

## 2005 DRAFTING REQUEST

### Bill

Received: 11/08/2004

Received By: pkahler

Wanted: As time permits

Identical to LRB:

For: Marlin Schneider (608) 266-0215

By/Representing: himself

This file may be shown to any legislator: NO

Drafter: pkahler

May Contact:

Addl. Drafters: rchampag

Subject: Dom. Rel. - marriage  
Dom. Rel. - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.Schneider@legis.state.wi.us

Carbon copy (CC:) to:

---

### Pre Topic:

No specific pre topic given

---

### Topic:

Define marriage as between one man and one woman and create a process for establishing domestic partnerships

---

### Instructions:

See Attached

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 11/09/2004	lkunkel 12/02/2004 lkunkel 12/03/2004		_____			S&L
/1			pgreensl 12/06/2004	_____	sbasford 12/06/2004		S&L
/2	pkahler	lkunkel	pgreensl	_____	lemery	lnorthro	S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	12/06/2004	12/06/2004	12/06/2004 _____		12/06/2004	12/07/2004	
/3	rchampag 01/10/2005	lkunkel 01/11/2005	jfrantze 01/11/2005 _____		lnorthro 01/11/2005	lnorthro 01/11/2005	

FE Sent For:

**<END>**

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FE Sent For:

13/mk 1/11 *[Signature]* *[Signature]*  
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/1			pgreensl 12/06/2004	<i>pkahler</i>	sbasford 12/06/2004		

*1/2 lmk 12/6*

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/?	pkahler	/1 lmk 12/3	12/3 ps	12/6 ps/AC			

FE Sent For:

<END>

11-8-04

M. Schneider

AB 475

combine "marriage between one man and  
one woman" bill  
with "domestic partnership" bill

as one bill

~~3000~~ 3017

3875 or 3886

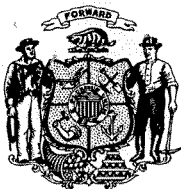
↓

99AB608

↓

2001AB721

690



12/8

2005  
2003 BILL

Regenerate

LPS: PIS  
PWF

defining marriage as  
between one man and  
one woman and  
establishing

1 AN ACT to create chapter 770 of the statutes; relating to: domestic partnership.

Analysis by the Legislative Reference Bureau

4 Current law specifies the requirements for contracting and for dissolving a marriage, which is defined in the statutes as a civil contract creating the legal status of husband and wife. In addition, the statutes set out various rights and responsibilities that apply to married persons or that result from the legal status of marriage.

2011 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 generally, not nearer of kin than second cousins, 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

Insert 1-A

anal title:  
sub-sub -> Domestic  
partnership

and, in addition, sets

**BILL**

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:*

SECTION 1. Chapter 770 of the statutes is created to read:

**CHAPTER 770** ✓

**DOMESTIC PARTNERSHIP** ✓

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

Insert 2-1

1  
2  
3  
4

## BILL

1 (1) "Domestic partner" means an individual who has signed and filed a  
2 declaration of domestic partnership in the office of the register of deeds ~~of the county~~  
3 ~~in which he or she resides.~~ ✓ as provided under s. 770.10 ✓

4 (2) "Domestic partnership" means the legal relationship that is formed  
5 between 2 individuals under this chapter. ✓

6 **770.05 Criteria for forming a domestic partnership.** ✓ Two individuals may  
7 form a domestic partnership if they fulfill all of the following criteria: ✓

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

10 (2) Neither individual is married to, or registered in a domestic partnership  
11 with, another individual. ✓

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

14 (4) The 2 individuals consider themselves to be members of each other's  
15 immediate family. ✓

16 **770.07 Application.** (1) (a) Individuals who wish to form a domestic  
17 partnership shall apply for a declaration of domestic partnership to the county clerk  
18 of the county in which at least one of the individuals has resided for at least 30 days  
19 immediately before applying. ✓

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

23 2. The county clerk may, at his or her discretion, issue a declaration of domestic  
24 partnership less than 5 days after application if the applicant pays an additional fee

**BILL**

1 of not more than \$10 to cover any increased processing cost incurred by the county.

2 The county clerk shall pay this fee into the county treasury.

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

7 (d) 1. Each applicant for a declaration of domestic partnership shall present  
8 satisfactory, documentary proof of identification and residence and shall swear to,  
9 or affirm, the application before the clerk who is to issue the declaration of domestic  
10 partnership. In addition to the social security number of each party who has a social  
11 security number, the application shall contain such informational items as the  
12 department of health and family services directs. The portion of the application form  
13 that is collected for statistical purposes only shall indicate that the address of an  
14 applicant may be provided by a county clerk to a law enforcement officer under the  
15 conditions specified under s. 770.18 (2).

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

24 (2) If sub. (1) and s. 770.05 are complied with, the county clerk shall issue a  
25 declaration of domestic partnership. With each declaration of domestic partnership,



**BILL**

1 the county clerk shall provide a pamphlet describing the causes and effects of fetal  
2 alcohol syndrome. After the application for the declaration of domestic partnership,  
3 the clerk shall, upon the sworn statement of either of the applicants, correct any  
4 erroneous, false, or insufficient statement in the application that comes to the clerk's  
5 attention and shall show the corrected statement, as soon as reasonably possible, to  
6 the other applicant.

7 **770.10 Completion and filing of declaration.** In order to form the legal  
8 status of domestic partners, the individuals shall complete the declaration of  
9 domestic partnership, sign the declaration, having their signatures acknowledged  
10 before a notary, and submit the declaration to the register of deeds of the county in  
11 which either individual resides. The register of deeds shall record the declaration  
12 and forward the original to the state registrar of vital statistics.

13 **770.15 Forms for declaration.** (1) The application and declaration of  
14 domestic partnership under s. 770.07 shall contain such information as the  
15 department of health and family services determines is necessary. The form for the  
16 declaration of domestic partnership shall require both individuals forming a  
17 domestic partnership to sign the form and attest to fulfilling all of the criteria under  
18 s. 770.05 (1) to (4).

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

21 **770.17 Fee to county clerk.** Each county clerk shall receive as a fee for each  
22 declaration of domestic partnership issued the same amount that the clerk receives  
23 for issuing a marriage license under s. 765.15. Of the amount that the clerk receives  
24 under this section, the clerk shall pay into the state treasury the same amount that  
25 the clerk pays into the state treasury from the fee collected for issuing a marriage

**BILL**

1 license. The remainder shall become a part of the funds of the county. For each  
2 declaration of domestic partnership issued, the clerk shall also receive a standard  
3 notary fee in the same amount that the clerk receives as a standard notary fee in  
4 connection with issuing a marriage license and that may be retained by the clerk if  
5 the clerk is operating on a fee or part-fee basis but which otherwise shall become part  
6 of the funds of the county. ✓

7 **770.18 Records.** (1) The county clerk shall keep among the records in the  
8 office a suitable book called the declaration of domestic partnership docket ✓ and shall  
9 enter therein ✓ a complete record of the applications for and the issuing of all  
10 declarations of domestic partnership, and of all other matters that the clerk is  
11 required by this chapter to ascertain related to the rights of any person to obtain a  
12 declaration of domestic partnership. ✓ An application may be recorded by entering  
13 into the docket the completed application form, with any portion collected only for  
14 statistical purposes removed. The declaration of domestic partnership docket shall  
15 be open for public inspection or examination at all times during office hours. ✓

16 (2) A county clerk may provide the name of a declaration of domestic  
17 partnership applicant and, from the portion of the application form that is collected  
18 for statistical purposes, as specified under sub. (1), may provide the address of the  
19 declaration of domestic partnership applicant to a law enforcement ✓ officer, as defined  
20 in s. 51.01 ✓ (11). A county clerk shall provide the name and, if it is available, the  
21 address, to a law enforcement officer who requests, in writing, ✓ the name and address  
22 for the performance of an investigation or the service of a warrant. ✓ If a county clerk  
23 has not destroyed the portion of the declaration of domestic partnership application  
24 form that is collected for statistical purposes, he or she shall keep the information  
25 on the portion confidential, except as authorized under this subsection. ✓ If a written

**BILL**

1 request is made by a law enforcement officer under this subsection, the county clerk  
2 shall keep the request with the declaration of domestic partnership application form. ✓  
3 If the county clerk destroys the declaration of domestic partnership application form,  
4 he or she shall also destroy the written request. ✓

5 **770.20 Effect of forming domestic partnership.** Except in ch. 765, all of  
6 the following apply:

7 (1) Any statute or rule that applies to a married person or a formerly married  
8 person; including but not limited to a spouse; husband, if appropriate; wife, if  
9 appropriate; widow, if appropriate; widower, if appropriate; or family member that  
10 includes a spouse; applies in the same respect to a domestic partner or a person who  
11 was formerly a domestic partner. ✓

12 (2) Except for ~~§~~ 48.14 (6), any statute or rule that applies to marriage or a  
13 marital relationship, including dissolution of a marriage, applies in the same respect  
14 to a domestic partnership. ✓

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

19 **SECTION 2. Effective date.**

20 (1) This act takes effect on the first day of the 13th month beginning after  
21 publication.

22 (END)

Insert 7-18



**EFFECTIVE DATE**

1. In the component bar: For the action phrase, execute: ... **create** → **action:** → \*NS: → **effdate**  
For the text, execute: ..... **create** → **text:** → \*NS: → **effdateA**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

**SECTION #** \_\_\_\_ . **Effective date.**

( #1 ) ( ) ..... This act takes effect on .....

1. In the component bar: For the action phrase, execute: .. **create** → **action:** → \*NS: → **effdateE**  
For the text, execute: ..... **create** → **text:** → \*NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed.

**SECTION #** \_\_\_\_ . **Effective dates;** ..... *period*

..... This act takes effect on the day after publication, except as follows:

( #1 ) ( ) *Domestic partnerships.* ..... The treatment of sections *chapter 770* ..... of the statutes takes effect on *the first day of the 13th month beginning after publication.* ✓

1. In the component bar: For the budget action phrase, execute:..**create** → **action:** → \*NS: → **94XX**  
For the text, execute: ..... **create** → **text:** → \*NS: → **effdate**
2. Nonstatutory subunits are numbered automatically. Fill in the SECTION # or subsection # only if a "frozen" number is needed. Below, for the budget, fill in the 9400 department code.

**SECTION 94** \_\_\_\_ . **Effective dates;** .....

( #1 ) ( ) ..... The treatment of sections ..... of the statutes takes effect on .....

(END)



## 2003 ASSEMBLY BILL 475

August 19, 2003 - Introduced by Representatives GUNDRUM, W. WOOD, HUNDERTMARK, NISCHKE, J. FITZGERALD, WEBER, ALBERS, NASS, GROTHMAN, M. LEHMAN, MONTGOMERY, LEMAHIEU, OTT, GOTTLIEB, F. LASEE, KREIBICH, KESTELL, PETTIS, SERATTI, SUDER, LADWIG, FREESE, HINES, GUNDERSON, KRAWCZYK, LOTHIAN, HUEBSCH, FRISKE, PETROWSKI, TOWNS, VAN ROY, HONADEL, BIES, HAHN, OLSEN, D. MEYER and OWENS, cosponsored by Senators S. FITZGERALD, LEIBHAM, ZIEN, STEPP, REYNOLDS, LAZICH, SCHULTZ, KANAVAS and ROESSLER. Referred to Committee on Judiciary.

1 AN ACT to renumber and amend 765.01; to amend 765.001 (2); and to create  
2 765.01 (2), 990.01 (19p) and 990.01 (39) of the statutes; relating to: marriage  
3 between one man and one woman.

anal title:  
sub-sub =>

Defining  
marriage

### Analysis by the Legislative Reference Bureau

Current law provides that marriage is a civil contract that creates the legal status of husband and wife. ~~The consent of the parties is essential, and the parties must have the legal capacity to enter into a contract.~~ In addition, 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

Insert 1-A  
182



ASSEMBLY BILL 475

2002

Insert 1-A  
 covered  
 end of  
 ins 1-A

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. Finally, the bill adds, to an introductory statement in current law addressing the seriousness and significance of marriage, that it is this state's public policy that marriage may be contracted only between one man and one woman.

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

Insert 2-1

1002

1 LPS:  
 PLS/PWF SECTION 1. 765.001 (2) of the statutes is amended to read:

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



ASSEMBLY BILL 475

*Insert 2-1 contd 2002*

1 adequate support and maintenance of his or her minor children and of the other  
2 spouse. No spouse may be presumed primarily liable for support expenses under this  
3 subsection.

*LRS.  
Pwf*

4 **SECTION 2.** 765.01<sup>✓</sup> of the statutes is renumbered 765.01 (1) and amended to  
5 read:

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

9 **SECTION 3.** 765.01<sup>✓</sup> (2) of the statutes is created to read:

10 765.01 (2) Regardless of whether s. 765.04<sup>✓</sup> applies and regardless of whether  
11 a marriage takes place in another jurisdiction in which marriage other than between  
12 one man and one woman is defined as valid, only marriage between one man and one  
13 woman shall be recognized as valid in this state.<sup>✓</sup> *(end of ins 2-1)*

*Insert 7-18*

14 **SECTION 4.** 990.01<sup>✓</sup> (19p) of the statutes is created to read:

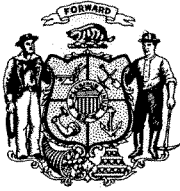
15 990.01 (19p) MARRIAGE. "Marriage" means a civil contract between one man  
16 and one woman that creates the legal status for the parties of husband and wife.<sup>✓</sup>

17 **SECTION 5.** 990.01<sup>✓</sup> (39) of the statutes is created to read:

18 990.01 (39) SPOUSE. "Spouse" means a party to a marriage.<sup>✓</sup>

19

~~END~~



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-0690/1

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2005 BILL

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1 AN ACT to renumber and amend 765.01; to amend 765.001 (2); and to create  
2 765.01 (2), chapter 770, 990.01 (19p) and 990.01 (39) of the statutes; relating  
3 to: defining marriage as between one man and one woman and establishing  
4 domestic partnership.

**Analysis by the Legislative Reference Bureau**

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

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Defining marriage



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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 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;

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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.

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

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

1           **SECTION 1.** 765.001 (2) of the statutes is amended to read:

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

**BILL**

1 adequate support and maintenance of his or her minor children and of the other  
2 spouse. No spouse may be presumed primarily liable for support expenses under this  
3 subsection.

4 **SECTION 2.** 765.01 of the statutes is renumbered 765.01 (1) and amended to  
5 read:

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

9 **SECTION 3.** 765.01 (2) of the statutes is created to read:

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

14 **SECTION 4.** Chapter 770 of the statutes is created to read:

**CHAPTER 770****DOMESTIC PARTNERSHIP**

17 **770.01 Definitions.** In this chapter:

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

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

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

**BILL**

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

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

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

7           (4) The 2 individuals consider themselves to be members of each other's  
8 immediate family.

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

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

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

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

24           (d) 1. Each applicant for a declaration of domestic partnership shall present  
25 satisfactory, documentary proof of identification and residence and shall swear to,

**BILL**

1 or affirm, the application before the clerk who is to issue the declaration of domestic  
2 partnership. In addition to the social security number of each party who has a social  
3 security number, the application shall contain such informational items as the  
4 department of health and family services directs. The portion of the application form  
5 that is collected for statistical purposes only shall indicate that the address of an  
6 applicant may be provided by a county clerk to a law enforcement officer under the  
7 conditions specified under s. 770.18 (2).

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

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

24 **770.10 Completion and filing of declaration.** In order to form the legal  
25 status of domestic partners, the individuals shall complete the declaration of

**BILL**

1 domestic partnership, sign the declaration, having their signatures acknowledged  
2 before a notary, and submit the declaration to the register of deeds of the county in  
3 which either individual resides. The register of deeds shall record the declaration  
4 and forward the original to the state registrar of vital statistics.

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

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

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

24 **770.18 Records.** (1) The county clerk shall keep among the records in the  
25 office a suitable book called the declaration of domestic partnership docket and shall

**BILL**

1 enter therein a complete record of the applications for and the issuing of all  
2 declarations of domestic partnership, and of all other matters that the clerk is  
3 required by this chapter to ascertain related to the rights of any person to obtain a  
4 declaration of domestic partnership. An application may be recorded by entering  
5 into the docket the completed application form, with any portion collected only for  
6 statistical purposes removed. The declaration of domestic partnership docket shall  
7 be open for public inspection or examination at all times during office hours.

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

22 **770.20 Effect of forming domestic partnership.** Except in ch. 765, all of  
23 the following apply:

24 (1) Except for s. 990.01 (39), any statute or rule that applies to a married person  
25 or a formerly married person; including but not limited to a spouse; husband, if

**BILL**

1 appropriate; wife, if appropriate; widow, if appropriate; widower, if appropriate; or  
2 family member that includes a spouse; applies in the same respect to a domestic  
3 partner or a person who was formerly a domestic partner.

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

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

11 **SECTION 5.** 990.01 (19p) of the statutes is created to read:

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

14 **SECTION 6.** 990.01 (39) of the statutes is created to read:

15 990.01 (39) SPOUSE. "Spouse" means a party to a marriage.

16 **SECTION 7. Effective dates.** This act takes effect on the day after publication,  
17 except as follows:

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

20 (END)

lmk

D-note (date)

This redraft makes a couple of technical  
corrections, such as adding a title in the  
analysis.  
analysis.

PJK



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

LRB-0690/2dn  
PJK:lmk:pg

December 6, 2004

This redraft makes a couple of technical corrections, such as adding a title in the analysis.

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**Northrop, Lori**

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**From:** Schneider, Marlin  
**Sent:** Tuesday, December 07, 2004 3:13 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-0690/2 Topic: Define marriage as between one man and one woman and create a process for establishing domestic partnerships

It has been requested by <Schneider, Marlin> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-0690/2 Topic: Define marriage as between one man and one woman and create a process for establishing domestic partnerships