

HOUSE BILL ANALYSIS

HB 1130

Title: An act relating to reaffirming and protecting the institution of marriage.

Brief Description: Reaffirming and protecting the institution of marriage.

Sponsors: Representatives Thompson, Koster, Mulliken, L. Thomas, Bush, Backlund, Dunn, Sump, Mielke, Pennington, Talcott, Chandler, Johnson, Lambert, D. Sommers, Sheahan, McDonald, D. Schmidt, McMorris, Sterk, Boldt, Crouse, Benson, DeBolt and Sherstad.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Edie Adams (786-7180).

Background:

WASHINGTON LAW: Marriage is a civil contract 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 nearer of kin to each other than second cousins. In addition, the marriage statute makes it unlawful for a man or a woman to marry close relatives of the opposite sex.

Persons of the same sex are prohibited from legally marrying in 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 sex. In Singer, the court relied on references to "husband and wife" and "female and male" contained in the original marriage statute and current provisions in determining that the Legislature did not intend to authorize same-sex marriage. The Singer court also held that prohibiting marriage between persons of the same sex does not violate the Equal Rights Amendment to the Washington Constitution or the Equal Protection Clause of the United States Constitution.

HAWAII DECISIONS: In 1993, the Hawaii Supreme Court, in Baehr v. Lewin, 852 P.2d 44 (Haw. 1993), ruled that not allowing persons of the same sex to marry presumptively violates the Equal Protection Clause of the Hawaii Constitution unless the state can show a compelling government interest in prohibiting same-sex marriage.

The court remanded the case to the trial court for a hearing on whether the state has a compelling interest in prohibiting same-sex marriages.

In December 1996, the Hawaii trial court ruled, in Baehr v. Miike, 910 P.2d 112 (Haw. Ct. App. 1996), that the state does not have a compelling interest in prohibiting marriage between persons of the same sex and that denying same-sex marriage violates the Hawaii Constitution's equal protection clause. The decision of the trial court is stayed pending appeal to the Hawaii Supreme Court.

FEDERAL LAW: The Full Faith and Credit Clause of the United States Constitution provides that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state.— Federal statutory law also provides that states must give full faith and credit to the laws and proceedings of other states.

In 1996, the United States Congress passed the Defense of Marriage Act, P.L. 104-199, 110 Stat. 219, which amends the full faith and credit statute. The act provides that a state is not required to give effect to a public act, record, or judicial proceeding of another state respecting a relationship, or a right or claim arising from a relationship, between persons of the same sex that is treated as a marriage under the laws of the other state.

In addition, the act defines the words marriage— and spouse— for the purposes of federal law. Marriage— is defined as a legal union between one man and one woman as husband and wife. Spouse— is defined as a person of the opposite sex who is a husband or a wife.

CHOICE OF LAW: Although the Full Faith and Credit Clause is not limited on its face, the scope of its application is not clearly defined in case law. In addition, the clause does not address the issue of what law to apply when two states with conflicting laws both have an interest in a matter. To resolve this issue, courts apply established choice of law rules.

With respect to marriage, the general choice of law rule provides that if a marriage is valid in the jurisdiction where it is contracted, it is valid in all other jurisdictions. This general rule is subject to exceptions. First, a state may not have to recognize a marriage valid in another state if the marriage violates a strong public policy of the state. Second, the state may not have to recognize a valid out-of-state marriage if the couple left the state to enter into the marriage in order to evade the state's law prohibiting such a marriage.

For example, common law marriages are not valid under Washington statutory law. However, case law establishes 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, which are specifically prohibited by state law, will not be recognized even if valid in the jurisdiction where they were contracted.

Summary of Bill: A legislative finding is made that matters relating to marriage are reserved to the sovereign states and should be determined by the people within each individual state, and not by the people or courts of another state. The Legislature intends to exercise the authority granted to states by Congress in the federal Defense of Marriage Act to establish in statute a public policy against same-sex marriage.

Washington is declared to have a compelling interest in reaffirming and protecting its historical commitment to the institution of marriage as a union between a man and woman as husband and wife.

The marriage statute is amended to specifically prohibit marriage when the parties are of the same sex. References to "parties" in the marriage statute are replaced with references to "the male and female" and "the husband and wife."

A marriage that is valid in another jurisdiction will not be recognized in Washington if either party has a husband or wife living at the time of the marriage, when the parties are closely related, or when the parties are of the same sex.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Office of Program Research