

CAYMAN ISLANDS



EVIDENCE (AMENDMENT) BILL, 2020

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**A BILL FOR A LAW TO AMEND THE EVIDENCE LAW (2019 REVISION) AS A
CONSEQUENCE OF THE ENACTMENT OF THE DOMESTIC PARTNERSHIP LAW,
2020; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Governor's Office



**Memorandum of
OBJECTS AND REASONS**

This Bill amends the Evidence Law (2019 Revision) (“the principal Law”) as a consequence of the enactment of the Domestic Partnership Law, 2020.

Clause 1 provides the short title and commencement of the legislation.

Clause 2 amends section 2 of the principal Law to insert definitions of the words “domestic partner” and “domestic partnership”.

Clause 3 amends section 19 of the principal Law to provide that domestic partners of an accused are both competent and compellable to give evidence in criminal proceedings for the prosecution or on behalf of the accused or any person jointly charged with the accused.

Clause 4 amends section 42 of the principal Law to provide that domestic partners of parties in civil proceedings in or before any court are both competent and compellable to give evidence on behalf of either or any of the parties to the civil proceedings.

Clause 5 amends section 51 of the principal Law to extend the application of the rules of law referred to in section 51(3) of the principal Law to include any rule of law whereby, in a civil proceeding, a question of the existence of a domestic partnership is in issue. In such a civil proceeding, evidence of reputation or family tradition is admissible for the purpose of proving or disproving the existence of the domestic partnership.

Clause 6 amends section 53 of the principal Law to apply the rules of evidence in relation to findings of adultery to domestic partnership proceedings.

Clause 7 amends section 55 of the principal Law to extend the right against spousal incrimination to parties to a domestic partnership.

CAYMAN ISLANDS**EVIDENCE (AMENDMENT) BILL, 2020****Arrangement of Clauses**

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A BILL FOR A LAW TO AMEND THE EVIDENCE LAW (2019 REVISION) AS A CONSEQUENCE OF THE ENACTMENT OF THE DOMESTIC PARTNERSHIP LAW, 2020; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Governor in accordance with section 81 of the Constitution, after consultation with the Premier and with the prior approval of a Secretary of State

Short title and commencement

1. (1) This Law may be cited as the Evidence (Amendment) Law, 2020.
- (2) This Law comes into force immediately after the commencement of the *Domestic Partnership Law, 2020*.

Amendment of section 2 of the Evidence Law (2019 Revision) - definitions

2. The *Evidence Law (2019 Revision)*, in this Law referred to as the “principal Law”, is amended in section 2 by inserting in the appropriate alphabetical sequence the following definitions —

“**domestic partner**” has the meaning assigned by the *Domestic Partnership Law, 2020*; and

“**domestic partnership**” has the meaning assigned by the *Domestic Partnership Law, 2020*.”.

Repeal of section 19 and substitution - competence and compellability of accused's spouse

3. The principal Law is amended by repealing section 19 and substituting the following section —

“Competence and compellability of accused's spouse or domestic partner

19. (1) In any criminal proceedings the wife, husband or domestic partner of the accused shall be competent to give evidence —
- (a) subject to subsection (4), for the prosecution; and
 - (b) on behalf of the accused or any person jointly charged with the accused.
- (2) In any criminal proceedings the wife, husband or domestic partner of the accused shall, subject to subsection (4), be compellable to give evidence on behalf of the accused.
- (3) In any criminal proceedings the wife, husband or domestic partner of the accused shall, subject to subsection (4), be compellable to give evidence for the prosecution or on behalf of any person jointly charged with the accused if —
- (a) the offence charged involves an assault on, or injury or threat of injury to, the wife, husband or domestic partner of the accused or a person who was at the material time under the age of sixteen;
 - (b) the offence charged is a sexual offence alleged to have been committed in respect of a person who was at the material time under that age; or
 - (c) the offence charged consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, an offence falling within paragraph (a) or (b).
- (4) Where a husband and wife or domestic partners are jointly charged with an offence neither spouse or domestic partner shall, at the trial, be competent or compellable by virtue of subsection (1)(a), (2) or (3) to give evidence in respect of that offence unless that spouse or domestic partner is not, or is no longer, liable to be convicted of that offence at the trial as a result of pleading guilty or for any other reason.
- (5) In any criminal proceedings a person who has been but is no longer married to the accused or in a domestic partnership with the accused



shall be competent and compellable to give evidence as if that person and the accused had never been married or in a domestic partnership.

- (6) Where in any criminal proceedings the age of a person at any time is material for the purposes of subsection (3), the age of the person at the material time shall for the purposes of that provision be deemed to be or to have been that which appears to the court to be or have been the person's age at that time.
- (7) The failure of the wife, husband or domestic partner of the accused to give evidence shall not be made the subject of any comment by the prosecution.”.

Amendment of section 42 - parties as witnesses in civil cases

4. The principal Law is amended in section 42 by inserting after the word “spouses” the words “or domestic partners”.

Amendment of section 51 - admissibility of certain hearsay evidence formerly admissible at common law

5. The principal Law is amended in section 51(4)(b) as follows —
 - (a) by inserting after the word “marriage” where it twice appears the words “or domestic partnership”; and
 - (b) by deleting the words “, as the case may be”.

Amendment of section 53 - findings of adultery and paternity as evidence in civil proceedings

6. The principal Law is amended in section 53 as follows —
 - (a) in subsection (1)(a), by inserting after the word “matrimonial” the words “or a domestic partnership”;
 - (b) in subsection (2)(b), by inserting after the word “matrimonial” the words “, domestic partnership”;
 - (c) in subsection (3), by inserting after the word “matrimonial” the words “, domestic partnership”.

Amendment of section 55 - privilege against incrimination of self or spouse, etc.

7. The principal Law is amended in section 55 as follows —
 - (a) in the section heading, by inserting after the word “spouse” the words “or domestic partner”; and

- (b) in subsections (1), (3) and (4) by deleting the words “or wife” wherever they appear and substituting the words “, wife or domestic partner.”.

Assented to by the Governor the day of , 2020.

