

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009**

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**HOUSE BILL 361**

Short Title: Defense of Marriage. (Public)

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Sponsors: Representatives Lewis, Crawford, Burris-Floyd, Hill (Primary Sponsors); Allred, Avila, Barnhart, Bell, Blackwell, Blackwood, Blust, Boles, Braxton, Brisson, Brown, Brubaker, Burr, Cleveland, Cole, Current, Daughtry, Dockham, Dollar, England, Folwell, Frye, Gillespie, Grady, Guice, Gulley, Hilton, Holloway, Howard, Hurley, Johnson, Justice, Justus, Killian, Langdon, McComas, McCormick, McElraft, McGee, Mills, Mobley, Moore, Neumann, Parmon, Pierce, Randleman, Rhyne, Sager, Samuelson, Setzer, Spear, Stam, Starnes, Steen, Stevens, Stiller, Tillis, West, Wiley, Williams, Wray, and Yongue.

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Referred to: Rules, Calendar, and Operations of the House, if favorable, Judiciary I, if favorable, Election Law and Campaign Finance Reform, if favorable, Appropriations.

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March 3, 2009

A BILL TO BE ENTITLED

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2 AN ACT TO AMEND THE CONSTITUTION TO PROVIDE THAT MARRIAGE  
3 BETWEEN A MAN AND A WOMAN IS THE ONLY DOMESTIC LEGAL UNION  
4 THAT SHALL BE VALID OR RECOGNIZED IN THIS STATE.

5       Whereas, of the 15 states in the Southeastern U.S., only one has failed to pass  
6 constitutional amendments defining marriage as "the union of one man and one woman."  
7 Florida voters approved the question on the ballot in 2008, leaving North Carolina as the only  
8 state in the Southeast that has taken no decisive action to pass a marriage amendment; and

9       Whereas, the 14 states in the Southeast that have passed marriage amendments have  
10 done so with an average rate of passage exceeding 75%; and

11       Whereas, in statewide poll numbers released May 20, 2008, by the John William  
12 Pope Civitas Institute, 71% of North Carolina voters support the passage of a State Marriage  
13 Amendment, while 26% are opposed. Among African-American voters, support for the  
14 marriage amendment was at 86%; and

15       Whereas, for the last five years, bills calling for a State Marriage Amendment have  
16 been introduced in the North Carolina House and the North Carolina Senate, but state  
17 lawmakers and the public have not been given the opportunity to vote on this critically  
18 important legislation; and

19       Whereas, the California Supreme Court's May 15, 2008 ruling that recognized a  
20 constitutional right to same sex marriage in that state will have significant implications across  
21 the nation, although it was reversed in that state with a constitutional amendment approved by  
22 the voters; and

23       Whereas, the threat of similar lawsuits in North Carolina increased significantly in  
24 2008 when the North Carolina Court of Appeals granted visitation rights to the estranged same  
25 sex partner of a lesbian woman who conceived a child through artificial insemination. (Mason  
26 v. Dwinnell.) In the introductory remarks to the opinion, Judge Martha Geer writes, "It is  
27 important to first observe that the factual context of this case — involving same sex domestic



1 partners — is immaterial to the proper analysis of the legal issues involved." In other words, the  
2 court considers the "sexual orientation" of the parties involved in this child custody case to be  
3 irrelevant. This rationale is strikingly similar to that used by the California Supreme Court  
4 when they said, "Furthermore, in contrast to earlier times, our state now recognizes that an  
5 individual's capacity to establish a loving and long-term committed relationship with another  
6 person and responsibly to care for and raise children does not depend upon the individual's  
7 sexual orientation..."; Now, therefore,

8 The General Assembly of North Carolina enacts:

9 **SECTION 1.** Article 14 of the North Carolina Constitution is amended by adding  
10 the following new section:

11 **"Sec. 6. Marriage.**

12 Marriage between a man and a woman is the only domestic legal union that shall be valid  
13 or recognized in this state."

14 **SECTION 2.** The amendment set out in Section 1 of this act shall be submitted to  
15 the qualified voters of the State at an election on November 3, 2009, which election shall be  
16 conducted under the laws then governing elections in the State. Ballots, voting systems, or both  
17 may be used in accordance with Chapter 163 of the General Statutes. The question to be used in  
18 the voting systems and ballots shall be:

19  FOR  AGAINST

20 Constitutional Amendment to provide that marriage between a man and a woman is  
21 the only domestic legal union that shall be valid or recognized in this state."

22 **SECTION 3.** If a majority of votes cast on the question are in favor of the  
23 amendment set out in Section 1 of this act, the State Board of Elections shall certify the  
24 amendment to the Secretary of State. The Secretary of State shall enroll the amendment so  
25 certified among the permanent records of that office.

26 **SECTION 4.** The amendment set out in Section 1 of this act becomes effective  
27 January 1, 2010.