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SB 54 and Same-Sex Couples Who Marry Outside of California

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SB 54, a bill authored by Senator Mark Leno and signed into law by Governor Schwarzenegger on October 11, 2009, clarifies the rights of same-sex couples who marry outside of California. SB 54 has two parts:

- First, it clarifies that couples who married outside of California **before** November 5, 2008, are entitled to full recognition as married couples in this state.
- Second, it ensures that couples who get married outside of California **on or after** November 5, 2008, will receive all of the rights, benefits, and responsibilities of marriage except for the name “marriage.”

Below are the answers to some common questions about the rights of same-sex couples who marry outside the state.

Frequently Asked Questions

1. What rights do same-sex couples have in California if they got married in another state or country before Proposition 8 passed?

SB 54 makes clear that same-sex couples who were legally married outside of California anytime before November 5, 2008, must be recognized as validly married in California. That is, they are entitled to all the rights, benefits, and obligations of marriage under state law, including the name of “marriage” for their relationship.

This clarification was necessary because in the court decision that upheld Proposition 8 as valid, the California Supreme Court held that all same-sex couples who married in California before November 5, 2008 are still legally married, and their marriages are entitled to full legal recognition in every respect, just like the marriages of different-sex couples. The court based that ruling on the fact that Proposition 8 did not say that it was intended to retroactively take away anyone’s marriage, and that same-sex couples, their families, and third parties (like employers or lenders) had reasonably relied on the belief that their marriages would be permanent.

That decision did not specifically address couples who got married outside California because no couples who married outside California were parties in the case. But the basis of the court’s ruling about couples who married in California before Proposition 8 passed



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applies equally to couples who married in other states or countries before Proposition 8 passed. Those marriages were plainly valid before Proposition 8 passed; Proposition 8's language and the ballot materials didn't say anything about taking those marriages away; and couples, their families, and third parties had the right to expect that those marriages would be permanently valid. It would also be unfair to treat couples who got married inside California differently than couples who were married in other places, especially because couples who had been married outside of California weren't even allowed to re-marry in California.

2. Does it matter if the couple got married outside of the state before same-sex couples in California were permitted to marry? For instance, what about a couple who married in Canada in 2006?

Under SB 54, same-sex couples who got married outside of California *at any time* before November 5, 2008 are entitled to full legal recognition as married. That includes couples who got married before the first legal marriages between same-sex couples took place in California in June 2008, or even before the California Supreme Court ruled in May 2008 that the California Constitution required marriage equality for same-sex couples.

3. What rights do same-sex couples have in California if they got married in another state or country after Proposition 8 passed?

SB 54 clarifies that couples who marry outside of California any time on or after November 5, 2008 are entitled to all the rights, benefits, and obligations of marriage, except for the use of the term "marriage" to describe their relationship. In the Proposition 8 decision, the California Supreme Court reaffirmed that equal treatment of same-sex couples, except for the name "marriage," is required by the California Constitution.

A different-sex couple who gets married outside of California receives all the rights and responsibilities of marriage in California, as well as the name "marriage" for their relationship. Because same-sex couples are entitled to equal treatment, a same-sex couple that gets married outside of California is entitled to all the same rights that the different-sex couple has, with the sole exception of being called "married."

4. Are same-sex couples who married in another state or country on or after November 5, 2008, considered to be registered domestic partners?

No. Same-sex couples who get married outside of California after Proposition 8 will not have any label that is imposed by state law. They are not automatically considered registered domestic partners. Registered domestic partnership is a second-class status in California designed for same-sex couples and older different-sex couples, which provides



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most, but not quite all, of the legal rights of marriage under state law. Same-sex couples who marry outside of California, on the other hand, have been legally married in another jurisdiction, and are entitled to every one of the rights, benefits, and obligations of marriage under state law, with the sole exception of being called “married” by the state.

In addition, please note that the two spouses in a married same-sex couple may also register as each other’s domestic partners if they wish to do so. Doing so may provide extra legal protections in some jurisdictions outside of California that honor domestic partnerships but not marriages.

5. Does California recognize civil unions or domestic partnerships that same-sex couples entered into in other states or countries?

Yes, California law already provides recognition for same-sex couples who enter into relationships in other jurisdictions, other than marriage, that are “substantially similar” to California domestic partnerships. Under Family Code section 299.2, those relationships are treated as registered domestic partnerships.

6. Does SB 54 change or expand the rights of same-sex couples who got married in California before the passage of Proposition 8?

No, SB 54 does not affect the rights of same-sex couples who were legally married in California. Those marriages that took place between June 16 and November 4, 2008, continue to be valid in every way under state law.

7. Does SB 54 violate the terms of Proposition 8?

No. SB 54 tracks the decision of the California Supreme Court in *Strauss v. Horton*, which held that Proposition 8 “carves out a narrow and limited exception to [the] state constitutional rights [of same-sex couples], reserving the official *designation* of the term ‘marriage’ for the union of opposite-sex couples as a matter of state constitutional law.” Proposition 8 did not invalidate any pre-existing marriages. Proposition 8 also did not change the court’s previous ruling in the *Marriage Cases* that the California Constitution prohibits government discrimination based on sexual orientation and requires the state to treat same-sex couples equally under the law. The measure’s only effect was to prevent the state from licensing any new in-state marriages or using the name “marriage” to recognize any out-of-state marriages of same-sex couples entered after Proposition 8 passed. SB 54 was carefully written to carry out the constitutional mandate that the state provide equal treatment for same-sex couples to the fullest extent allowed within the bounds set by Proposition 8.