

**ANALYSIS OF ORIGINAL BILL**

Author: Morrow Analyst: Anne Mazur Bill Number: SCA 1  
 Related Bills: See Legislative History Telephone: 845-5404 Introduced Date: December 6, 2004  
 Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Marriage/Rights, Responsibilities, Benefits & Obligations Of Marriage Shall Only Be Granted Upon A Man & Woman Joined In A Valid Marriage

**SUMMARY**

Upon approval by the voters, this measure would amend the California Constitution to:

- Provide that only a marriage between a man and a woman is valid or recognized in California.
- Limit the rights, responsibilities, benefits, and obligations of marriage to a marriage between a man and a woman.

Discussion in this analysis is limited to provisions of the measure that affect the department.

**PURPOSE OF THE BILL**

According to the author's staff, the purpose of this measure is to elevate existing law to the constitution to prevent lawmakers from enacting changes without voter approval or from circumventing Proposition 22.

**EFFECTIVE/OPERATIVE DATE**

This measure would become effective the day following approval by the voters in the first general election following approval of the measure by the Legislature.

**POSITION**

Pending.

**ANALYSIS****FEDERAL/STATE LAW**

Existing state law imposes tax on the income earned by individuals, estates, trusts, and certain business entities. Tax is imposed on the entire taxable income of residents of California and upon the taxable income of nonresidents derived from sources within California. The tax for individuals is computed on a graduated scale at rates ranging from 1% to 9.3%. For taxable years beginning on or after January 1, 2005, and additional 1% is imposed on taxable incomes over \$1 million.

For income tax purposes, the terms taxpayer, individual, person, husband, and wife and the determination of marital status are defined by federal law as modified by state income tax law. In addition, the term domestic partner is defined by reference to Family Code Section 297, which states that California recognizes a domestic partnership as being established when specified requirements are met. State tax law provides that the taxpayer's domestic partner be treated as the spouse of the taxpayer for purposes of determining various tax benefits relating to medical expenses, such as:

Board Position:		Department Director	Date
_____ S	_____ NA	_____ NP	
_____ SA	_____ O	_____ NAR	
_____ N	_____ OUA	_____ X PENDING	
		Gerald H. Goldberg	2/17/05

- medical expenses deductible as an itemized deduction;
- medical expenses deductible as an adjustment to gross income for self-employed individual health insurance,
- an exclusion from gross income for employer-provided accident and health insurance,
- an exclusion from gross income for medical expense reimbursement if the expense was not previously deducted, and
- long-term health care insurance deductible as a medical expense.

State law, under the Family Code, defines marriage as a personal relationship that arises out of a civil contract between a man and a woman. All real or personal property, wherever situated, that is acquired by a married person during the marriage is considered community property. Since California is a community property state, spouses who file separate income tax returns are required to split the community incomes of each spouse to be claimed on each return.

Pursuant to the Domestic Partner Rights and Responsibilities Act of 2003, enacted by AB 205 (Stats. 2003, Ch. 4210), hereafter the Act, community property is also created between domestic partners. However, a domestic partner may not treat *earned* income as community property for state income tax purposes. A domestic partner must use the same filing status for state income tax purposes that was used or would have been used for federal income tax purposes.

### THIS BILL

Under this measure, only a civil marriage between a man and a woman would be valid or recognized in California, as currently provided by statute. This would apply for marriages that take place either within or outside California. This measure would also restrict the provision of rights, responsibilities, benefits, and obligations of marriage only to a man and woman in a valid marriage. These rights and responsibilities would *not* be allowed to any other union or partnership. As a result, this measure would have the effect of eliminating rights, responsibilities, benefits, and obligations currently provided to registered domestic partners pursuant to the Act, including the creation of community property; AB 25 (Stats. 2001, Ch. 893), allowing certain deductions or exclusions for medical expenses and reimbursements; and any other previously provided rights and responsibilities.

### IMPLEMENTATION CONSIDERATIONS

If enacted, this measure would appear to be in conflict with statutes providing rights and responsibilities to members of domestic partnerships, as described earlier under the Federal/State Law section of this analysis. However, under Section 3.5 of Article 3 of the California Constitution, an administrative agency such as the Franchise Tax Board has no authority to declare a statute unenforceable, or refuse to enforce a statute, on the basis that it is unconstitutional unless an appellate court has ruled that the statute is unconstitutional. Therefore, the department would continue administering the relevant statutes irrespective of this proposed constitutional amendment until the statutes were repealed or declared unconstitutional by an appellate court.

### **LEGISLATIVE HISTORY**

ACA 3 (Haynes, 2005/06), currently in Assembly Desk, is identical to SCA 1.

AB 19 (Leno, 2005/06), currently in the Assembly Judiciary Committee, would amend relevant provisions of the Family Code to provide for gender-neutral marriage, but would not affect provisions added by Proposition 22, see below, relating to marriages contracted outside the state.

AB 205 (Goldberg, Stats. 2003, Ch. 421) made changes to various California laws regarding domestic partners, including the creation of community property rights.

AB 25 (Migden, Stats. 2001, Ch. 893) allowed several existing taxpayer benefits for medical expenses and health insurance benefits to include a taxpayer's domestic partner and a domestic partner's dependents.

Proposition 22, effective March 8, 2000, provided that only marriage between a man and a woman is valid or recognized in California.

### **OTHER STATES' INFORMATION**

In November 2004, eleven states passed constitutional amendments that limit marriage to unions between one man and one woman. In *Mississippi*, *Montana*, and *Oregon*, the amendments refer only to marriage. In *Arkansas*, *Georgia*, *Kentucky*, *Michigan*, *North Dakota*, *Ohio*, *Oklahoma*, and *Utah*, the amendments ban civil unions, as well. Numerous other states, such as Alaska, have previously enacted similar provisions.

*Vermont* allows eligible persons of the same sex with an established relationship all the same legal benefits, protections, and responsibilities under law granted to married couples. For state income tax purposes, the parties to a civil union may file a joint income tax return and will be taxed in the same manner as married persons.

*Hawaii* defines domestic partners as reciprocal beneficiaries. Those partners who are legally registered receive some of the same rights and benefits of marriage. State income tax law does not provide reciprocal beneficiaries with income tax benefits or allow joint income tax returns.

*Massachusetts* recognizes the right of same-sex couples to be married for state income tax purposes. For tax periods ending on or after May 16, 2004, same-sex spouses may file either state joint returns or married filed separate returns.

### **ECONOMIC IMPACT**

As discussed above in Implementation Considerations, the department would continue to administer the relevant statutes irrespective of this proposed constitutional amendment until the statutes were repealed or declared unconstitutional by an appellate court. Therefore, this measure would not impact state income tax revenue.

### **LEGISLATIVE STAFF CONTACT**

Anne Mazur  
Franchise Tax Board  
(916) 845-5404  
[anne.mazur@ftb.ca.gov](mailto:anne.mazur@ftb.ca.gov)

Brian Putler  
Franchise Tax Board  
(916) 845-6333  
[brian.putler@ftb.ca.gov](mailto:brian.putler@ftb.ca.gov)