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HOUSE BILL NO. 751

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend the Code of Virginia by adding in Chapter 2 of Title 20 a section numbered 20-12.1, relating to the Affirmation of Marriage Act for the Commonwealth of Virginia.

Patrons—Marshall, R.G., Albo, Black, Cole and Welch

Referred to Committee for Courts of Justice

Whereas, if "same sex" unions are a civil right, then legal sanctions and coercion will be imposed against persons and institutions opposed to homosexual behavior or same sex unions. For example, schools in their Family Life and other programs will have to teach that "civil unions" or "homosexual marriage" are equivalent to traditional marriage; churches whose teachings does not accept homosexual behavior as moral will lose their tax exempt status; employers will be ineligible for government contracts unless they will hire and provide benefits to the "married homosexuals" and their "spouses" and "partners;" and homosexual groups helped organize a \$100,000 law suit against a private religious school which refused to allow a homosexual 17 year old male student permission to bring his homosexual boyfriend to the school prom as his date; and

Whereas, same sex advocates seek to curb the free speech rights of their opponents, for instance, in Saskatchewan, Canada, the Human Rights Commission has ordered both the Saskatoon Star Phoenix newspaper and Hugh Owens of Regina to pay \$1,500 Canadian to three homosexual activists for publishing an ad in the Saskatoon newspaper quoting Bible versus regarding homosexuality; and same sex advocates are intolerant of their opponents, to wit: former Vermont Governor Howard Dean who signed America's first same sex civil union law said in April of 2003, that "Senator Rick Santorum, the third highest ranking Republican in the Senate, compared homosexuality to bigamy, polygamy, incest and adultery...Senator Santorum must step down from his leadership post; and

Whereas, because very few homosexuals will "marry" or seek civil unions, the legal effect for homosexual marriage or same sex unions is not primarily about marriage itself, but is directed at weakening the institution of marriage which is foundational to this country's history and tradition; and where heterosexual marriage requires sexual exclusivity, advocates of same sex unions merely prefer sexual exclusivity, but do not demand it. Promoting and defending the common good of society requires that marriage be recognized and defended as a preferential and beneficial complimentary relationship between the sexes for one man, a husband, and one woman, a wife which are necessary conditions for the formation of a family; and

Whereas, human marriage is a consummated two in one communion of male and female persons made possible by sexual differences which are reproductive in type, whether or not they are reproductive in effect or motivation. This present relationship recognizes the equality of male and female persons, and antedates recorded history and the writings of revealed religions; consequently, granting legal equivalency status between same sex unions and heterosexual marriage would result in the state's failure to defend marriage as an institution essential to the common good; and

Whereas, there is a profound moral and legal difference between private behavior conducted outside the sanction or eyes of the law as it were, and granting such behavior a legal institutional status in society. Such a radical change would require and set in motion as yet unforeseen legal and social consequences which would rely upon the coercive power of the state for their implementation. The structures of civil law constitute a very important and sometimes decisive role in influencing and sanctioning patterns of thought and behavior. Such structures are especially influential on younger citizens' views and evaluation of forms of conduct; and

Whereas, providing for same sex unions would obscure certain basic moral values and further devalue the institution of marriage and the status of children; children need not just parents, but a mother and a father, and to deprive children of a mother and a father is harmful to their development; and

Whereas, defining marriage or civil unions as permissible for same sex individuals as simply an alternate form of "marriage" will radically transform the institution of marriage with serious and harmful consequences to the social order. Same sex civil unions are simply marriages by a different name. Columnist George Will reports (Dec. 7., 2003) that Governor "Dean said that

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in terms of legal rights there is no practical difference between same-sex civil unions and marriages. Matthews: So why are we quibbling over a name?" Dean: Because marriage is very important to a lot of people who are pretty religious." Neither status is needed for the exercise or enjoyment of civil rights by citizens with same sex attractions; and

Whereas, persons who wish to dispose of their property or assign the power of attorney to another person in case they are sick or disabled are legally authorized to do so at present without regard to any legal impediment or qualification regarding their sexual orientation. The rights of the franchise, property ownership, travel and other such rights are not conditioned the sexual orientation of individuals. Because such private "goods" can now be secured, without legally recognizing same sex unions, it is unnecessary, unjust and socially disruptive to provide for legal recognition of same sex unions to achieve such goals. A prominent same sex marriage advocate speaks of "an openness of the contract" for marriage between homosexuals and claims that such a legal union would be more durable than heterosexual marriage because the contract contains an "understanding of the need for extramarital outlets." No such understanding exists in law for married heterosexuals. No one is legally denied the opportunity to marry because of their preference for one or more of the more than 20 different "sexual orientations;" now, therefore

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 2 of Title 20 a section numbered 20-12.1 as follows:

§ 20-12.1. Marriage; legislative findings.

The General Assembly finds that the public policy of the Commonwealth of Virginia is best expressed by the people of Virginia through their elected representatives. Compelling the Commonwealth of Virginia to recognize out-of-state same sex unions subverts representative government in the Commonwealth in violation of Article IV, Section 4 of the United States Constitution, which states that "The United States shall guarantee to every state in the Union a Republican form of government...." Further, in 1996, the United States Congress passed the Defense of Marriage Act (Pub. L. No. 104-199, 110 Stat. 2419 (1996)), which recognized the traditional definition of marriage as between one man and one woman for all aspects of federal law. The Act also provided that no state would be obligated to accept another state's nontraditional marriages (or civil unions) because of the operation of the United States Constitution's full faith and credit clause (Article IV, Section 1). The second sentence of the full faith and credit clause allows Congress to specify which acts of states must be recognized by other states, or which may be recognized according to the public policy of that state. Since the passage of the federal Act, 37 states have enacted either constitutional or statutory amendments to further protect traditional, heterosexual marriage.

The General Assembly finds that the United States Supreme Court has acknowledged that "A husband without a wife, or a wife without a husband, is unknown to the law." (*Atherton v. Atherton*, 181 U.S. 155, (1901), reversed on other grounds under *Haddock v. Haddock*, 201 U.S. 562, (1906)). The General Assembly further recognizes that both the United States Supreme Court in *Lawrence v. Texas*, 539 U. S. ___, 123 S. Ct. 2472, (2003), and the Massachusetts Supreme Court in *Goodrich v. Department of Health*, SJC 08860, March 4, 2003-November 18, 2003, failed to consider the beneficial health effects of heterosexual marriage, as contrasted to the life-shortening and health compromising consequences of homosexual behavior, and this to the detriment of all citizens regardless of their sexual orientation or inclination.

The General Assembly hereby concludes that the Commonwealth of Virginia is under no constitutional or legal obligation to recognize a marriage, civil union, partnership contract or other arrangement purporting to bestow any of the privileges or obligations of marriage under the laws of another state or territory of the United States unless such marriage conforms to the laws of this Commonwealth.