



Joint Committee on the Judiciary

Testimony of GLAD, MaineTrans.Net, Equality Maine,
ACLU of Maine & Maine Women's Lobby

Re: LD 1804 – An Act to Provide Consistency in the Laws Regarding Domestic Partners – OTP

January 14, 2022

Senator Carney, Representative Harnett, & Distinguished Members of the Judiciary Committee,

My name is Mary Bonauto, and I am an attorney for GLBTQ Legal Advocates & Defenders and live in Portland. I am here today for my GLAD as well as our colleagues at the ACLU Maine, Maine Women's Lobby, Equality Maine and MaineTrans.Net.

We applaud Representative Roberts and the Senate and House co-sponsors for this bill streamlining the definitions of “domestic partner” in Maine law to focus on the Probate Code definition of “domestic partner” adopted by this Committed in the 128th Legislature and placing it as a defined term in the Words and Phrases section of Title 1 MRSA §72. We appreciate the updating and decluttering of the law by removing, as we count it, 18 definitional sections or clauses, plus multiple cross references to definitional provisions.

Some of our organizations began advocating for domestic partnership plans and coverage years ago and with respect to some of the laws amended here. But we all agree that the one-sentence definition of “domestic partner” in the Maine Probate Code says all that needs to be said.

That definition provides

“domestic partner” “means one of 2 unmarried adults who are domiciled together under long-term agreements that evidence a commitment to remain responsible indefinitely for each other’s welfare.”

LD 1804, § 1 (adopting 18-C MRSA §1-201 (14)).

Domestic partnership came into ME law in 2001, partly at the request of health plans and insurers who wanted to provide to employers health insurance policies that would cover employees’ nonmarital families and their children.¹ In 2003, the Legislature enacted a

¹ For insurers, nonprofit hospitals, HMOs, group health plans, a domestic partner of a member or subscriber is:

- A. Is a mentally competent adult as is the subscriber or member;
- B. Has been legally domiciled with the subscriber or member for at least 12 months;
- C. Is not legally married to or legally separated from another individual;
- D. Is the sole partner of the subscriber or member and expects to remain so; and

“Domestic Partner Registry” (hereafter, “Registry”) so that qualified couples could file paperwork and pay a fee to the Secretary of State to register their family relationships/ domestic partnerships with the State and receive a certificate.²

Comparing the Definitions

The bill demonstrates that all three definitions are currently used in Maine law. The Probate Code definition essentially provides that domestic partners are domiciled together in a common home and whose “long term arrangements” show a commitment to mutual responsibility for each other’s welfare for the duration.

The Probate Code definition is preferable to both the insurance and Registry definitions. Although the insurance and Registry definitions have similarities to the Probate Code definition, they are more mechanistic and less holistic. The Registry definition also lacks any requirement of mutual responsibility, but rights normally accompany responsibilities. In contrast to the Probate Code definition, the other two also require a 12-month residence in Maine before becoming eligible for domestic partnership. This is arbitrary and defeats the purposes of providing discrete protections and responsibilities to domestic partners. For example:

- Sections 2 and 3 of the bill address legislative ethics rules and lobbyist disclosures, both of which sweep in domestic partners with the insurance definition. Is a conflict of interest important at 3 or 6 months or does it snap it at 12?
- If a person on General Assistance dies, then their family of origin or registered domestic partner is responsible for the costs of burial or cremation in proportion to their abilities, as in section 25 of the bill. Should a domestic partner be able to avoid that responsibility at 6 months but not 12?
- If a couple owns a limited liability company and are domestic partners, what interest is served by denying them the opportunity to appear in court without a lawyer in forcible entry and detainer actions before the 12 months?
- Speaking personally, an acquaintance of mine some years ago awoke one day to find her partner of over 20 years had passed from a heart attack. She eventually called to have her partner’s body taken to a funeral parlor, but they refused her request and told her to get in

E. Is jointly responsible with the subscriber or member for each other's common welfare as evidenced by joint living arrangements, joint financial arrangements or joint ownership of real or personal property.
24 MRSA sec. 2319-A (1) (definition).

² Under the Registry law, a couple can register as domestic partners when –

- They are competent adults who are not barred from marrying
- They have been legally domiciled in Maine for at least 12 months
- Are not married on in a domestic partnership or marriage with anyone else
- They are the sole domestic partners of each other.

22 MRSA §2710 (2) (criteria).

touch with the woman's family of origin, all of whom lived outside Maine. This issue was "fixed" by legislation, but the law on custody of remains uses the insurance definition (see section 20), meaning this could happen again.

The Probate Code definition would address each of these issues.

Thank you for your consideration of this important bill to update and streamline our laws, and please feel free to be in touch if we can be of any assistance.

Truly yours,

Mary L. Bonauto, for GLBTQ Legal Advocates & Defenders
MaineTrans.Net
Equality Maine
Maine Women's Lobby
ACLU of Maine