

# HOUSE BILL REPORT

## ESHB 1130

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### As Amended by the Senate

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

**Brief Description:** Reaffirming and protecting the institution of marriage.

**Sponsors:** By House Committee on Law & Justice (originally sponsored by 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).

**Brief History:**

**Committee Activity:**

Law & Justice: 2/4/97, 2/7/97 [DPS].

**Floor Activity:**

Passed House: 3/18/97, 50-48.

Senate Amended.

Senate Amended.

Passed House: 2/4/98, 56-41.

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### HOUSE COMMITTEE ON LAW & JUSTICE

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Carrell; Lambert; Radcliff; Sherstad and Skinner.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Cody; Kenney and Lantz.

**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, 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, 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, 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, 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.

The bill contains a referendum clause requiring the act to be submitted to the people for adoption or rejection on the date specified by statute for the state primary. A legislative finding is made that persons engaged in public debate on a political issue, whether before the Legislature or on the ballot as an initiative or referendum, deserve the highest protections of the law. A legislative declaration is made that an individual

who commits a criminal act against another person who is engaged in public debate simply because the person disagrees with the political speech of the victim should be expeditiously prosecuted and appropriately punished.

The provisions of the act concerning same-sex marriages apply retroactively as of January 1, 1997.

**EFFECT OF SENATE AMENDMENT(S):** The referendum clause is removed.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** The bill simply codifies current law that marriage is and always has been between a man and woman. We should not allow a judge in another state to redefine the marriage relationship for this state. Action is needed now because same-sex marriages could take place in Hawaii at any time. The federal Defense of Marriage Act gives us the power to decide whether or not to recognize same-sex marriage and we need to make that statement now. We should not denigrate the institution of marriage by allowing same-sex marriage to be recognized. The majority of people oppose the sanctioning of same-sex marriage. Marriage exists because of the societal values associated with the rearing of children. Families are adversely affected when children are taught that same-sex marriage is the same as traditional marriage. Same-sex families do not provide proper role models for children. Research indicates that children need a mother and a father to provide the best environment for their development. We shouldn't lower our moral standards or allow the concept of family to be distorted by a minority. The drive to legalize same-sex marriage is just a political agenda of the homosexual movement.

**Testimony Against:** This bill is discriminatory, a declaration of intolerance, an attack on families, and an insult to gays and lesbians who are as human, ordinary, and hard-working as anyone else. The bill masquerades as a measure to strengthen families when in fact it does the opposite. The 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 discriminates on the basis of sex, and violates due process rights, the Full Faith and Credit Clause, and the right to travel. There is no legitimate state interest in denying same-sex marriage to justify this discrimination. No one can show a concrete harm to other people's marriages that would result from recognizing same-sex marriage. The bill represents the use of people's hate and fear to try and destroy families that are loving, caring, nurturing, and ordinary in every other way. Recent polls indicate that the majority of people do not support a change in state law to deny a valid out-of-state

same-sex marriage. In addition, a poll indicates that a majority of the people of this state do not support banning same-sex marriage.

**Testified:** Representative Thompson, prime sponsor; Leilani Lutali, citizen (pro); Anne Ball, Concerned Women of Washington (pro); Lynn Wardle, citizen (pro, with amendment); Doug Burman, citizen (pro); Forrest Messenger, citizen (pro); Suzanne Cook, citizen (pro); Fred Jensen, citizen (pro); Paul Petry, citizen (pro); Kurt Mach, citizen (pro); Jeff Kemp, Washington Family Council (pro); Jamaica Filgo, citizen (pro); Representative Murray (con); Michael Shiosaki, citizen (con); Karen McGaffey, citizen and Northwest Women’s Law Center (con); Donna Taylor, citizen (con); Lynn and Evan Grotsky, citizens (con); Reverend Paul Beeman, United Methodist Ministries (con); and Laurie Jinkins, Hands Off Washington (con).