

HOUSE BILL REPORT

ESHB 2262

As Passed House:
February 10, 1996

Title: An act relating to marriages.

Brief Description: Prohibiting marriages between two persons of the same gender.

Sponsors: By House Committee on Law & Justice (originally sponsored by Representatives Thompson, Koster, Carrell, Hargrove, Stevens, Mulliken, Fuhrman, Hymes, Crouse, Sterk, Backlund, L. Thomas, McMahan, Beeksma, Pelesky, Johnson and Casada).

Brief History:

Committee Activity:

Law & Justice: 1/31/96 [DPS].

Floor Activity:

Passed House: 2/10/96, 66-30.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Sheahan, Chairman; Delvin, Vice Chairman; Hickel, Vice Chairman; Campbell; Carrell; Chappell; Lambert; McMahan; Morris; Robertson; Smith and Sterk.

Minority Report: Do not pass. Signed by 5 members: Representatives Dellwo, Ranking Minority Member; Costa, Assistant Ranking Minority Member; Cody; Murray and Veloria.

Staff: Edie Adams (786-7180).

Background: Marriage is a civil contract extensively regulated by the state. Marriage must be solemnized before a judge, court commissioner, or licensed or ordained minister or priest. In order to be lawfully married, both parties must be at least 18 years of age and capable of giving consent. Marriage is specifically prohibited if one party has a spouse living or if the parties are closely related.

Persons of the same gender are prohibited from legally marrying in the State of Washington. Although not specifically prohibited in the marriage statute, a

Washington appellate court decision, Singer v. Hara, 11 Wn. App. 247 (1974), held that the marriage statute does not allow marriage between persons of the same gender. In Singer, the court relied on references to "husband and wife" and "female and male" contained in the original statute and some current provisions in determining that the Legislature did not intend to authorize same gender marriage. The Singer court also held that prohibiting marriage between persons of the same gender does not violate the Equal Rights Amendment to the Washington Constitution or the Equal Protection Clause of the United States Constitution.

In 1993, the Hawaii Supreme Court, in Baehr v. Lewin, 852 P.2d 44 (Haw. 1993), ruled that not allowing persons of the same gender to marry presumptively violates the Equal Protection Clause of the Hawaii Constitution unless the state can show a compelling government interest in prohibiting same gender marriage. The court remanded the case to the trial court for a hearing on whether the state has a compelling interest in prohibiting same-gender marriages. The rehearing on this issue has not yet occurred.

If Hawaii ultimately determines that marriage between persons of the same gender is a right protected by the Hawaii constitution, it is unclear whether the state of Washington would have to recognize a marriage between persons of the same gender that is validly contracted in Hawaii.

Generally, if a marriage is valid in the jurisdiction where it is contracted, it is valid in all other jurisdictions unless it violates a strong public policy of the other jurisdiction. For example, common law marriages are not valid under Washington statutory law, but case law has established that Washington will recognize a common law marriage if it is valid in the state where it was contracted. In addition, Washington courts have held that polygamous or incestuous marriages will not be recognized in Washington, even if valid in the jurisdiction where they were contracted.

Summary of Bill: Marriage is redefined as a civil contract between a man and a woman. References to "parties" in the marriage statute are replaced with references to "the male and female" and "the husband and wife." Marriage between persons other than a male and female are specifically prohibited. A marriage that is valid in another jurisdiction will not be recognized in the State of Washington when either party has a husband or wife living, when the parties are too closely related, or when the parties are of the same gender.

The state of Washington is stated to have a compelling interest in reaffirming its historical commitment to marriage as a union between a man and woman and marriage's fundamental role in the procreation and development of children.

The bill contains a referendum clause requiring the act to be submitted to a vote of the people at the next general election.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: On the 30th day after the election at which the bill is approved.

Testimony For: The bill simply defines what marriage is and always has been in our culture. We should not allow another state to redefine for us what marriage is. This bill is necessary to stop the movement for acceptance of the homosexual lifestyle into our homes, schools, and society. Homosexuals are not interested in marriage because they don't want monogamy. The real motive is forced acceptance of homosexuality. Homosexual behavior is unnatural, deadly, and devoid of any moral character. Sixty percent of people are opposed to allowing same gender marriages. The movement to recognize same gender marriages by homosexual activists is an attack on family values and the moral foundations of America.

Testimony Against: This bill represents an attempt to rationalize discrimination, bigotry, and hatred. It demonizes, dehumanizes, demeans, and slanders. This bill is not necessary because current law prevents same gender marriage. It will cost the state money in expensive litigation challenging the bill. It violates the federal and state constitutions because it treats people differently based on their sex. This bill is anti-family and a denial of civil rights. It tells children of gay and lesbian partners that their parents' relationships are bad. It is a painful insult to have committed, loving relationships likened to incest and bigamy. The recognition of same-gender marriages will not cost the state a lot of money to provide health benefits to state employees. In Seattle, insurance for domestic partners costs less than insurance for spouses.

Testified: Representative Thompson, prime sponsor; Robert Larimen, Washington for Traditional Values (pro); Michael Johnston, Alaskans Opposed to Pro-homosexual Policies (pro); Mike Gabbard, Stop Promoting Homosexuality America (pro); Kurt Mach, citizen (pro); Jeff Kemp, Washington Family Council (pro); and Carol Sterling, Karen McGaffey, Sally Fox, John Wilkinson, Gwen Hall, and Paul Beeman, Privacy Fund (con).