

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known and may be cited as the "California Religious Freedom and Civil Marriage Protection Act"

SEC. 2 It is the intent of the Legislature that this act be interpreted consistently with the guarantees of the First Amendment to the Constitution of the United States and of Article I, section 4, of the California Constitution to free exercise of religion and enjoyment of religion without discrimination or preference."

SEC. 3. The Legislature finds and declares as follows:

(a) Civil marriage is a legal institution recognized by the state in order to promote stable relationships and to protect individuals who are in those relationships. The institution of marriage also provides important protections for the families of those who are married, including not only any children or other dependents they may have, but also members of their extended families.

(b) From 1850 to 1977, the statutory definition of marriage in California was gender-neutral, containing no reference to "man" or "woman."

(c) In 1948, the California Supreme Court became the first state court in the country to strike down a law prohibiting interracial marriage. It was the only state supreme court to do so before the United States Supreme Court invalidated all such laws in 1967. The California Supreme Court held that "marriage is . . . something more than a civil contract subject to regulation by the state; it is a fundamental right of free men...Legislation infringing such rights must be based upon more than prejudice and must be free from oppressive discrimination to comply with the constitutional requirements of due process and equal protection of the laws." *Perez v. Sharp* (1948) 32 Cal.2d 711, 714-15.

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

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

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

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

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

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

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

(k) It is the intent of the Legislature in enacting this act to end the pernicious practice of marriage discrimination in California.

This act is in no way intended to alter Section 308.5 of the Family Code, which prohibits California from treating as valid or otherwise recognizing marriages of same-sex couples solemnized outside of California.

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

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

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

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

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

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

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

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

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

SEC. 7. The Legislature finds and declares that this act does not amend or modify Section 308.5 of the Family Code, which addresses marriages from other jurisdictions, as enacted by an initiative measure.

SEC. 8. Add Section 403 of the Family Code to read:

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

SEC. 9. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.