



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB0178

Introduced 1/14/2009, by Rep. Greg Harris

#### SYNOPSIS AS INTRODUCED:

New Act

750 ILCS 5/201	from Ch. 40, par. 201
750 ILCS 5/209	from Ch. 40, par. 209
750 ILCS 5/212	from Ch. 40, par. 212
750 ILCS 5/213.1 rep.	

Creates the Religious Freedom and Marriage Fairness Act. Makes legislative findings: same-sex couples are denied equal access to civil marriage benefits; the current marriage law is discriminatory and harms same-sex couples; and there is no compelling interest or rational basis to deny same-sex couples those benefits. Provides that the Act does not interfere with any religious beliefs about marriage. Provides that the Act's purpose is to provide eligible same-sex and opposite-sex couples with the same treatment as those in a civil marriage. Provides that parties to a marriage of the same sex are included in the terms "spouse", "immediate family", "dependent", and related matters. Provides that domestic relations, probate, and family law shall apply equally to parties to a marriage of the same sex. Provides that benefits apply equally to same-sex marriages in these areas: causes of actions related to spousal status, for wrongful death, emotional distress, and loss of consortium; adoption; family leave; group insurance for State and municipal employees; accident and health insurance protections tied to former spouses and dependents; and taxes and tax deductions based on marital status. Provides that a civil marriage is prohibited between siblings or between an uncle and a nephew or an aunt and a niece. Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that nothing in the Act should be construed to interfere or regulate any religious practice concerning marriage and no religion is required to solemnize a marriage to which it objects. Provides that a marriage is between 2 persons (rather than, a man and a woman) licensed, solemnized, and registered under the Act. Effective immediately.

LRB096 03920 AJO 13955 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the  
5 Religious Freedom and Marriage Fairness Act.

6 Section 5. Declaration of policy. With this Act, Illinois  
7 builds on a long tradition of respect for religious freedom,  
8 individual rights and responsibilities, the commitments of  
9 married couples to each other and their families, and equal  
10 protection of the laws. Accordingly, it is the public policy of  
11 this State:

12 (a) Religious freedom. To respect the guarantees of the  
13 First Amendment of the United States Constitution and of  
14 Article I, Section 3 of the Illinois Constitution of 1970  
15 to free exercise of religion and enjoyment of religion  
16 without discrimination or preference.

17 (b) Freedom from unlawful discrimination. To secure  
18 for all individuals within Illinois the freedom from  
19 discrimination against any individual because of his or her  
20 sex or sexual orientation in connection with the benefits,  
21 protections, and responsibilities that are otherwise  
22 provided only through civil marriage in Illinois.

23 (c) Public health, welfare and safety. To promote the

1 public health, welfare, and safety by protecting the  
2 interest of all people in Illinois in maintaining personal  
3 dignity, in realizing their full productive capacities,  
4 and in furthering their interests, rights, and privileges  
5 as citizens of this State in connection to the benefits,  
6 protections, and responsibilities that are currently  
7 associated only with civil marriage in Illinois.

8 (d) Equal protection. To continue Illinois' history as  
9 a state in affording equal treatment and respect for all  
10 residents of Illinois as embodied in Article I, Sections 2  
11 and 18 of the Illinois Constitution of 1970.

12 Section 10. Legislative findings. The General Assembly  
13 finds that:

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

21 (b) The benefits, protections, and responsibilities  
22 that are associated with civil marriage in Illinois are  
23 currently available only to opposite-sex couples. Thus,  
24 same-sex couples and their children are denied equal access  
25 to these benefits, protections, and responsibilities.

1           (c) Legal recognition of civil marriage by Illinois is  
2           the primary and, in a number of instances, the exclusive  
3           source of numerous benefits, responsibilities, and  
4           protections under the laws of Illinois for parties to a  
5           marriage and their children. Without the legal  
6           protections, benefits, and responsibilities currently  
7           associated only with civil marriage, same-sex couples in  
8           Illinois suffer numerous obstacles and hardships.

9           (d) Other jurisdictions have chosen to treat as valid  
10          or otherwise recognize marriages between same-sex couples.  
11          Illinois' discriminatory marriage law therefore also harms  
12          Illinois' same-sex couples when they travel to other  
13          jurisdictions by preventing them from having access to the  
14          benefits, protections, and responsibilities those  
15          jurisdictions provide to all couples.

16          (e) By excluding same-sex couples from marriage,  
17          Illinois' marriage law discriminates against members of  
18          same-sex couples based on their gender and based on their  
19          sexual orientation. The exclusion of same-sex couples from  
20          marriage is based in significant part on, and perpetuates,  
21          gender stereotypes about the roles of men and women in  
22          families and society.

23          (f) Illinois' discriminatory exclusion of same-sex  
24          couples from marriage harms same-sex couples and their  
25          families by denying those couples and their families  
26          specific benefits, protections, and responsibilities under

1 State law and by depriving members of those couples and  
2 their families of a legal basis to challenge (28 U.S.C. §  
3 1738C) federal laws that deny access to the many important  
4 federal benefits and obligations provided only to spouses  
5 (1 U.S.C. §7). Those federal benefits include the right to  
6 file joint federal tax returns, the right to sponsor a  
7 partner for immigration status, the right to social  
8 security survivor's benefits, the right to family and  
9 medical leave, and many other substantive benefits and  
10 obligations.

11 (g) The exclusion of same-sex couples from Illinois'  
12 marriage law further harms same-sex couples and their  
13 families by denying them the unique public recognition and  
14 validation that marriage confers.

15 (h) Illinois has a strong interest in promoting stable  
16 and lasting families, including families headed by a  
17 same-sex couple. The benefits that accrue to the general  
18 community when couples undertake the mutual obligations of  
19 marriage accrue regardless of the gender or sexual  
20 orientation of the partners. Notwithstanding longstanding  
21 social and economic discrimination, many gay and lesbian  
22 residents of Illinois have formed lasting, committed,  
23 caring, and faithful relationships with a person of the  
24 same sex. These couples share lives together and  
25 participate in their communities together, and many rear  
26 children and care for other dependent family members

1 together. Permitting same-sex couples to marry would  
2 further Illinois' interests in promoting family  
3 relationships and protecting family members during life  
4 crises. Lesbian, gay, and bisexual residents of Illinois  
5 have the same interests in marriage and in personal  
6 autonomy and privacy, including marrying the person of  
7 one's choice, as other residents of Illinois.

8 (i) There is neither a compelling interest nor a  
9 rational basis for Illinois to deny same-sex couples the  
10 benefits, responsibilities, and protections afforded  
11 spouses under Illinois law.

12 (j) It is the public policy of the State to allow and  
13 to respect the private decision of all its residents to  
14 bind themselves to the obligation of and rights related to  
15 family relationships that are codified under Illinois law.

16 (k) It is the intent of the General Assembly in  
17 enacting this Act to end the practice of marriage  
18 discrimination in Illinois. The harms caused by  
19 prohibiting same-sex couples from marrying in Illinois  
20 cannot be remedied, as required by the Illinois  
21 Constitution, by any measure short of permitting same-sex  
22 couples to marry in Illinois.

23 (l) This Act is in no way intended to alter Section 216  
24 of the Illinois Marriage and Dissolution of Marriage Act,  
25 which prohibits Illinois from treating as valid or  
26 otherwise recognizing marriages solemnized outside of

1 Illinois if such a marriage is prohibited or declared void  
2 by the laws of this State.

3 Section 20. Purposes; rules of construction. This Act shall  
4 be liberally construed and applied to promote its underlying  
5 purpose, which is to provide both eligible same-sex and  
6 opposite-sex couples the opportunity to obtain the same  
7 benefits, protections, and responsibilities afforded by the  
8 laws of Illinois to parties to a civil marriage.

9 Section 30. Formalities.

10 (a) Notwithstanding any other provision of State law, a  
11 marriage between two persons of either the same-sex or  
12 opposite-sex licensed, solemnized, and registered as provided  
13 in the Illinois Marriage and Dissolution of Marriage Act is  
14 valid in this State.

15 (b) All laws of the State of Illinois, whether they derive  
16 from statute, administrative or court rule, policy, common law  
17 or any other source of civil or criminal law, applicable to  
18 marriage shall also be applicable to parties to marriage of the  
19 same sex.

20 (c) Parties to a marriage of the same sex shall have all  
21 the same benefits, protections, and responsibilities under  
22 law, whether they derive from statute, administrative or court  
23 rule, policy, common law or any other source of civil or  
24 criminal law, as are granted to parties to a marriage of

1 opposite sexes.

2 (d) Parties to a marriage of the same sex shall be included  
3 in any definition or use of the terms "spouse", "family",  
4 "immediate family", "dependent", "next of kin", "husband",  
5 "wife", "out of wedlock", and other terms that denote the  
6 spousal relationship, as those terms are used throughout the  
7 law.

8 (e) The term marriage as it is used throughout the law,  
9 whether in statutes, administrative or court rule, policy,  
10 common law or any other source of civil or criminal law,  
11 without limitation shall be read, interpreted, and understood  
12 to include parties to a marriage of the same sex.

13 (f) The whole of this State's law concerning domestic  
14 relations, probate, and family law shall apply equally to  
15 parties to a marriage of the same sex as parties to a marriage  
16 of the opposite sexes.

17 (g) The following is a nonexclusive list of legal benefits,  
18 protections, and responsibilities of parties to a marriage,  
19 which shall apply in like manner to parties to a marriage of  
20 the same sex:

21 (1) Law and procedure relating to title, tenure,  
22 descent, and distribution in estate succession, or  
23 transfer by purchase, legacy or descent of real or personal  
24 property as provided in Chapter 755 of the Illinois  
25 Compiled Statutes.

26 (2) Probate law and procedure as provided in the



1 Probate Act of 1975.

2 (3) Causes of actions related to or dependent upon  
3 spousal status, including actions for wrongful death,  
4 emotional distress, loss of consortium or other torts, or  
5 actions under contract related to or dependent upon spousal  
6 status.

7 (4) Family law and procedure as provided in Chapter 750  
8 of the Illinois Compiled Statutes.

9 (5) Group insurance for State and municipal employees  
10 under the State Employees Group Insurance Act of 1971.

11 (6) Accident and health insurance protections tied to  
12 former spouses, dependents, and immediate family provided  
13 in Article XX of the Illinois Insurance Code.

14 (7) Veteran benefits as provided in Chapter 330 of the  
15 Illinois Compiled Statutes and the Department of Veterans  
16 Affairs Act.

17 (8) Workers' compensation as provided by the Workers'  
18 Compensation Act and the Workers' Occupational Diseases  
19 Act.

20 (9) Assignment of wages as provided in the Illinois  
21 Wage Assignment Act.

22 (10) Trust and fiduciaries laws and procedures as  
23 provided in Chapter 760 of the Illinois Compiled Statutes.

24 (11) Property law and procedures as provided in Chapter  
25 765 of the Illinois Compiled Statutes.

26 (12) Order of protection law and procedures as provided

1 under the Illinois Domestic Violence Act of 1986.

2 (13) Antenuptial and premarital agreements as provided  
3 in the Illinois Uniform Premarital Agreement Act and  
4 Section 503 of the Illinois Marriage and Dissolution of  
5 Marriage Act.

6 (14) Declaration of invalidity, legal separation, and  
7 dissolution law and procedures as provided in the Illinois  
8 Marriage and Dissolution of Marriage Act.

9 (15) Adoption laws and procedures as provided in the  
10 Adoption Act.

11 (16) Address confidentiality law and procedures as  
12 provided in the Address Confidentiality for Victims of  
13 Domestic Violence Act.

14 (17) The rights of spouses to be sued and sue each  
15 other under the Rights of Married Persons Act.

16 (18) Marital communications privilege afforded under  
17 Section 115-16 of the Code of Criminal Procedure of 1963.

18 (h) The rights of parties to marriage of the same sex, with  
19 respect to a child of whom either becomes the natural parent  
20 during the term of the civil union, shall be the same as those  
21 of parties to a marriage of opposite sexes, with respect to a  
22 child of whom either spouse becomes the natural parent during  
23 the marriage.

24 (i) To the extent any of the laws of Illinois adopt, refer  
25 to, or rely upon provisions of federal law as applicable to the  
26 State, parties to a marriage of the same sex shall be treated

1 under the law of the State as if federal law recognized the  
2 marriages of same-sex couples in the same manner as the law of  
3 the State.

4 Section 40. Construction. This Act and the rules now or  
5 hereafter applicable thereto shall be liberally construed to  
6 secure to eligible couples the option of a legal status with  
7 all the attributes and effects, benefits, and protections of  
8 civil marriage. Parties to a marriage of the same sex shall  
9 have all the same benefits, protections, and responsibilities  
10 under State law, whether derived from statute, administrative  
11 or court rule, policy, common law, or any other source of civil  
12 or criminal law, as granted to parties to a marriage of the  
13 opposite sexes. Further, this Act is intended to extend to  
14 parties to a marriage of the same sex the benefits,  
15 protections, and responsibilities that flow from a marriage  
16 with parties of the opposite sex.

17 Section 45. Severability Clause. If any part of this Act or  
18 its application to any person or circumstance is adjudged  
19 invalid, such adjudication or application shall not affect the  
20 validity of the Act as a whole or of any other part.

21 Section 50. The Illinois Marriage and Dissolution of  
22 Marriage Act is amended by changing Sections 201, 209, and 212  
23 as follows:

1           (750 ILCS 5/201) (from Ch. 40, par. 201)  
2           Sec. 201. Formalities.) A marriage between two persons ~~a~~  
3 ~~man and a woman~~ licensed, solemnized and registered as provided  
4 in this Act is valid in this State.  
5           (Source: P.A. 80-923.)

6           (750 ILCS 5/209) (from Ch. 40, par. 209)  
7           Sec. 209. Solemnization and Registration.)  
8           (a) A marriage may be solemnized by a judge of a court of  
9 record, by a retired judge of a court of record, unless the  
10 retired judge was removed from office by the Judicial Inquiry  
11 Board, except that a retired judge shall not receive any  
12 compensation from the State, a county or any unit of local  
13 government in return for the solemnization of a marriage and  
14 there shall be no effect upon any pension benefits conferred by  
15 the Judges Retirement System of Illinois, by a judge of the  
16 Court of Claims, by a county clerk in counties having 2,000,000  
17 or more inhabitants, by a public official whose powers include  
18 solemnization of marriages, or in accordance with the  
19 prescriptions of any religious denomination, Indian Nation or  
20 Tribe or Native Group, provided that when such prescriptions  
21 require an officiant, the officiant be in good standing with  
22 his or her religious denomination, Indian Nation or Tribe or  
23 Native Group. Either the person solemnizing the marriage, or,  
24 if no individual acting alone solemnized the marriage, both

1 parties to the marriage, shall complete the marriage  
2 certificate form and forward it to the county clerk within 10  
3 days after such marriage is solemnized.

4 (a-1) Nothing in this Act shall be construed to interfere  
5 or regulate religious practice of the many faiths in Illinois  
6 that grant status, sacrament, and blessing of marriage under  
7 wholly separate religious rules, practices, or traditions of  
8 such faiths. And, nothing in this Act shall be construed as to  
9 require any religious denomination, Indian Nation or Tribe or  
10 Native Group to solemnize any marriage to which it objects.  
11 Instead, any religious denomination, Indian Nation or Tribe or  
12 Native Group is free to choose which marriage it will  
13 solemnize.

14 (b) The solemnization of the marriage is not invalidated by  
15 the fact that the person solemnizing the marriage was not  
16 legally qualified to solemnize it, if either party to the  
17 marriage believed him or her to be so qualified or by the fact  
18 that the marriage was inadvertently solemnized in a county in  
19 Illinois other than the county where the license was issued.

20 (Source: P.A. 95-775, eff. 1-1-09.)

21 (750 ILCS 5/212) (from Ch. 40, par. 212)

22 Sec. 212. Prohibited Marriages.

23 (a) The following marriages are prohibited:

24 (1) a marriage entered into prior to the dissolution of  
25 an earlier marriage of one of the parties;

1 (2) a marriage between an ancestor and a descendant or  
2 between siblings ~~a brother and a sister~~, whether the  
3 relationship is by the half or the whole blood or by  
4 adoption;

5 (3) a marriage between an uncle and a niece, between an  
6 uncle and a nephew, ~~or~~ between an aunt and a nephew, or  
7 between an aunt and a niece whether the relationship is by  
8 the half or the whole blood;

9 (4) a marriage between cousins of the first degree;  
10 however, a marriage between first cousins is not prohibited  
11 if:

12 (i) both parties are 50 years of age or older; or

13 (ii) either party, at the time of application for a  
14 marriage license, presents for filing with the county  
15 clerk of the county in which the marriage is to be  
16 solemnized, a certificate signed by a licensed  
17 physician stating that the party to the proposed  
18 marriage is permanently and irreversibly sterile;

19 (5) (Blank). ~~a marriage between 2 individuals of the~~  
20 ~~same sex.~~

21 (b) Parties to a marriage prohibited under subsection (a)  
22 of this Section who cohabit after removal of the impediment are  
23 lawfully married as of the date of the removal of the  
24 impediment.

25 (c) Children born or adopted of a prohibited or common law  
26 marriage are the lawful children of the parties.

1 (Source: P.A. 94-229, eff. 1-1-06.)

2 (750 ILCS 5/213.1 rep.)

3 Section 90. The Illinois Marriage and Dissolution of  
4 Marriage Act is amended by repealing Section 213.1.

5 Section 99. Effective date. This Act takes effect upon  
6 becoming law.