

H. B. 4569

(By Delegate Doyle)

[Introduced February 16, 2012; referred to the
Committee on the Judiciary then Finance.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §48-2A-1, §48-2A-2,
12 §48-2A-3, §48-2A-4, §48-2A-5, §48-2A-6, §48-2A-7, §48-2A-8,
13 §48-2A-9, §48-2A-10, §48-2A-11, §48-2A-12, §48-2A-13 and
14 §48-2A-14, all relating to civil unions generally; stating a
15 legislative intent in creating a state recognized status for
16 civil unions; providing a general purpose and rules of
17 construction in relation to this article; definitions;
18 preserving related religious freedom and rights; providing
19 procedures for establishing a civil union; establishing
20 minimum requirements for applicants; prohibiting civil unions
21 between certain relationships; prohibiting persons from
22 entering into a civil union while they are still partners or
23 spouse to another by marriage, civil union or other
24 substantially similar legal relationship, until that prior

1 marriage or union is dissolved; requiring both parties to a
2 civil union to be over the age of eighteen at the time of
3 application; requiring at least one of the applicants to be a
4 resident of the state at the time of application to enter into
5 a civil union in this state; providing for the duties,
6 requirements and obligations of county clerks regarding the
7 receipt, processing and subsequent issuance of a license to
8 enter into a civil union; providing a time limitation on the
9 license; requiring solemnization or certification of civil
10 union before it; relating to the qualifications of persons
11 authorized to certify or solemnize a civil union in this
12 state; requiring the return of a completed certificate to the
13 county clerk by the officiant before a civil union is legally
14 recognized; providing for the recordation of certificated
15 civil unions by county clerks; establishing the obligations,
16 responsibilities, protections and benefits afforded to parties
17 to a civil unions; setting forth protections, obligations and
18 responsibilities on the parties to a civil union equal to the
19 protections afforded to spouses under the laws of West
20 Virginia; providing procedures and standards by which civil
21 unions may be dissolved or voided; recognition of civil unions
22 and same sex marriages legally entered into other
23 jurisdictions as civil unions in West Virginia; providing for
24 pleadings for civil actions after civil union has been

1 certificated; establishing jurisdiction and venue for hearing
2 and addressing certain disputes; incorporating family court
3 standards and procedures for civil union disputes.

4 *Be it enacted by the Legislature of West Virginia:*

5 That the Code of West Virginia, 1931, as amended, be amended
6 by adding thereto a new article, designated §48-2A-1, §48-2A-2,
7 §48-2A-3, §48-2A-4, §48-2A-5, §48-2A-6, §48-2A-7, §48-2A-8,
8 §48-2A-9, §48-2A-10, §48-2A-11, §48-2A-12, §48-2A-13 and §48-2A-14,
9 all to read as follows:

10 **ARTICLE 2A. CIVIL UNIONS.**

11 **§48-2A-1. Short title.**

12 This article may be cited as the "West Virginia Civil Union
13 Act".

14 **§48-2A-2. Legislative intent.**

15 The intent of this article is to recognize civil unions in
16 West Virginia. By establishing the status of civil unions in this
17 state, it is not the Legislature's intent to revise the definition
18 or eligibility requirements of marriage.

19 **§48-2A-3. Purposes; rules of construction.**

20 The provisions of this article shall be liberally construed
21 and applied to promote its underlying purposes, which are to
22 provide adequate procedures for the certification and registration
23 of a civil union and provide persons entering into a civil union

1 with the obligations, responsibilities, protections and benefits
2 afforded or recognized by the laws of West Virginia to spouses.

3 **§48-2A-4. Definitions.**

4 (a) As used in this article:

5 (1) "Certificate" means a document that certifies that the
6 persons named on the certificate have established a civil union in
7 this state in compliance with this article.

8 (2) "Civil union" means a legal relationship between two
9 persons, of either the same or opposite sex, established pursuant
10 to this article.

11 (3) "Civil union couple" means two persons who have
12 established a civil union pursuant to this article.

13 (4) "Officiant" means the person authorized to certify a civil
14 union in accordance with section ten of this article.

15 (5) "Party to a civil union" means a person who has
16 established a civil union pursuant to this article.

17 (b) The definitions of the terms "spouse", "family",
18 "immediate family", "dependent", "next of kin", and other terms
19 that denote the spousal relationship, as those terms are used
20 throughout this code, shall hereafter be interpreted to include
21 "party to a civil union".

22 **§48-2A-5. Religious freedom.**

23 (a) Nothing in this article interferes with or regulates the
24 religious practice of any religious body. Any religious body,

1 Indian Nation or Tribe or Native Group is free to choose whether or
2 not to solemnize or officiate a civil union.

3 (b) Notwithstanding any other provision of law to the
4 contrary, no religious or denominational organization, no
5 organization operated for charitable or educational purpose which
6 is supervised or controlled by or in connection with a religious
7 organization, and no individual employed by any of the foregoing
8 organizations, while acting in the scope of that employment, is
9 required to:

10 (1) Provide services, accommodations, advantages, facilities,
11 goods, or privileges for a purpose related to the solemnization,
12 certification, or celebration of any civil union;

13 (2) Solemnize or certify any civil union; or

14 (3) Treat as valid any civil union;

15 if such providing, solemnizing, certifying, or treating as valid
16 would cause such organizations or individuals to violate their
17 sincerely held religious beliefs.

18 (c) No organization or individual as described in subsection
19 (a) above who fails or refuses to provide, solemnize, certify, or
20 treat as valid, as described in subdivision (b) (1), (b) (2) or
21 (b) (3) above, persons in a civil union, may be subject to a fine,
22 penalty, or other cause of action for such failure or refusal.

23 (d) Nothing in this section requires any person authorized to
24 perform solemnizations of marriages or civil unions to perform a

1 solemnization of a civil union, or requires the imposition of
2 sanctions against a person who is registered to solemnize marriages
3 or civil unions in West Virginia for failing or refusing for any
4 reason to join persons in a civil union.

5 **§48-2A-6. Protections, obligations, and responsibilities.**

6 (a) A party to a civil union is entitled to the same legal
7 obligations, responsibilities, protections, and benefits as are
8 afforded or recognized by the laws of West Virginia to spouses,
9 whether they derive from statute, administrative rule, policy,
10 common law, or any other source of civil or criminal law.

11 (b) The dissolution of civil unions shall follow the same
12 procedures and be subject to the same substantive rights and
13 obligations that are involved in the dissolution of marriage.

14 (c) The laws of domestic relations, including annulment,
15 premarital agreements, separation, divorce, child custody and
16 support, property division and maintenance, and post-relationship
17 spousal support, apply to civil union couples.

18 (d) Civil union couples may modify the terms, conditions or
19 effects of their civil union in the same manner and to the same
20 extent as married persons who execute an antenuptial agreement or
21 other agreement recognized and enforceable under the laws of this
22 state, setting forth particular understandings with respect to
23 their union.

24 (e) The rights of civil union couples with respect to a child

1 of whom either becomes the parent during the term of the civil
2 union are same the same as those of a married couple with respect
3 to a child of whom either spouse or partner in a civil union couple
4 becomes the parent during a marriage.

5 **§48-2A-7. Prohibited civil unions.**

6 (a) The following civil unions are prohibited:

7 (1) A civil union entered into prior to both parties attaining
8 eighteen years of age;

9 (2) A civil union entered into prior to the dissolution of a
10 marriage or civil union or substantially similar legal relationship
11 of one of the parties;

12 (3) A civil union between an ancestor and a descendent or
13 between siblings, whether the relationship is by the half or the
14 whole blood or by adoption;

15 (4) A civil union between an aunt or uncle and a niece or
16 nephew, whether the relationship is by the half or the whole blood
17 or by adoption; and,

18 (5) A civil union between first cousins or between second
19 cousins.

20 (b) Any civil union which violates any of the prohibitions set
21 forth by this section is void.

22 **§48-2A-8. Application, license, and certification.**

23 (a) The Secretary of State shall prescribe the form for an
24 application, license and certificate for a civil union.

1 (b) An application for a civil union shall include the
2 following information:

3 (1) Name, sex, occupation, address, social security number,
4 date and place of birth of each party to the civil union;

5 (2) Name and address of the parents or guardian of each party;

6 (3) Whether the parties are related to each other and, if so,
7 their relationship; and,

8 (4) Whether either party was previously married or had entered
9 into a civil union or a substantially similar legal relationship
10 with another person. In the event either party was previously
11 married or entered into a civil union or a substantially similar
12 legal relationship, he or she shall provide the name, date, place
13 and the court in which the prior marriage or civil union or
14 substantially similar legal relationship was dissolved or declared
15 invalid, or provide the date and place of death of the former
16 spouse or of the party to the civil union or substantially similar
17 legal relationship.

18 (c) When an application has been completed and signed by both
19 parties, applicable fees have been paid, and both parties have
20 appeared before the county clerk, the county clerk shall issue a
21 license and a certificate of civil union upon being furnished
22 satisfactory proof that the civil union is not prohibited.

23 (d) One or more of the applicants must be a legal resident of
24 this state at the time of the application, and the application must

1 be made in a county where one or more of the applicants resides at
2 the time of the application.

3 (e) A license becomes effective in the county where it was
4 issued one day after the date of issuance, and expires sixty days
5 after it becomes effective.

6 (f) The certificate must be completed and returned to the
7 county clerk that issued the license within ten days of the civil
8 union.

9 (g) A copy of the completed certificate from the county clerk
10 or the return provided to the Department of Public Health by a
11 county clerk shall be presumptive evidence of the civil union in
12 all courts.

13 **§48-2A-9. Duties of the county clerk.**

14 (a) Before issuing a civil union license to a person who
15 resides and intends to continue to reside in another state, the
16 county clerk shall satisfy himself or herself by requiring
17 affidavits or otherwise that the person is not prohibited from
18 entering into a civil union or substantially similar legal
19 relationship by the laws of the jurisdiction where he or she
20 resides.

21 (b) Upon receipt of the certificate, the county clerk shall
22 record the certificate, with a completed return that includes at a
23 minimum, the following items of information:

24 (1) A copy of the application signed and attested to by the

1 applicants;

2 (2) The license number;

3 (3) A copy of the certificate; and

4 (4) The date and location of the civil union.

5 (c) The clerk of the county commission is required to maintain
6 a suitable book to be used as a register of civil unions. The
7 clerk shall keep a complete record of the following information:

8 (1) Factual information that relates to the eligibility of a
9 person to obtain a civil union license;

10 (2) Each civil union license issued by the clerk; and

11 (3) An endorsement by a minister, priest, rabbi or judge
12 certifying that the civil union was solemnized or celebrated.

13 (d) The clerk shall index the register of civil unions in the
14 names of both parties to the civil union.

15 (e) Any official issuing a license with knowledge that the
16 parties are thus prohibited from entering into a civil union is
17 guilty of a misdemeanor.

18 **§48-2A-10. Certification.**

19 (a) A civil union may be certified by:

20 (1) A family court judge, a circuit judge or a Justice of the
21 Supreme Court of Appeals;

22 (2) A retired judge of a court of record, unless the retired
23 judge was removed from office by the Judicial Inquiry Board:

24 Provided, That a retired judge may not receive any compensation

1 from the state, a county, or any unit of local government in return
2 for the solemnization of a civil union; or

3 (3) A person who is registered to perform solemnizations of
4 marriage in this state in accordance with the provisions of section
5 four hundred two, article two of this chapter.

6 (b) When the civil union is to be performed by an officiant in
7 accordance with the prescriptions of any religious denomination,
8 Indian Nation or Tribe or Native Group, the officiant must be in
9 good standing with his or her religious denomination, Indian Nation
10 or Tribe or Native Group.

11 (c) The person performing a civil union shall complete the
12 certificate and forward it to the county clerk within ten days
13 after a civil union.

14 **§48-2A-11. Dissolution; declaration of invalidity.**

15 Any person who enters into a civil union in West Virginia
16 consents to the jurisdiction of the courts of West Virginia for the
17 purpose of any action relating to a civil union even if one or both
18 parties cease to reside in this state. A court shall enter a
19 judgment of dissolution of a civil union if at the time the action
20 is commenced it meets the grounds for annulment set forth in
21 section one hundred three, article three of this chapter, or the
22 grounds for divorce set forth in sections two hundred one through
23 two hundred nine, article five of this chapter. The procedures,
24 standards and remedies applied to the dissolution of a marriage, as

1 set forth in article five of this chapter, shall also apply to
2 petitions to dissolve or invalidate a civil union.

3 **§48-2A-12. Application of the Civil Practice Law.**

4 The provisions of the Civil Practice Law shall apply to all
5 proceedings under this act, except as otherwise provided in this
6 article. A proceeding for dissolution of a civil union or
7 declaration of invalidity of a civil union shall be entitled "In re
8 the Civil Union of ... and ...". The initial pleading in all
9 proceedings under this act shall be denominated a petition. A
10 responsive pleading shall be denominated a response. All other
11 pleadings under this act shall be denominated as provided in the
12 Civil Practice Law.

13 **§48-2A-13. Venue.**

14 The proceedings shall be had in the county where the
15 petitioner or respondent resides or where the parties' certificate
16 of civil union was issued, except as otherwise provided herein, but
17 process may be directed to any county in the state. Objection to
18 venue is barred if not made within such time as the respondent's
19 response is due. In no event shall venue be deemed jurisdictional.

20 **§48-2A-14. Reciprocity.**

21 A marriage between persons of the same sex, a civil union, or
22 a substantially similar legal relationship other than common law
23 marriage, legally entered into in another jurisdiction, shall be
24 recognized in West Virginia as a civil union.

NOTE: The purpose of this bill is to establish a legally recognized status of civil unions in this state. The bill establishes procedures for the certification and registration of a civil union. Once two parties have entered into a civil union pursuant to those procedures, each would have the same obligations, responsibilities, protections and benefits afforded or recognized by the laws of West Virginia for spouses.

This article is new; therefore, it has been completely underscored.