

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1020

S.P. 384

In Senate, March 17, 2009

An Act To End Discrimination in Civil Marriage and Affirm Religious Freedom

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator DAMON of Hancock.

Cosponsored by Speaker PINGREE of North Haven and

Senators: ALFOND of Cumberland, BARTLETT of Cumberland, BLISS of Cumberland, BOWMAN of York, BRANNIGAN of Cumberland, GERZOFKY of Cumberland, NUTTING of Androscoggin, SULLIVAN of York, Representatives: ADAMS of Portland, BEAUDOIN of Biddeford, BERRY of Bowdoinham, BLODGETT of Augusta, BUTTERFIELD of Bangor, CAIN of Orono, CAREY of Lewiston, COHEN of Portland, CONNOR of Kennebunk, CORNELL du HOUX of Brunswick, CROCKETT of Augusta, DILL of Cape Elizabeth, EATON of Sullivan, EBERLE of South Portland, EVES of North Berwick, FLEMINGS of Bar Harbor, GOODE of Bangor, HARLOW of Portland, HASKELL of Portland, HINCK of Portland, HUNT of Buxton, WALSH INNES of Yarmouth, KAENRATH of South Portland, LEGG of Kennebunk, LOVEJOY of Portland, MacDONALD of Boothbay, MARTIN of Orono, McCABE of Skowhegan, MITCHELL of the Penobscot Nation, MORRISON of South Portland, NELSON of Falmouth, O'BRIEN of Lincolnville, PENDLETON of Scarborough, PEOPLES of Westbrook, PERCY of Phippsburg, PERRY of Calais, PILON of Saco, PRATT of Eddington, PRIEST of Brunswick, RUSSELL of Portland, SANBORN of Gorham, SCHATZ of Blue Hill, SMITH of Monmouth, SOCTOMAH of the Passamaquoddy Tribe, STEVENS of Bangor, STRANG BURGESS of Cumberland, STUCKEY of Portland, TREAT of Hallowell, TRINWARD of Waterville, VALENTINO of Saco, WAGNER of Lewiston, WATSON of Bath, WEBSTER of Freeport, WELSH of Rockport.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 19-A MRSA §650**, as enacted by PL 1997, c. 65, §2, is repealed.

3 **Sec. 2. 19-A MRSA §650-A** is enacted to read:

4 **§650-A. Codification of marriage**

5 Marriage is the legally recognized union of 2 people. Gender-specific terms relating
6 to the marital relationship or familial relationships, including, but not limited to,
7 "spouse," "family," "marriage," "immediate family," "dependent," "next of kin," "bride,"
8 "groom," "husband," "wife," "widow" and "widower," must be construed to be gender-
9 neutral for all purposes throughout the law, whether in the context of statute,
10 administrative or court rule, policy, common law or any other source of civil law.

11 **Sec. 3. 19-A MRSA §650-B** is enacted to read:

12 **§650-B. Recognition of marriage licensed and certified in another jurisdiction**

13 A marriage of a same-sex couple that is validly licensed and certified in another
14 jurisdiction is recognized for all purposes under the laws of this State.

15 **Sec. 4. 19-A MRSA §651, sub-§2**, as amended by PL 1997, c. 537, §12 and
16 affected by §62, is further amended to read:

17 **2. Application.** The parties wishing to record notice of their intentions of marriage
18 shall submit an application for recording notice of their intentions of marriage. The
19 application may be issued to any 2 persons otherwise qualified under this chapter
20 regardless of the sex of each person. The application must include a signed certification
21 that the information recorded on the application is correct and that the applicant is free to
22 marry according to the laws of this State. The applicant's signature must be
23 acknowledged before an official authorized to take oaths. Applications recording notice
24 of intentions to marry must be open for public inspection in the office of the clerk. When
25 the application is submitted, the applicant shall provide the clerk with the social security
26 numbers of the parties. The application must include a statement that the social security
27 numbers of the parties have been provided to the clerk. The clerk shall record the social
28 security numbers provided by each applicant. The record of the social security numbers
29 is confidential and is not open for public inspection.

30 **Sec. 5. 19-A MRSA §655, sub-§3** is enacted to read:

31 **3. Affirmation of religious freedom.** This Part does not authorize any court or
32 other state or local governmental body, entity, agency or commission to compel, prevent
33 or interfere in any way with any religious institution's religious doctrine, policy, teaching
34 or solemnization of marriage within that particular religious faith's tradition as guaranteed
35 by the Maine Constitution, Article 1, Section 3 or the First Amendment of the United
36 States Constitution. A person authorized to join persons in marriage and who fails or
37 refuses to join persons in marriage is not subject to any fine or other penalty for such
38 failure or refusal.

1 **Sec. 6. 19-A MRSA §701**, as amended by PL 2007, c. 695, Pt. C, §4, is further
2 amended to read:

3 **§701. Prohibited marriages; exceptions**

4 ~~1. **Marriage out of State to evade law.** When residents of this State, with intent to~~
5 ~~evade this section and to return and reside here, go into another state or country to have~~
6 ~~their marriage solemnized there and afterwards return and reside here, that marriage is~~
7 ~~void in this State.~~

8 **1-A. Certain marriages performed in another state not recognized in this State.**
9 Any marriage performed in another state that would violate any provisions of subsections
10 2 to ~~5~~ 4 if performed in this State is not recognized in this State and is considered void if
11 the parties take up residence in this State.

12 **2. Prohibitions based on degrees of consanguinity; exceptions.** This subsection
13 governs marriage between relatives.

14 A. ~~A man may not marry his mother, grandmother, daughter, granddaughter, sister,~~
15 ~~brother's daughter, sister's daughter, father's sister, mother's sister, the daughter of his~~
16 ~~father's brother or sister or the daughter of his mother's brother or sister. A woman~~
17 ~~may not marry her father, grandfather, son, grandson, brother, brother's son, sister's~~
18 ~~son, father's brother, mother's brother, the son of her father's brother or sister or the~~
19 ~~son of her mother's brother or sister person may not marry that person's parent,~~
20 ~~grandparent, child, grandchild, sibling, nephew, niece, aunt, uncle or first cousin.~~

21 B. Notwithstanding paragraph A, a ~~man~~ person may marry ~~the daughter of his~~
22 ~~father's brother or sister or the daughter of his mother's brother or sister, and a woman~~
23 ~~may marry the son of her father's brother or sister or the son of her mother's brother~~
24 ~~or sister that person's first cousin as long as, pursuant to sections 651 and 652, the~~
25 ~~man or woman~~ person provides the physician's certificate of genetic counseling.

26 **3. Persons under disability.** A person who is impaired by reason of mental illness
27 or mental retardation to the extent that that person lacks sufficient understanding or
28 capacity to make, communicate or implement responsible decisions concerning that
29 person's property or person is not capable of contracting marriage. For the purposes of
30 this section:

31 A. "Mental illness" means a psychiatric or other disease that substantially impairs a
32 person's mental health; and

33 B. "Mental retardation" means a condition of significantly subaverage intellectual
34 functioning resulting in or associated with concurrent impairments in adaptive
35 behavior and manifested during the developmental period.

36 **4. Polygamy.** A marriage contracted while either party has a living wife or husband
37 from whom the party is not divorced is void.

38 ~~**5. Same sex marriage prohibited.** Persons of the same sex may not contract~~
39 ~~marriage.~~

1

SUMMARY

2 This bill repeals the provision that limits marriage to one man and one woman and
3 replaces it with the authorization for marriage between any 2 persons that meet the other
4 requirements of Maine law. It also specifies that a marriage between 2 people of the
5 same sex in another state that is valid in that state is valid and must be recognized in this
6 State.

7 This bill also clarifies that the authorization of marriage between 2 people of the
8 same sex does not compel any religious institution to alter its doctrine, policy or teaching
9 regarding marriage or to solemnize any marriage in conflict with that doctrine, policy or
10 teaching. It also specifies that a person authorized to join persons in marriage and who
11 fails or refuses to join persons in marriage is not subject to any fine or other penalty for
12 such failure or refusal.