

2005 ASSEMBLY BILL 503

June 17, 2005 – Introduced by Representative SCHNEIDER. Referred to Committee on Insurance.

1 **AN ACT** *to renumber and amend* 40.02 (20) and 765.01; *to amend* 40.55 (1) and
2 765.001 (2); and *to create* 40.02 (20) (b), 40.02 (21c), 40.02 (21d), 765.01 (2),
3 chapter 770, 990.01 (19p) and 990.01 (39) of the statutes; **relating to:** defining
4 marriage as between one man and one woman and establishing domestic
5 partnership; providing coverage for domestic partners of University of
6 Wisconsin System employees and annuitants under health care coverage plans
7 and long-term care insurance policies offered by the Group Insurance Board.

Analysis by the Legislative Reference Bureau

Health insurance benefits for domestic partners of University of Wisconsin System employees and annuitants

Under current law, the Group Insurance Board offers health care coverage plans for state employees, local government employees, school district employees, and annuitants under the Wisconsin Retirement System. In addition, the Group Insurance Board currently offers long-term care insurance policies to state employees and state annuitants. Under the health care coverage plans, the employees and annuitants are able to receive coverage for dependents; under the long-term care insurance policies, the employees and annuitants are able to purchase the policies for their spouses and parents.

This bill provides that domestic partners (as defined below) of University of Wisconsin System employees and annuitants are eligible to receive coverage under

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the health care coverage plans offered by the Group Insurance Board and that state employees and state annuitants are able to purchase the policies for their domestic partners.

Defining marriage

Current law provides that marriage is a civil contract that creates the legal status of husband and wife. Current law prohibits certain marriages, such as a marriage between persons who are nearer of kin than second cousins or a marriage in which at least one of the persons was divorced less than six months before the marriage. If a person who is prohibited from marrying in this state leaves the state for the purpose of contracting a marriage in a state where the marriage is valid, that marriage is void in this state. Such a person will be considered to have left this state for the purpose of marrying in the other state if he or she lived in this state within 12 months before marrying in the other state and resumed residence in this state within 18 months after leaving this state, or if he or she maintained a residence in this state the entire time that he or she was away.

This bill specifies that marriage is a civil contract between one man and one woman. The bill provides that only marriage between one man and one woman will be recognized as valid in this state, regardless of whether a marriage took place in a jurisdiction that defined marriage other than between one man and one woman as valid, and regardless of whether the statute regarding marrying in another state to circumvent the marriage laws of this state applies to a marriage. The bill provides definitions for “spouse” and “marriage” for purposes of statutory construction. A “spouse” is defined as a party to a marriage, and “marriage” is defined as a civil contract between one man and one woman that creates the legal status for the parties of husband and wife.

Domestic partnership

Current law specifies the requirements for contracting and for dissolving a marriage and, in addition, sets out various rights and responsibilities that apply to married persons or that result from the legal status of marriage. This bill provides requirements for forming a legal relationship of domestic partnership. Under the bill, a domestic partnership may be formed by two individuals who are at least 18 years old and who are not married or in another domestic partnership. The individuals may not be related to each other by blood in any way that would prohibit them from marrying under the laws of the state and must consider themselves to be members of each other’s immediate family.

The procedure for obtaining a declaration of domestic partnership is similar to the procedure for obtaining a marriage license. The individuals apply for a declaration of domestic partnership to the county clerk of the county in which at least one of them has resided for at least 30 days. The application must be subscribed to by the parties, who must submit proof of identification to the county clerk. Just as with an application for a marriage license, the application must contain the social security numbers of the parties, as well as any other information that the Department of Health and Family Services directs. Just as with an application for a marriage license, a portion of the application for a declaration of domestic partnership contains information that is collected for statistical purposes only and

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is not open to public inspection. If the parties fulfill all of the requirements for forming a domestic partnership, the clerk issues to the parties a declaration of domestic partnership. The parties must complete the declaration, sign it in front of a notary, and submit it to the register of deeds of the county in which either party resides. After recording the declaration, the register of deeds must send the original to the state registrar of vital statistics.

The bill provides that any state statute or rule that applies to a married person or a formerly married person, such as a widow, applies in the same respect to a domestic partner or a person who was formerly a domestic partner; that any state statute or rule that applies to marriage or a marital relationship, including dissolution of a marriage, applies in the same respect to a domestic partnership; and that any state statute or rule that applies to a marriage document applies in the same respect to a declaration of domestic partnership. Thus, under the bill for example, the statutory divorce procedure and property division would apply to the dissolution of a domestic partnership; the marital property provisions of current law would apply to domestic partners; a domestic partner would have the same intestate inheritance rights as a spouse and the same election rights under a will; domestic partners would be entitled to adopt; domestic partners could file joint state income tax returns; a domestic partner could consent to an autopsy on the body of his or her deceased domestic partner; a domestic partner could make a claim for loss of society and companionship in the event of the wrongful death of his or her domestic partner; domestic partners could obtain a combined fishing license; a domestic partner would have an evidentiary privilege to prevent his or her domestic partner from testifying as to any private communication between the two during their domestic partnership; and a domestic partner could receive death benefits under the worker's compensation law as the result of the employment-related death of his or her domestic partner.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 40.02 (20) of the statutes is renumbered 40.02 (20) (intro.) and
2 amended to read:

3 40.02 (20) (intro.) “Dependent” means ~~the~~:

4 (a) Except as provided in par. (b), the spouse, minor child, including
5 stepchildren of the current marriage dependent on the employee for support and
6 maintenance, or child of any age, including stepchildren of the current marriage, if

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1 handicapped to an extent requiring continued dependence. For group insurance
2 purposes only, the department may promulgate rules with a different definition of
3 “dependent” than the one otherwise provided in this subsection paragraph for each
4 group insurance plan.

5 **SECTION 2.** 40.02 (20) (b) of the statutes is created to read:

6 40.02 **(20)** (b) For an employee of the Board of Regents of the University of
7 Wisconsin System or for an annuitant who was employed by the Board of Regents
8 of the University of Wisconsin System on the day on which he or she terminated
9 covered employment, the spouse, domestic partner, minor child, including
10 stepchildren of the current marriage or children of a domestic partner dependent on
11 the employee for support and maintenance, or child of any age, including
12 stepchildren of the current marriage or children of a domestic partner, if
13 handicapped to an extent requiring continued dependence.

14 **SECTION 3.** 40.02 (21c) of the statutes is created to read:

15 40.02 **(21c)** “Domestic partner” has the meaning given in s. 770.01 (1).

16 **SECTION 4.** 40.02 (21d) of the statutes is created to read:

17 40.02 **(21d)** “Domestic partnership” has the meaning given in s. 770.01 (2).

18 **SECTION 5.** 40.55 (1) of the statutes is amended to read:

19 **40.55 Long-term care coverage. (1)** Except as provided in sub. (5), the state
20 shall offer, through the group insurance board, to eligible employees under s. 40.02
21 (25) (bm) and to state annuitants long-term care insurance policies which have been
22 approved for sale in this state by the office of the commissioner of insurance and
23 which have been approved for offering under contracts established by the group
24 insurance board if the insurer requests that the policy be offered, and the state shall
25 also allow an eligible employee or a state annuitant to purchase those policies for his

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1 or her spouse or parent. If the eligible employee is employed by the Board of Regents
2 of the University of Wisconsin System or if the state annuitant was employed by the
3 Board of Regents of the University of Wisconsin System on the day on which he or
4 she terminated covered employment, the state shall also allow the eligible employee
5 or state annuitant to purchase those policies for his or her domestic partner.

6 **SECTION 6.** 765.001 (2) of the statutes is amended to read:

7 765.001 (2) INTENT. It is the intent of chs. 765 to 768 to promote the stability
8 and best interests of marriage and the family. It is the intent of the legislature to
9 recognize the valuable contributions of both spouses during the marriage and at
10 termination of the marriage by dissolution or death. Marriage is the institution that
11 is the foundation of the family and of society. Its stability is basic to morality and
12 civilization, and of vital interest to society and the state. The consequences of the
13 marriage contract are more significant to society than those of other contracts, and
14 the public interest must be taken into account always. The seriousness of marriage
15 makes adequate premarital counseling and education for family living highly
16 desirable and courses thereon are urged upon all persons contemplating marriage.
17 The impairment or dissolution of the marriage relation generally results in injury
18 to the public wholly apart from the effect upon the parties immediately concerned.
19 It is the public policy of this state that marriage may be contracted only between one
20 man and one woman. Under the laws of this state, marriage is a legal relationship
21 between 2 equal persons, a husband and wife, who owe to each other mutual
22 responsibility and support. Each spouse has an equal obligation in accordance with
23 his or her ability to contribute money or services or both which are necessary for the
24 adequate support and maintenance of his or her minor children and of the other

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1 spouse. No spouse may be presumed primarily liable for support expenses under this
2 subsection.

3 **SECTION 7.** 765.01 of the statutes is renumbered 765.01 (1) and amended to
4 read:

5 765.01 (1) Marriage, so far as its validity at law is concerned, is a civil contract
6 between one man and one woman, to which the consent of the parties capable in law
7 of contracting is essential, and which creates the legal status of husband and wife.

8 **SECTION 8.** 765.01 (2) of the statutes is created to read:

9 765.01 (2) Regardless of whether s. 765.04 applies and regardless of whether
10 a marriage takes place in another jurisdiction in which marriage other than between
11 one man and one woman is defined as valid, only marriage between one man and one
12 woman shall be recognized as valid in this state.

13 **SECTION 9.** Chapter 770 of the statutes is created to read:

14 **CHAPTER 770**

15 **DOMESTIC PARTNERSHIP**

16 **770.01 Definitions.** In this chapter:

17 (1) “Domestic partner” means an individual who has signed and filed a
18 declaration of domestic partnership in the office of the register of deeds as provided
19 under s. 770.10.

20 (2) “Domestic partnership” means the legal relationship that is formed
21 between 2 individuals under this chapter.

22 **770.05 Criteria for forming a domestic partnership.** Two individuals may
23 form a domestic partnership if they fulfill all of the following criteria:

24 (1) Each individual is at least 18 years old and otherwise competent to enter
25 into a contract.

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1 **(2)** Neither individual is married to, or registered in a domestic partnership
2 with, another individual.

3 **(3)** The 2 individuals are not related by blood in any way that would prohibit
4 marriage under s. 765.03.

5 **(4)** The 2 individuals consider themselves to be members of each other's
6 immediate family.

7 **770.07 Application. (1)** (a) Individuals who wish to form a domestic
8 partnership shall apply for a declaration of domestic partnership to the county clerk
9 of the county in which at least one of the individuals has resided for at least 30 days
10 immediately before applying.

11 (b) 1. Except as provided in subd. 2., the county clerk may not issue a
12 declaration of domestic partnership until at least 5 days after receiving the
13 application for the declaration of domestic partnership.

14 2. The county clerk may, at his or her discretion, issue a declaration of domestic
15 partnership less than 5 days after application if the applicant pays an additional fee
16 of not more than \$10 to cover any increased processing cost incurred by the county.
17 The county clerk shall pay this fee into the county treasury.

18 (c) No declaration of domestic partnership may be issued unless the application
19 for it is subscribed to by the parties intending to form the domestic partnership;
20 contains the social security number of each party who has a social security number;
21 and is filed with the clerk who issues the declaration of domestic partnership.

22 (d) 1. Each applicant for a declaration of domestic partnership shall present
23 satisfactory, documentary proof of identification and residence and shall swear to,
24 or affirm, the application before the clerk who is to issue the declaration of domestic
25 partnership. In addition to the social security number of each party who has a social

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1 security number, the application shall contain such informational items as the
2 department of health and family services directs. The portion of the application form
3 that is collected for statistical purposes only shall indicate that the address of an
4 applicant may be provided by a county clerk to a law enforcement officer under the
5 conditions specified under s. 770.18 (2).

6 2. Each applicant for a declaration of domestic partnership who is under 30
7 years of age shall exhibit to the clerk a certified copy of a birth certificate, and shall
8 submit a copy of any judgment or death certificate affecting the applicant's domestic
9 partnership status. If any applicable birth certificate, death certificate, or judgment
10 is unobtainable, other satisfactory documentary proof may be presented instead.
11 Whenever the clerk is not satisfied with the documentary proof presented, he or she
12 shall submit the presented proof to a judge of a court of record in the county of
13 application for an opinion as to its sufficiency.

14 (2) If sub. (1) and s. 770.05 are complied with, the county clerk shall issue a
15 declaration of domestic partnership. With each declaration of domestic partnership,
16 the county clerk shall provide a pamphlet describing the causes and effects of fetal
17 alcohol syndrome. After the application for the declaration of domestic partnership,
18 the clerk shall, upon the sworn statement of either of the applicants, correct any
19 erroneous, false, or insufficient statement in the application that comes to the clerk's
20 attention and shall show the corrected statement, as soon as reasonably possible, to
21 the other applicant.

22 **770.10 Completion and filing of declaration.** In order to form the legal
23 status of domestic partners, the individuals shall complete the declaration of
24 domestic partnership, sign the declaration, having their signatures acknowledged
25 before a notary, and submit the declaration to the register of deeds of the county in

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1 which either individual resides. The register of deeds shall record the declaration
2 and forward the original to the state registrar of vital statistics.

3 **770.15 Forms for declaration.** (1) The application and declaration of
4 domestic partnership under s. 770.07 shall contain such information as the
5 department of health and family services determines is necessary. The form for the
6 declaration of domestic partnership shall require both individuals forming a
7 domestic partnership to sign the form and attest to fulfilling all of the criteria under
8 s. 770.05 (1) to (4).

9 (2) The department of health and family services shall prepare and distribute
10 forms under sub. (1) in sufficient quantities to each county clerk.

11 **770.17 Fee to county clerk.** Each county clerk shall receive as a fee for each
12 declaration of domestic partnership issued the same amount that the clerk receives
13 for issuing a marriage license under s. 765.15. Of the amount that the clerk receives
14 under this section, the clerk shall pay into the state treasury the same amount that
15 the clerk pays into the state treasury from the fee collected for issuing a marriage
16 license. The remainder shall become a part of the funds of the county. For each
17 declaration of domestic partnership issued, the clerk shall also receive a standard
18 notary fee in the same amount that the clerk receives as a standard notary fee in
19 connection with issuing a marriage license and that may be retained by the clerk if
20 the clerk is operating on a fee or part-fee basis but which otherwise shall become part
21 of the funds of the county.

22 **770.18 Records.** (1) The county clerk shall keep among the records in the
23 office a suitable book called the declaration of domestic partnership docket and shall
24 enter therein a complete record of the applications for and the issuing of all
25 declarations of domestic partnership, and of all other matters that the clerk is

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1 required by this chapter to ascertain related to the rights of any person to obtain a
2 declaration of domestic partnership. An application may be recorded by entering
3 into the docket the completed application form, with any portion collected only for
4 statistical purposes removed. The declaration of domestic partnership docket shall
5 be open for public inspection or examination at all times during office hours.

6 **(2)** A county clerk may provide the name of a declaration of domestic
7 partnership applicant and, from the portion of the application form that is collected
8 for statistical purposes, as specified under sub. (1), may provide the address of the
9 declaration of domestic partnership applicant to a law enforcement officer, as defined
10 in s. 51.01 (11). A county clerk shall provide the name and, if it is available, the
11 address, to a law enforcement officer who requests, in writing, the name and address
12 for the performance of an investigation or the service of a warrant. If a county clerk
13 has not destroyed the portion of the declaration of domestic partnership application
14 form that is collected for statistical purposes, he or she shall keep the information
15 on the portion confidential, except as authorized under this subsection. If a written
16 request is made by a law enforcement officer under this subsection, the county clerk
17 shall keep the request with the declaration of domestic partnership application form.
18 If the county clerk destroys the declaration of domestic partnership application form,
19 he or she shall also destroy the written request.

20 **770.20 Effect of forming domestic partnership.** Except in ch. 765, all of
21 the following apply:

22 **(1)** Except for s. 990.01 (39), any statute or rule that applies to a married person
23 or a formerly married person; including but not limited to a spouse; husband, if
24 appropriate; wife, if appropriate; widow, if appropriate; widower, if appropriate; or

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1 family member that includes a spouse; applies in the same respect to a domestic
2 partner or a person who was formerly a domestic partner.

3 **(2)** Except for ss. 48.14 (6) and 990.01 (19p), any statute or rule that applies
4 to marriage or a marital relationship, including dissolution of a marriage, applies in
5 the same respect to a domestic partnership.

6 **(3)** Except for ss. 46.03 (34), 69.01 (16), and 69.16 (1), any statute or rule that
7 applies to a marriage license, certificate, or document or the application or applicant
8 for such a document, applies in the same respect to a declaration of domestic
9 partnership or the application or applicant for a declaration.

10 **SECTION 10.** 990.01 (19p) of the statutes is created to read:

11 990.01 **(19p)** MARRIAGE. “Marriage” means a civil contract between one man
12 and one woman that creates the legal status for the parties of husband and wife.

13 **SECTION 11.** 990.01 (39) of the statutes is created to read:

14 990.01 **(39)** SPOUSE. “Spouse” means a party to a marriage.

15 **SECTION 12. Initial applicability.**

16 (1) The treatment of sections 40.02 (21c) and (21d) and 40.55 (1) of the statutes,
17 the renumbering and amendment of section 40.02 (20) of the statutes, and the
18 creation of section 40.02 (20) (b) of the statutes first apply to coverage under group
19 insurance plans offered by the group insurance board on the January 1 that occurs
20 after the first day of the 13th month beginning after publication.

21 **SECTION 13. Effective dates.** This act takes effect on the day after publication,
22 except as follows:

23 (1) DOMESTIC PARTNERSHIPS. The treatment of chapter 770 of the statutes takes
24 effect on the first day of the 13th month beginning after publication.

25

(END)