same sex.

16          (b) At least one of the individuals is 62 years of age or older.

17          **770.07 Procedure for entering into a state-registered domestic**  
18 **partnership.** (1) FILE DECLARATION. Two individuals who meet the criteria under  
19 s. 770.05 may enter into a state-registered domestic partnership by filing a  
20 completed declaration of state-registered domestic partnership form with the  
21 secretary and paying the filing fee established under s. 770.18 (3) (a). The  
22 declaration must be signed by both individuals and notarized.

23          (2) SECRETARY ISSUE CERTIFICATE. Upon receiving a completed, signed, and  
24 notarized declaration of state-registered domestic partnership and the filing fee  
25 established under s. 770.18 (3) (a), the secretary shall register the declaration, as

1 provided under s. 770.18 (1), and issue to each individual named on the declaration  
2 a certificate of state-registered domestic partnership.

3 **770.10 Terminating a state-registered domestic partnership. (1) FILE**  
4 **NOTICE OF TERMINATION; AFFIDAVIT.** (a) A party to a state-registered domestic  
5 partnership may terminate the state-registered domestic partnership by filing a  
6 completed notice of termination of state-registered domestic partnership form with  
7 the secretary and paying the filing fee established under s. 770.18 (3) (a). The notice  
8 must be signed by one or both domestic partners and notarized.

9 (b) If the notice under par. (a) is signed by only one of the domestic partners,  
10 that individual must also file with the secretary an affidavit stating either of the  
11 following:

12 1. That the other domestic partner has been served in writing, in the manner  
13 provided under s. 801.11, that a notice of termination of state-registered domestic  
14 partnership is being filed with the secretary.

15 2. That the domestic partner seeking termination has been unable to locate the  
16 other domestic partner after making reasonable efforts and that notice to the other  
17 domestic partner has been made by publication as provided in sub. (2).

18 (2) **PUBLISH NOTICE.** If a domestic partner who is seeking to terminate the  
19 state-registered domestic partnership is unable to find the other domestic partner  
20 after making reasonable efforts, the domestic partner seeking termination may  
21 provide notice by publication in a newspaper of general circulation in the county in  
22 which the residence most recently shared by the domestic partners is located. The  
23 notice need not be published more than one time.

24 (3) **SECRETARY ISSUES CERTIFICATE.** Upon receiving a completed, signed, and  
25 notarized notice of termination of state-registered domestic partnership, the

1 affidavit under sub. (1) (b) if required, and the filing fee established under s. 770.18  
2 (3) (a), the secretary shall register the notice of termination of state-registered  
3 domestic partnership, as provided under s. 770.18 (1), and issue to each domestic  
4 partner a certificate of termination of state-registered domestic partnership.

5 (4) WHEN TERMINATION EFFECTIVE. (a) Except as provided in par. (b), the  
6 termination of a state-registered domestic partnership is effective 90 days after the  
7 notice of termination of state-registered domestic partnership or notice of  
8 termination of state-registered domestic partnership and affidavit are filed under  
9 sub. (1).

10 (b) If a party to a state-registered domestic partnership enters into a marriage  
11 that is recognized as valid in this state, the state-registered domestic partnership  
12 is automatically terminated on the date of the marriage.

13 **770.15 Forms for declaration and notice of termination. (1)**  
14 PREPARATION. The secretary shall prepare forms entitled "declaration of  
15 state-registered domestic partnership" and "notice of termination of  
16 state-registered domestic partnership" and any other forms that are necessary to  
17 meet the requirements of this chapter.

18 (2) DISTRIBUTION. The secretary shall distribute the forms under this section  
19 to each county clerk. The forms shall be available to the public at the office of the  
20 secretary, at any county clerk's office, and on the Internet at a site maintained by the  
21 secretary.

22 **770.18 State domestic partnership registry; fees. (1) REGISTRATION OF**  
23 DECLARATIONS AND NOTICES OF TERMINATION. The state domestic partnership registry  
24 is created in the office of the secretary. The secretary shall register and permanently

1 maintain in the state domestic partnership registry all of the following documents  
2 or records of all of the following documents:

3 (a) Declarations of state-registered domestic partnership filed with the  
4 secretary under s. 770.07 (1).

5 (b) Certificates of state-registered domestic partnership issued by the  
6 secretary under s. 770.07 (2).

7 (c) Notices of termination of state-registered domestic partnership and  
8 affidavits filed with the secretary under s. 770.10 (1).

9 (d) Certificates of termination of state-registered domestic partnership issued  
10 by the secretary under s. 770.10 (3).

11 (2) COPIES TO STATE REGISTRAR. The secretary shall provide the state registrar  
12 of vital statistics with copies of declarations of state-registered domestic partnership  
13 filed with the secretary under s. 770.07 (1) and with copies of notices of termination  
14 of state-registered domestic partnership and affidavits filed with the secretary  
15 under s. 770.10 (1).

16 (3) SETTING FEES; RULES. (a) The secretary shall set, by rule, reasonable fees  
17 for filing a declaration of state-registered domestic partnership and for filing a notice  
18 of termination of state-registered domestic partnership. The fees shall be calculated  
19 to cover the secretary's costs, but no fee may exceed \$50. Fees collected under ss.  
20 770.07 and 770.10 shall be credited to the appropriation account under s. 20.575 (1)  
21 (g).

22 (b) The secretary shall promulgate any other rules necessary for the  
23 implementation and administration of the state domestic partnership registry.

24 SECTION 95. 851.08 of the statutes is created to read:

1           **851.08 Domestic partner.** “Domestic partner” means a state-registered  
2 domestic partner under s. 770.05.

3           **SECTION 96.** 851.17 of the statutes is amended to read:

4           **851.17 Net estate.** “Net estate” means all property subject to administration  
5 less the property selected by the surviving spouse or surviving domestic partner  
6 under s. 861.33, the allowances made by the court under ss. 861.31, 861.35 and  
7 861.41 except as those allowances are charged by the court against the intestate  
8 share of the recipient, administration, funeral and burial expenses, the amount of  
9 claims paid and federal and state estate taxes payable out of such property.

10          **SECTION 97.** 851.295 of the statutes is created to read:

11          **851.295 Surviving domestic partner.** (1) Subject to sub. (2), “surviving  
12 domestic partner” means a person who was in a domestic partnership registered with  
13 the secretary of state under s. 770.07 with the decedent, at the time of the decedent’s  
14 death.

15          (2) “Surviving domestic partner” does not include any of the following:

16          (a) An individual who obtains or consents to a termination of domestic  
17 partnership from the decedent if the secretary of state fails to issue a valid certificate  
18 of termination of domestic partnership under s. 770.10 (3), unless the individual and  
19 the decedent subsequently register as domestic partners under s. 770.07 with the  
20 secretary of state or they subsequently hold themselves out as domestic partners.

21          (b) An individual whose domestic partnership with the decedent has not been  
22 terminated by the secretary of state issuing a valid certificate of termination under  
23 s. 770.10 (3) and who subsequently registers a domestic partnership with a 3rd  
24 individual with the secretary of state under s. 770.07 or who participates in a  
25 marriage ceremony with a 3rd individual.

1 (c) An individual who was party to a valid proceeding concluded by an order  
2 purporting to terminate all property rights based on the domestic partnership.

3 **SECTION 98.** 852.01 (1) (a) (intro.), 1. and 2. (intro.) and b., (b), (c), (d) and (f)  
4 (intro.) of the statutes are amended to read:

5 852.01 (1) (a) (intro.) To the spouse or domestic partner:

6 1. If there are no surviving issue of the decedent, or if the surviving issue are  
7 all issue of the surviving spouse or surviving domestic partner and the decedent, the  
8 entire estate.

9 2. (intro.) If there are surviving issue one or more of whom are not issue of the  
10 surviving spouse or surviving domestic partner, one-half of decedent's property  
11 other than the following property:

12 b. The decedent's interest in property held equally and exclusively with the  
13 surviving spouse or surviving domestic partner as tenants in common.

14 (b) To the issue, per stirpes, the share of the estate not passing to the spouse  
15 or surviving domestic partner, under par. (a), or the entire estate if there is no  
16 surviving spouse or surviving domestic partner.

17 (c) If there is no surviving spouse, surviving domestic partner, or issue, to the  
18 parents.

19 (d) If there is no surviving spouse, surviving domestic partner, issue, or parent,  
20 to the brothers and sisters and the issue of any deceased brother or sister per stirpes.

21 (f) (intro.) If there is no surviving spouse, surviving domestic partner, issue,  
22 parent, or issue of a parent, to the grandparents and their issue as follows:

23 **SECTION 99.** 852.09 of the statutes is amended to read:

24 **852.09 Assignment of home to surviving spouse or surviving domestic**  
25 **partner.** If the intestate estate includes an interest in a home, assignment of that

1 interest to the surviving spouse or surviving domestic partner is governed by s.  
2 861.21.

3 **SECTION 100.** 853.11 (2m) and (3) of the statutes are amended to read:

4 853.11 (2m) **PREMARITAL OR PREDOMESTIC PARTNERSHIP WILL.** Entitlements of a  
5 surviving spouse or surviving domestic partner under a decedent's will that was  
6 executed before marriage to the surviving spouse or registration of the domestic  
7 partnership under s. 770.07 to the surviving domestic partner are governed by s.  
8 853.12.

9 **(3) TRANSFER TO FORMER SPOUSE OR FORMER DOMESTIC PARTNER.** A transfer under  
10 a will to a former spouse or former domestic partner is governed by s. 854.15.

11 **SECTION 101.** 853.12 (title) of the statutes is amended to read:

12 **853.12 (title) Premarital will or predomestic partnership will.**

13 **SECTION 102.** 853.12 (1), (2) (intro.) and (a), (3) (a) and (b) and (4) (a) of the  
14 statutes are amended to read:

15 853.12 (1) **ENTITLEMENT OF SURVIVING SPOUSE OR SURVIVING DOMESTIC PARTNER.**  
16 Subject to sub. (3), if the testator married the surviving spouse or registered a  
17 domestic partnership under s. 770.07 with the surviving domestic partner after the  
18 testator executed his or her will, the surviving spouse or surviving domestic partner  
19 is entitled to a share of the probate estate.

20 **(2) VALUE OF SHARE.** (intro.) The value of the share under sub. (1) is the value  
21 of the share that the surviving spouse or surviving domestic partner would have  
22 received had the testator died with an intestate estate equal to the value of the  
23 testator's net estate, but the value of the net estate shall first be reduced by the value  
24 of all of the following:

1 (a) All devises to or for the benefit of the testator's children who were born  
2 before the marriage to the surviving spouse or the domestic partnership with the  
3 surviving domestic partner and who are not also the children of the surviving spouse  
4 or surviving domestic partner.

5 (3) (a) It appears from the will or other evidence that the will was made in  
6 contemplation of the testator's marriage to the surviving spouse or domestic  
7 partnership with the surviving domestic partner.

8 (b) It appears from the will or other evidence that the will is intended to be  
9 effective notwithstanding any subsequent marriage or domestic partnership, or  
10 there is sufficient evidence that the testator considered revising the will after  
11 marriage or domestic partnership but decided not to.

12 (4) (a) Amounts received by the surviving spouse under s. 861.02 and devises  
13 made by will to the surviving spouse or surviving domestic partner are applied first.

14 **SECTION 103.** 859.25 (1) (g) of the statutes is amended to read:

15 859.25 (1) (g) Property assigned to the surviving spouse or surviving domestic  
16 partner under s. 861.41.

17 **SECTION 104.** 861.21 (title) of the statutes is amended to read:

18 **861.21 (title) Assignment of home to surviving spouse or surviving**  
19 **domestic partner.**

20 **SECTION 105.** 861.21 (1) (b) of the statutes, as affected by 2007 Wisconsin Act  
21 11, is amended to read:

22 861.21 (1) (b) "Home" means any dwelling in which the decedent had an  
23 interest and that at the time of the decedent's death the surviving spouse or surviving  
24 domestic partner occupies or intends to occupy. If there are several such dwellings,  
25 any one may be designated by the surviving spouse or surviving domestic partner.

1 "Home" includes a house, a mobile home, a manufactured home, a duplex or multiple  
2 apartment building one unit of which is occupied by the surviving spouse or  
3 surviving domestic partner and a building used in part for a dwelling and in part for  
4 commercial or business purposes. "Home" includes all of the surrounding land,  
5 unless the court sets off part of the land as severable from the remaining land under  
6 sub. (5).

7 **SECTION 106.** 861.21 (2), (4) and (5) of the statutes are amended to read:

8 861.21 (2) DECEDENT'S PROPERTY INTEREST IN HOME. Subject to subs. (4) and (5),  
9 if a married or domestic partnership decedent has a property interest in a home, the  
10 decedent's entire interest in the home shall be assigned to the surviving spouse or  
11 surviving domestic partner if the surviving spouse or surviving domestic partner  
12 petitions the court requesting such a distribution and if a governing instrument does  
13 not provide a specific transfer of the decedent's interest in the home to someone other  
14 than the surviving spouse or surviving domestic partner. The surviving spouse or  
15 surviving domestic partner shall file the petition within 6 months after the  
16 decedent's death, unless the court extends the time for filing.

17 (4) PAYMENT BY SURVIVING SPOUSE OR SURVIVING DOMESTIC PARTNER. The court  
18 shall assign the interest in the home under sub. (2) to the surviving spouse or  
19 surviving domestic partner upon payment of the value of the decedent's interest in  
20 the home that does not pass to the surviving spouse or surviving domestic partner  
21 under intestacy or under a governing instrument. Payment shall be made to the  
22 fiduciary holding title to the interest. The surviving spouse or surviving domestic  
23 partner may use assets due him or her from the fiduciary to satisfy all or part of the  
24 payment in kind. Unless the court extends the time, the surviving spouse or

1 surviving domestic partner shall have one year from the decedent's death to pay the  
2 value of the assigned interest.

3 (5) SEVERANCE OF HOME FROM SURROUNDING LAND. On petition of the surviving  
4 spouse or surviving domestic partner or of any interested person that part of the land  
5 is not necessary for dwelling purposes and that it would be inappropriate to assign  
6 all of the surrounding land as the home under sub. (2), the court may set off for the  
7 home as much of the land as is necessary for a dwelling. In determining how much  
8 land should be set off, the court shall take into account the use and marketability of  
9 the parcels set off as the home and the remaining land.

10 **SECTION 107.** 861.31 (1m), (2) and (4) (intro.) and (b) of the statutes are  
11 amended to read:

12 861.31 (1m) The court may, without notice or on such notice as the court  
13 directs, order payment by the personal representative or special administrator of an  
14 allowance as the court determines necessary or appropriate for the support of the  
15 surviving spouse or surviving domestic partner and any minor children of the  
16 decedent during the administration of the estate. The court shall consider the size  
17 of the probate estate, other resources available for support, the existing standard of  
18 living, and any other factors it considers relevant.

19 (2) The court may order that an allowance be made to the spouse or surviving  
20 domestic partner for support of the spouse or surviving domestic partner and any  
21 minor children of the decedent, or that separate allowances be made to the spouse  
22 or surviving domestic partner and to the minor children of the decedent or their  
23 guardian, if any, if the court finds separate allowances advisable. If there is no  
24 surviving spouse or surviving domestic partner, the court may order that an  
25 allowance be made to the minor children of the decedent or to their guardian, if any.

1           (4) (intro.) The court may order that the allowance be charged against income  
2 or principal, either as an advance or otherwise, but the court may not order that an  
3 allowance for support of minor children of the decedent be charged against the  
4 income or principal interest of the surviving spouse or surviving domestic partner.  
5 The court may order that the allowance for support of the surviving spouse or  
6 surviving domestic partner, not including any allowance for support of minor  
7 children of the decedent, be applied in satisfaction of any of the following:

8           (b) Any right of the surviving spouse or surviving domestic partner to elect  
9 under s. 861.02.

10           **SECTION 108.** 861.33 (title) of the statutes is amended to read:

11           **861.33** (title) **Selection of personalty by surviving spouse or surviving**  
12 **domestic partner.**

13           **SECTION 109.** 861.33 (1) (a) (intro.) and 1. and (b) of the statutes are amended  
14 to read:

15           861.33 (1) (a) (intro.) Subject to this section, in addition to all allowances and  
16 distributions, the surviving spouse or surviving domestic partner may file with the  
17 court a written selection of the following personal property, which shall then be  
18 transferred to the spouse or domestic partner by the personal representative:

19           1. Wearing apparel and jewelry held for personal use by the decedent or the  
20 surviving spouse or surviving domestic partner;

21           (b) The selection in par. (a) may not include items specifically bequeathed  
22 except that the surviving spouse or surviving domestic partner may in every case  
23 select the normal household furniture, furnishings, and appliances necessary to  
24 maintain the home. For this purpose antiques, family heirlooms, and collections that

1 are specifically bequeathed are not classifiable as normal household furniture or  
2 furnishings.

3 **SECTION 110.** 861.35 (title) of the statutes is amended to read:

4 **861.35**<sup>00</sup> (title) **Special allowance for support of spouse or domestic**  
5 **partner and support and education of minor children.**

6 **SECTION 111.** 861.35 (1m), (2), (3) (a) and (4) of the statutes are amended to  
7 read:

8 861.35 (1m) If the decedent is survived by a spouse, domestic partner, or by  
9 minor children, the court may order an allowance for the support and education of  
10 each minor child until he or she reaches a specified age, not to exceed 18, and for the  
11 support of the spouse or domestic partner. This allowance may be made whether the  
12 estate is testate or intestate. If the decedent is not survived by a spouse or domestic  
13 partner, the court also may allot directly to the minor children household furniture,  
14 furnishings, and appliances. The court may not order an allowance under this  
15 section if any of the following applies:

16 (a) The decedent has amply provided for each minor child and for the spouse  
17 or domestic partner by the transfer of probate or nonprobate assets, or support and  
18 education have been provided for by any other means.

19 (b) In the case of minor children, the surviving spouse or surviving domestic  
20 partner is legally responsible for support and education and has ample means to  
21 provide them in addition to his or her own support.

22 (c) In the case of the surviving spouse or surviving domestic partner, he or she  
23 has ample means to provide for his or her support.

24 (2) The court may set aside property to provide an allowance and may appoint  
25 a trustee to administer the property, subject to the continuing jurisdiction of the

1 court. If a child dies or reaches the age of 18, or if at any time the property held by  
2 the trustee is no longer required for the support of the spouse or domestic partner ✓  
3 the support and education of the minor child, any remaining property is to be  
4 distributed by the trustee as the court orders in accordance with the terms of the  
5 decedent's will or to the heirs of the decedent in intestacy or to satisfy unpaid claims  
6 of the decedent's estate.

7 (3) (a) The effect on claims under s. 859.25. The court shall balance the needs  
8 of the spouse, domestic partner, ✓ or minor children against the nature of the creditors'  
9 claims in setting the amount allowed under this section.

10 (4) The court may order that the allowance to the surviving spouse or surviving ✓  
11 domestic partner, not including any allowance for the support and education of minor  
12 children, be applied in satisfaction of any of the following:

13 (a) Any entitlement of the surviving spouse or surviving domestic partner ✓  
14 under s. 853.12.

15 (b) Any right of the surviving spouse or surviving domestic partner ✓  
16 under s. 861.02 (1).

17 **SECTION 112.** 861.41 of the statutes is amended to read:

18 **861.41 Exemption of property to be assigned to surviving spouse or**  
19 **surviving domestic partner.** ✓ (1) After the amount of claims against the estate  
20 has been ascertained, the surviving spouse or surviving domestic partner ✓  
21 petition the court to set aside as exempt from the claims of creditors under s. 859.25  
22 (1) (h) an amount of property reasonably necessary for the support of the spouse or  
23 domestic partner, ✓ not to exceed \$10,000 in value, if it appears that the assets are  
24 insufficient to pay all claims and allowances and still leave the surviving spouse or

1 surviving domestic partner such an amount of property in addition to selection and  
2 allowances.

3 (2) The court shall grant the petition if it determines that an assignment ahead  
4 of creditors is reasonably necessary for the support of the spouse or domestic partner.  
5 In determining the necessity and the amount of property to be assigned, the court  
6 must take into consideration the availability of a home to the surviving spouse or  
7 surviving domestic partner and all other assets and resources available for support.

8 **SECTION 113.** 867.01 (1) (b) and (3) (f) of the statutes are amended to read:

9 867.01 (1) (b) Whenever the estate, less the amount of the debts for which any  
10 property in the estate is security, does not exceed \$50,000 in value and the decedent  
11 is survived by a spouse or domestic partner, or one or more minor children or both.

12 (3) (f) *Order.* If the court is satisfied that the estate may be settled under this  
13 section, after 30 days have elapsed since notice to the department of health services  
14 under par. (d), if that notice is required, the court shall assign the property to the  
15 persons entitled to it. If the estate may be settled under sub. (1) (b), any property not  
16 otherwise assigned shall be assigned to the surviving spouse or surviving domestic  
17 partner, or minor children or both as an allowance under s. 861.31. The court shall  
18 order any person indebted to or holding money or other property of the decedent to  
19 pay the indebtedness or deliver the property to the persons found to be entitled to  
20 receive it. The court shall order the transfer of interests in real estate, stocks or  
21 bonds registered in the name of the decedent, the title of a licensed motor vehicle, or  
22 any other form of property. If the decedent immediately prior to death had an estate  
23 for life or an interest as a joint tenant in any property in regard to which a certificate  
24 of termination in accordance with s. 867.04 has not been issued, the order shall set  
25 forth the termination of that life estate or the right of survivorship of any joint

1 tenant. Every tract of real property in which an interest is assigned or terminated  
2 or which is security for a debt in which an interest is assigned or terminated shall  
3 be specifically described.

4 **SECTION 114.** 895.04 (2) and (6) of the statutes are amended to read:

5 895.04 (2) If the deceased leaves surviving a spouse or state-registered  
6 domestic partner under s. 770.05, and minor children under 18 years of age with  
7 whose support the deceased was legally charged, the court before whom the action  
8 is pending, or if no action is pending, any court of record, in recognition of the duty  
9 and responsibility of a parent to support minor children, shall determine the amount,  
10 if any, to be set aside for the protection of such children after considering the age of  
11 such children, the amount involved, the capacity and integrity of the surviving  
12 spouse or surviving domestic partner, and any other facts or information it may have  
13 or receive, and such amount may be impressed by creation of an appropriate lien in  
14 favor of such children or otherwise protected as circumstances may warrant, but  
15 such amount shall not be in excess of 50% of the net amount received after deduction  
16 of costs of collection. If there are no such surviving minor children, the amount  
17 recovered shall belong and be paid to the spouse or domestic partner of the deceased;  
18 if no spouse or domestic partner survives, to the deceased's lineal heirs as determined  
19 by s. 852.01; if no lineal heirs survive, to the deceased's brothers and sisters. If any  
20 such relative dies before judgment in the action, the relative next in order shall be  
21 entitled to recover for the wrongful death. A surviving nonresident alien spouse or  
22 a nonresident alien domestic partner state-registered under s. 770.05 and minor  
23 children shall be entitled to the benefits of this section. In cases subject to s. 102.29  
24 this subsection shall apply only to the surviving spouse's or surviving domestic  
25 partner's interest in the amount recovered. If the amount allocated to any child

1 under this subsection is less than \$10,000, s. 807.10 may be applied. Every  
2 settlement in wrongful death cases in which the deceased leaves minor children  
3 under 18 years of age shall be void unless approved by a court of record authorized  
4 to act hereunder.

5 (6) Where the wrongful death of a person creates a cause of action in favor of  
6 the decedent's estate and also a cause of action in favor of a spouse, state-registered  
7 domestic partner under s. 770.05, or relatives as provided in this section, such  
8 spouse, domestic partner, or relatives may waive and satisfy the estate's cause of  
9 action in connection with or as part of a settlement and discharge of the cause of  
10 action of the spouse, domestic partner, or relatives.

11 **SECTION 115.** 905.05 (title) of the statutes is amended to read:

12 **905.05** (title) **Husband-wife and domestic partner privilege.**

13 **SECTION 116.** 905.05 (1), (2) and (3) (a), (b), (c) and (d) of the statutes are  
14 amended to read:

15 905.05 (1) GENERAL RULE OF PRIVILEGE. A person has a privilege to prevent the  
16 person's spouse or former spouse or domestic partner or former domestic partner  
17 from testifying against the person as to any private communication by one to the  
18 other made during their marriage or domestic partnership. As used in this section,  
19 "domestic partner" means a state-registered domestic partner under s. 770.05.

20 (2) WHO MAY CLAIM THE PRIVILEGE. The privilege may be claimed by the person  
21 or by the spouse or domestic partner on the person's behalf. The authority of the  
22 spouse or domestic partner to do so is presumed in the absence of evidence to the  
23 contrary.

24 (3) (a) If both spouses or former spouses or domestic partners or former  
25 domestic partners are parties to the action.

1 (b) In proceedings in which one spouse or former spouse or domestic partner  
2 or former domestic partner is charged with a crime against the person or property  
3 of the other or of a child of either, or with a crime against the person or property of  
4 a 3rd person committed in the course of committing a crime against the other.

5 (c) In proceedings in which a spouse or former spouse or domestic partner or  
6 former domestic partner is charged with a crime of pandering or prostitution.

7 (d) If one spouse or former spouse or domestic partner or former domestic  
8 partner has acted as the agent of the other and the private communication relates  
9 to matters within the scope of the agency.

10 **SECTION 117.** 949.01 (2) of the statutes is amended to read:

11 949.01 (2) "Dependent" means any spouse, state-registered domestic partner  
12 under s. 770.05, parent, grandparent, stepparent, child, stepchild, adopted child,  
13 grandchild, brother, sister, half brother, half sister, or parent of spouse or of  
14 state-registered domestic partner under s. 770.05, of a deceased victim who was  
15 wholly or partially dependent upon the victim's income at the time of the victim's  
16 death and includes any child of the victim born after the victim's death.

17 **SECTION 118.** 949.06 (1m) (a) of the statutes is amended to read:

18 949.06 (1m) (a) In this subsection, "family member" means any spouse,  
19 state-registered domestic partner under s. 770.05, parent, grandparent, stepparent,  
20 child, stepchild, adopted child, grandchild, foster child, treatment foster child,  
21 brother, sister, half brother, half sister, aunt, uncle, nephew, niece, or parent or  
22 sibling of spouse or of state-registered domestic partner under s. 770.05

23 **SECTION 119.** 971.17 (4m) (a) 2. of the statutes is amended to read:

24 971.17 (4m) (a) 2. "Member of the family" means spouse, state-registered  
25 domestic partner under s. 770.05, child, sibling, parent or legal guardian.



**2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1308/?ins  
PJK:.....

**INSERT A-7**

**INSURANCE**

The bill authorizes fraternal benefit societies to provide insurance coverage to the domestic partners of fraternal members. Under current law, only members and their spouses and financially dependent children may be covered.

**(END OF INSERT A-7)**

**2009-2010 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB  
.....

1

**PJHINSERT1:**

Current law requires that a victim of a crime or his or her family members be notified when a person who committed a crime against the victim is released from prison or a mental institution, applies or qualifies for release to probation or extended supervision from prison or a mental institution, applies for a pardon, or escapes from a prison. This bill includes a domestic partner as a member of a victim's family who is entitled to the same notice given to family members under current law.

Current law also allows DOJ to grant compensation to the spouse of a person who is killed or injured while trying to prevent a crime, trying to detain a criminal, or trying to assist a crime victim or a law enforcement officer. This bill allows a domestic partner to receive the same compensation that a spouse receives under current law.

DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

1308/P1dn  
LRB-3960/P1dn  
ALL:bjk:awn

GF

July 9, 2008 Date

To Glenn Wavrunek

1. Number 19. of your instructions refers to "medical" records, but lists provisions in s. 51.30, stats., for amendment. These provisions deal with "treatment" records, i.e., records of services for mental illness, developmental disability, alcoholism, or drug dependence. In contrast, provisions in current law that deal with "patient health care records" are in ch. 146, stats. For the purposes of this draft, I have amended both treatment record and patient health care record provisions; please let me know if this is not what you want, and I'll redraft. In addition, your instructions seem to reference s. 51.30 (4) (b) 12., stats., which authorizes release of treatment records to correctional officers. I am uncertain how you want this provision amended, so have left it out of the draft for now.

which are

2. With respect to #20. of your instructions, please review the treatment of ss. 50.032 (2) and (2d), 50.033 (2) and (2d), 50.034 (3) (e), 50.035 (2d), 50.04 (2d), 50.36 (3j), 50.942, and 50.95 (1) in this draft. Your instructions referred to "any health care facility." These provisions address each type of health care facility (certified or licensed adult family homes, community-based residential facilities, nursing homes, residential care apartment complexes, hospitals, and hospices) that is regulated by DHFS. Note that medical clinics are not regulated as such by DHFS; do you want a provision that accords spousal privileges of accompanying a patient to a medical clinic for state-registered domestic partners?

regarding access to health care facilities

Note also that, as drafted, violation of some of these provisions is subject to penalty and violation of others is not. The difference is caused by differing provisions for each type of facility under current law. For example, violation of s. 50.032 (2d), under the provisions of s. 50.032 (6), stats., would carry with it a \$500 fine or imprisonment in the county jail for not more than one year, whereas violation of s. 50.36 (3j) has no penalty that attaches under current law. Do you want all violations to be subject to penalty? Do you want the amounts of the penalties to be identical? If so, what penalty would you prefer?

3. Number 39. of your instructions states, "Spouses, registered domestic partners, children, parents and grandparents of a decedent have priority over the decedent's designated health care agent (such as an unregistered domestic partner) in deciding whether to make anatomical gifts. Sec. 157.06 (3) (a)." Section 157.06 (3) (a) no longer

The bill grants domestic partners the same right or privilege as a spouse to visit or accompany a patient at the following types of health care facilities:

exists; s. 157.06, stats., was repealed and recreated under 2007 Wisconsin Act 106. The provision that, in part, replaced it is s. 157.06 (9) (a), stats., which sets up a priority of individuals who may make an anatomical gift of the body or part of a decedent. First in priority, under s. 157.06 (9) (a) 1., stats., is an individual's agent under a power of attorney for health care, followed by an individual's spouse, and then numerous other specified persons. I have amended s. 157.06 (9) (a) 2., stats., to include a state-registered domestic partner. Do you want me additionally to change the order of priority as specified in your instructions?

4. In #38. of your instructions, you appear to want to amend s. 157.05, stats., so that a state-registered domestic partner has priority over a "friend" in consenting to an autopsy. However, that provision is not written as a prioritized list of persons; it instead seems to contemplate that, of a number of persons, one will assume custody of the body for purposes of burial. Do you want me to establish priority under this section? If so, should a state-registered domestic partner occur after "next of kin," as you propose? Note that, for the sake of consistency, I also included an amendment to s. 157.06 (8) (a), stats., which refers to to assuming custody of the body; okay?

RLR

Debora A. Kennedy  
 Managing Attorney  
 Phone: (608) 266-0137  
 E-mail: debora.kennedy@legis.wisconsin.gov

these statutes

Please note that I have included all of the statutory sections relating to benefits in the legal process that you mentioned in your drafting instructions. Most of these statutory sections relate to treating, throughout the criminal justice process, registered domestic partners the same as "spouses" are treated under current law.

As we discussed, there are many more statutes throughout the crime chapters that offer particular victim status to spouses and other family members. See, for example, s. 940.201, which prohibits a person from battering or threatening a witness in a trial or the witness' family members. Section 940.201 includes "spouse" as a family member. I did not treat this statute or other similar statutes in this draft.

Peggy Hurley  
 Legislative Attorney  
 Phone: (608) 266-8906  
 E-mail: peggy.hurley@legis.wisconsin.gov

Section 109.03 (3) requires an employer to pay a deceased employee's wages to the deceased employee's spouse. Similarly, s. 103.165 (3) requires an employer to pay the bond of deceased employee who is required to be bonded to the deceased employee's

See also ch. 950 relating to the rights of victims of crime. Section 950.02 (3) includes "spouse" as a family member.

spouse. Accordingly, this draft amends s. 103.165 (3) to require an employer to pay the bond of a deceased employee who is required to be bonded to the deceased employee's domestic partner.

There are several other provisions in the employment laws that reference a spouse, so the question is whether you want to add domestic partner to those provisions as well. Those provisions are the following:

1. Section 102.07 (5) (b) and (c) relating to counting the employees of a farmer for purposes of determining coverage of the worker's compensation law.
2. Section 102.80 (4) (a) 1. relating to transfer of the business of an uninsured employer under the worker's compensation law.
3. Section 103.90 (3) (a) 2. and (5) (b) 1. relating to the regulation of migrant labor camps and contractors.
4. Sections 111.32 (5) and (12) and 111.345 relating to employment discrimination based on marital status.

If you would like to conform any of those provisions, please advise.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: gordon.malaise@legis.wisconsin.gov

Current law provides that an owner of a manufactured home must pay a supplemental fee when transferring the title to a manufactured home. The fee is waived with respect to the transfer of a decedent's interest in a manufactured home to his or her surviving spouse. This draft extends the waiver to a state-registered domestic partner. There are also references to surviving spouses in the other manufactured home provisions relating to involuntary transfers in the interest of an owner of a manufactured home. See s. 101.9211 (4) (b) 1., 1m., and 4. Please let me know if you would like the draft to add domestic partners to these provisions as well.

Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.wisconsin.gov

The probate provisions of this draft utilize a definition for "surviving domestic partner" that is based on the definition of "surviving spouse" under s. 851.30. The instructions do not address a situation in which a surviving domestic partner or the decedent had not

obtained a valid certificate of termination of a previous domestic partnership with a third person or a final decree or judgment of divorce or an annulment of a previous marriage to a third person prior to registering the domestic partnership with the decedent under created s. 770.05. Would you like to address this issue in this draft?

The instructions do not mention transfers under a will or revocations of provisions in favor of a former domestic partner, and accordingly, this draft does not treat s. 854.15. Is that your intent?

The instructions in Benefit 28 refer to s. 861.21 (3) and I note that 2005 Wisconsin Act 216 repealed that subsection, which dealt with an intestate estate's interest in a home. It appears that sub. (3) was repealed because it was redundant, as the language in sub. (2) allowing the surviving spouse or domestic partner to petition the court for full ownership in the absence of a governing instrument transferring the decedent's interest in the property to a third person would apply equally to the estate of a decedent whose estate is governed by a will and to a decedent who died intestate. Accordingly, I believe that amending s. 861.21 (2) to add surviving domestic partners adequately addresses the intent in Benefit 28. Is this acceptable?

Your request specified in Benefit 29 that a domestic partner is entitled to receive a share of the testator's estate under s. 853.11 (2) (renumbered to s. 853.12 in 2005 Wisconsin Act 216) if the testator had a premarital or predomestic partnership will. Although s. 853.12 (3)(d) refers to spouses, I have not added "or domestic partner" to it because it provides an exception to the surviving spouse inheriting under a premarital will if there was an agreement under chapter 766 that the spouse is to have no portion of the testator's estate. Given that the instructions do not mention chapter 766 at all, I have not amended s. 853.12 (3) (d) or any other portion of the probate statutes that refers to marital property issues under chapter 766. Is that your intent?

The draft amends s. 859.25 (1) (g), which regulates payment of claims of a probate estate, and that section is referenced by both s. 342.17 (4) (b) 1.c., which governs the transfer of automobile titles and is amended in this draft, and s. 30.541 (3) (d) 2. a., which governs the transfer of boat titles and is not addressed by the drafting instructions. Would you like to amend s. 30.541 (3) (d) 2.a. to include domestic partners as well as spouses?

You have requested that for estates of under \$50,000 in value, that domestic partners be allowed to partake of the estate under the summary settlement of small estates procedures under s. 867.01 and of the procedures under s. 867.03 for transfers by affidavit. Several portions of those two statutes, including ss. 867.01 (3) (am) 4, 867.03 (1g) (c) and (1m) (a), as well as 867.02 (2) (am) 6., concerning assignments of small estates subject to the claims of creditors, refer to situations in which the decedent or spouse received benefits including the family care benefit under s. 46.286, medical assistance under subch. IV of ch. 49, long-term community support services funded under s. 46.27(7), or aid under s. 49.68, 49.683, or 49.685. I have not included domestic partners within those portions of ss. 867.01 to 867.03 because the instructions do not address amending chapters 46 or 49 to add domestic partners to the groups of persons entitled to such benefits. Additionally, I have not changed s. 867.03, as requested in Instruction 34, as no portion of that statute, other than subs. (1g) (c) and (1m) (a),

*no change*  
*and*

*attorneys*

*e*

discussed above, mentions spouses or otherwise requires change to apply to domestic partners. Is this acceptable?

X

The probate statutes are rather complex and I would recommend that you have ~~at least one attorney~~ who specializes in probate law review this draft. Perhaps the State Bar of Wisconsin's probate section could assemble a panel to review the draft and recommend further changes. A computer search of the probate chapters, chs. 851 to 879 using Folio, revealed that the word "spouse" appears 203 times, which includes many sections that are not addressed in this draft. You may wish to perform that Folio search and determine if there are any additional probate provisions you would like addressed in this draft.

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511  
E-mail: robert.nelson@legis.wisconsin.gov

As I'm sure you are aware, this bill could be challenged as unconstitutional under article XIII, section 13, of the Wisconsin Constitution, which provides that "[a] legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized in this state." Although a state-registered domestic partnership under this bill is not identical to marriage, the question is whether it is substantially similar to marriage. It has some characteristics in common but obviously differs in many ways. No matter what our opinions might be on that question, the only opinion that matters is a court's if the bill were passed and a legal action initiated to determine its constitutionality.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.wisconsin.gov

*9 No changes were suggested in ch. 815, but that chapter provides exemptions for <sup>execution</sup> ~~execution~~, including the homestead exemption for land owned by a husband and wife under s. 815.20 and various exemptions under s. 815.18 that define a "dependent" to include a spouse. Is your intent to not make changes in that chapter?*

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1308/P1dn  
ALL:kjf:ph

January 20, 2009

The bill grants domestic partners the same right or privilege as a spouse to visit or accompany a patient at the following types of health care facilities: certified or licensed adult family homes, community-based residential facilities, nursing homes, residential care apartment complexes, hospitals, and hospices, which are regulated by DHS. Medical clinics are not regulated as such by DHS; do you want a provision that accords spousal privileges of accompanying a patient to a medical clinic for state-registered domestic partners?

Also, as drafted, violation of some of these provisions regarding access to health care facilities is subject to penalty and violation of others is not. The difference is caused by differing provisions for each type of facility under current law. For example, violation of s. 50.032 (2d), under the provisions of s. 50.032 (6), stats., would carry with it a \$500 fine or imprisonment in the county jail for not more than one year, whereas violation of s. 50.36 (3j) has no penalty that attaches under current law. Do you want all violations to be subject to penalty? Do you want the amounts of the penalties to be identical? If so, what penalty would you prefer?

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.wisconsin.gov

Please note that I have included all of the statutory sections relating to benefits in the legal process that you mentioned in your drafting instructions. Most of these statutory sections relate to treating, throughout the criminal justice process, registered domestic partners the same as "spouses" are treated under current law.

As we discussed, there are many more statutes throughout the crime chapters that offer particular victim status to spouses and other family members. See, for example, s. 940.201, which prohibits a person from battering or threatening a witness in a trial or the witness' family members. Section 940.201 includes "spouse" as a family member. See also ch. 950 relating to the rights of victims of crime. Section 950.02 (3) includes

“spouse” as a family member. I did not treat these statutes or other similar statutes in this draft.

Peggy Hurley  
Legislative Attorney  
Phone: (608) 266-8906  
E-mail: [peggy.hurley@legis.wisconsin.gov](mailto:peggy.hurley@legis.wisconsin.gov)

Section 109.03 (3) requires an employer to pay a deceased employee’s wages to the deceased employee’s spouse. Similarly, s. 103.165 (3) requires an employer to pay the bond of a deceased employee who is required to be bonded to the deceased employee’s spouse. Accordingly, this draft amends s. 103.165 (3) to require an employer to pay the bond of a deceased employee who is required to be bonded to the deceased employee’s domestic partner.

There are several other provisions in the employment laws that reference a spouse, so the question is whether you want to add domestic partner to those provisions as well. Those provisions are the following:

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2. Section 102.80 (4) (a) 1. relating to transfer of the business of an uninsured employer under the worker’s compensation law.
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4. Sections 111.32 (5) and (12) and 111.345 relating to employment discrimination based on marital status.

If you would like to conform any of those provisions, please advise.

Gordon M. Malaise  
Senior Legislative Attorney  
Phone: (608) 266-9738  
E-mail: [gordon.malaise@legis.wisconsin.gov](mailto:gordon.malaise@legis.wisconsin.gov)

Current law provides that an owner of a manufactured home must pay a supplemental fee when transferring the title to a manufactured home. The fee is waived with respect to the transfer of a decedent’s interest in a manufactured home to his or her surviving spouse. This draft extends the waiver to a state-registered domestic partner. There are also references to surviving spouses in the other manufactured home provisions relating to involuntary transfers in the interest of an owner of a manufactured home.

See s. 101.9211 (4) (b) 1., 1m., and 4. Please let me know if you would like the draft to add domestic partners to these provisions as well.

Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.wisconsin.gov

The probate provisions of this draft utilize a definition for "surviving domestic partner" that is based on the definition of "surviving spouse" under s. 851.30. The instructions do not address a situation in which a surviving domestic partner or the decedent had not obtained a valid certificate of termination of a previous domestic partnership with a third person or a final decree or judgment of divorce or an annulment of a previous marriage to a third person prior to registering the domestic partnership with the decedent under created s. 770.05. Would you like to address this issue in this draft?

The instructions do not mention transfers under a will or revocations of provisions in favor of a former domestic partner, and accordingly, this draft does not treat s. 854.15. Is that your intent?

The instructions in Benefit 28 refer to s. 861.21 (3) and I note that 2005 Wisconsin Act 216 repealed that subsection, which dealt with an intestate estate's interest in a home. It appears that sub. (3) was repealed because it was redundant, as the language in sub. (2) allowing the surviving spouse or domestic partner to petition the court for full ownership in the absence of a governing instrument transferring the decedent's interest in the property to a third person would apply equally to the estate of a decedent whose estate is governed by a will and to a decedent who died intestate. Accordingly, I believe that amending s. 861.21 (2) to add surviving domestic partners adequately addresses the intent in Benefit 28. Is this acceptable?

Your request specified in Benefit 29 that a domestic partner is entitled to receive a share of the testator's estate under s. 853.11 (2) (renumbered to s. 853.12 in 2005 Wisconsin Act 216) if the testator had a premarital or predomestic partnership will. Although s. 853.12 (3) (d) refers to spouses, I have not added "or domestic partner" to it because it provides an exception to the surviving spouse inheriting under a premarital will if there was an agreement under chapter 766 that the spouse is to have no portion of the testator's estate. Given that the instructions do not mention chapter 766 at all, I have not amended s. 853.12 (3) (d) or any other portion of the probate statutes that refers to marital property issues under chapter 766. Is that your intent?

The draft amends s. 859.25 (1) (g), which regulates payment of claims of a probate estate, and that section is referenced by both s. 342.17 (4) (b) 1. c., which governs the transfer of automobile titles and is amended in this draft, and s. 30.541 (3) (d) 2. a., which governs the transfer of boat titles and is not addressed by the drafting instructions. Would you like to amend s. 30.541 (3) (d) 2. a. to include domestic partners as well as spouses?

You have requested that for estates of under \$50,000 in value, that domestic partners be allowed to partake of the estate under the summary settlement of small estates procedures under s. 867.01 and of the procedures under s. 867.03 for transfers by affidavit. Several portions of those two statutes, including ss. 867.01 (3) (am) 4. and 867.03 (1g) (c) and (1m) (a), as well as s. 867.02 (2) (am) 6., concerning assignments of small estates subject to the claims of creditors, refer to situations in which the decedent or spouse received benefits including the family care benefit under s. 46.286, medical assistance under subch. IV of ch. 49, long-term community support services funded under s. 46.27 (7), or aid under s. 49.68, 49.683, or 49.685. I have not included domestic partners within those portions of ss. 867.01 to 867.03 because the instructions do not address amending chapters 46 or 49 to add domestic partners to the groups of persons entitled to such benefits. Additionally, I have not changed s. 867.03, as requested in Instruction 34, as no portion of that statute, other than subs. (1g) (c) and (1m) (a), discussed above, mentions spouses or otherwise requires change to apply to domestic partners. Is this acceptable?

The probate statutes are rather complex and I would recommend that you have attorneys who specialize in probate law review this draft. Perhaps the State Bar of Wisconsin's probate section could assemble a panel to review the draft and recommend further changes. A computer search of the probate chapters, chs. 851 to 879 using Folio, revealed that the word "spouse" appears 203 times, which includes many sections that are not addressed in this draft. You may wish to perform that Folio search and determine if there are any additional probate provisions you would like addressed in this draft.

No changes were suggested in ch. 815, but that chapter provides exemptions for execution, including the homestead exemption for land owned by a husband and wife under s. 815.20 and various exemptions under s. 815.18 that define a "dependent" to include a spouse. Is your intent to not make changes in that chapter?

Robert P. Nelson  
Senior Legislative Attorney  
Phone: (608) 267-7511  
E-mail: robert.nelson@legis.wisconsin.gov

As I'm sure you are aware, this bill could be challenged as unconstitutional under article XIII, section 13, of the Wisconsin Constitution, which provides that "[a] legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized in this state." Although a state-registered domestic partnership under this bill is not identical to marriage, the question is whether it is substantially similar to marriage. It has some characteristics in common but obviously differs in many ways. No matter what our opinions might be on that question, the only

opinion that matters is a court's if the bill were passed and a legal action initiated to determine its constitutionality.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
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# Memo

**To:** Rick, Robin R., Robin K., Bob, Peggy, Gordon  
**From:** Pam  
**Subject:** DOA's domestic partnership bill  
**Date:** Jan. 22, 2009

---

DOA has reviewed Pocan's draft and wants to go with their (DOA's) version. (Even though in the email it says to use Pocan's, they want to use their procedure – state-registered with Secretary of State – and to respond to the d-notes differently, so it's their version we start with, not Pocan's.)

Please make any changes necessary in response to their responses to the d-notes.

Rick, I talked to Caitlin yesterday. She said their intent for the ch. 40 provisions is to use the definition of domestic partner that you have in LRB-1175 for all of the ch. 40 provisions, not just health insurance. She said their intent is not to require state-registry for the DP's in ch. 40, but to require the criteria in LRB-1175. If the DP's under ch. 40 *are* state-registered, that's ok, but they still need to satisfy the criteria under LRB-1175.

~~The draft is a "Hoed"  
file is on BRN's desk.~~

**Kahler, Pam**

**From:** Frederick, Caitlin - DOA  
**Sent:** Wednesday, January 21, 2009 1:58 PM  
**To:** Ryan, Robin; Malaise, Gordon; Kite, Robin; Nelson, Robert P.; Kahler, Pam; Hurley, Peggy  
**Subject:** FW: LRB Draft: 09-1308/P1 Domestic Partnership Registry  
**Attachments:** 09-1308/P1.pdf; 09-1308/P1dn.pdf

✓ 1. Please modify the bill to eliminate the requirement that dp be of the same gender.

2. Regarding the attached notes:

✓ **Robin R:**

Do you want a provision that accords spousal privileges of accompanying a patient to a medical clinic for state-registered domestic partners? Yes

Also, as drafted, violation of some of these provisions regarding access to health care facilities is subject to penalty and violation of others is not. The difference is caused by differing provisions for each type of facility under current law. For example, violation of s. 50.032 (2d), under the provisions of s. 50.032 (6), stats., would carry with it a \$500 fine or imprisonment in the county jail for not more than one year, whereas violation of s. 50.36 (3j) has no penalty that attaches under current law. Do you want all violations to be subject to penalty? Yes

Do you want the amounts of the penalties to be identical? Yes. If so, what penalty would you prefer? \$500, etc.

*Caitlin also wants to amend refs to relative in ch. 153 to cover domestic partners*

✓ **Peggy:**

Provide dp's with victim status. *t/c ≠ adultery, abuse of child (no child can be d.p.)*

✓ **Gordon:**

Confirm this provision: 4. Sections 111.32 (5) and (12) and 111.345 relating to employment discrimination based on marital status.

✓ **Robin K:**

Add dp to the manufactured home transfer fee provision.

✓ **Robert:**

The probate provisions of this draft utilize a definition for "surviving domestic partner" that is based on the definition of "surviving spouse" under s. 851.30. The instructions do not address a situation in which a surviving domestic partner or the decedent had not obtained a valid certificate of termination of a previous domestic partnership with a third person or a final decree or judgment of divorce or an annulment of a previous marriage to a third person prior to registering the domestic partnership with the decedent under created s. 770.05. Would you like to address this issue in this draft? Yes.

✓ The instructions do not mention transfers under a will or revocations of provisions in favor of a former domestic partner, and accordingly, this draft does not treat s. 854.15. Is that your intent? Yes.

✓ The instructions in Benefit 28 refer to s. 861.21 (3) and I note that 2005 Wisconsin Act 216 repealed that subsection, which dealt with an intestate estate's interest in a home. It appears that sub. (3) was repealed because it was redundant, as the language in sub. (2) allowing the surviving spouse or domestic partner

Neck ✓

to petition the court for full ownership in the absence of a governing instrument transferring the decedent's interest in the property to a third person would apply equally to the estate of a decedent whose estate is governed by a will and to a decedent who died intestate. Accordingly, I believe that amending s. 861.21 (2) to add surviving domestic partners adequately addresses the intent in Benefit 28. Is this acceptable? Yes.

Your request specified in Benefit 29 that a domestic partner is entitled to receive a share of the testator's estate under s. 853.11 (2) (renumbered to s. 853.12 in 2005 Wisconsin Act 216) if the testator had a premarital or predomestic partnership will.

✓

Although s. 853.12 (3) (d) refers to spouses, I have not added "or domestic partner" to it because it provides an exception to the surviving spouse inheriting under a premarital will if there was an agreement under chapter 766 that the spouse is to have no portion of the testator's estate. Given that the instructions do not mention chapter 766 at all, I have not amended s. 853.12 (3) (d) or any other portion of the probate statutes that refers to marital property issues under chapter 766. Is that your intent? DP should be treated as a dependent. [Legislature may address further]

Leave as is. CF 1/22 11:30 am

MBG ✓

The draft amends s. 859.25 (1) (g), which regulates payment of claims of a probate estate, and that section is referenced by both s. 342.17 (4) (b) 1. c., which governs the transfer of automobile titles and is amended in this draft, and s. 30.541 (3) (d) 2. a., which governs the transfer of boat titles and is not addressed by the drafting instructions. Would you like to amend s. 30.541 (3) (d) 2. a. to include domestic partners as well as spouses? Yes

No ch ✓

... estates of under \$50,000 in value... I have not changed s. 867.03, as requested in Instruction 34, as no portion of that statute, other than subs. (1g) (c) and (1m) (a), discussed above, mentions spouses or otherwise requires change to apply to domestic partners. Is this acceptable? Yes.

✓ Also, do not make changes to ch 815 regarding exemptions.

From: Rick

Currently there is a conflict between LRB 1175/1 and this bill regarding the definition of domestic partner. For the purposes of treatment of benefits under Ch. 40, the definition of dp under 1175/1, Ch. 40.02 (21d) should be used.

**From:** Henry, Patty [mailto:Patty.Henry@legis.wisconsin.gov]  
**Sent:** Tuesday, January 20, 2009 3:22 PM  
**To:** Frederick, Caitlin - DOA  
**Cc:** Thornton, Scott - DOA; Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA  
**Subject:** LRB Draft: 09-1308/P1 Domestic Partnership Registry

Following is the PDF version of draft 09-1308/P1.

6-8777

**Kahler, Pam**


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**From:** Hanaman, Cathlene  
**Sent:** Wednesday, January 21, 2009 4:48 PM  
**To:** Kahler, Pam  
**Subject:** FW: DP Registry  
**Attachments:** 09-1492/P1.pdf; FW: LRB Draft: 09-1308/P1 Domestic Partnership Registry

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**From:** Frederick, Caitlin - DOA [mailto:caitlin.frederick@wisconsin.gov]  
**Sent:** Wednesday, January 21, 2009 4:47 PM  
**To:** Hanaman, Cathlene  
**Cc:** Thornton, Scott - DOA  
**Subject:** DP Registry

Our starting point is using the Pocan draft (1492/P1) as a base, and modifying it to address the issues noted in the drafter's notes (attached e-mail).

- ✓ • Remove Pocan's treatment of Ch 770 (Section 97) and replace it with the 1308/P1 (Section 94) but omit lines 12-14 of pg 44 of 1308/P1 limiting the criteria by sex and age and modify the application materials under 770.07 (lines 16-20, pg 44 of 1308/P1) to require documentary proof of identification and residence and social security number.
- Remove Pocan's treatment of Ch 853 (Section 104) and replace with 1308/P1

The intent of these modifying provisions, if I have not caught everything, is to remove the language from 1492/P1 which is similar to the language used for marriage, expand the eligibility as to not limit it to those of the same gender, administer the registry and application as noted in the original 1308/P1 draft, and to include some proof of identification and residence requirements.

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**From:** Hanaman, Cathlene [mailto:Cathlene.Hanaman@legis.wisconsin.gov]  
**Sent:** Wednesday, January 21, 2009 2:38 PM  
**To:** Kraus, Jennifer - DOA; Frederick, Caitlin - DOA  
**Subject:**

Jenny and Caitlin:

Pocan's office is waiving confidentiality on their domestic partners draft for DOA budget purposes. Please let us know as soon as possible if you want to start using their draft as a base or if you want to proceed on your draft.

Your response will greatly relieve some of our stress over here. Did I mention "greatly"?

Jenny, ignore that last email I sent you.

-Cathlene

<<09-1492/P1>>

01/21/2009