
ENGROSSED SUBSTITUTE SENATE BILL 5398

State of Washington

55th Legislature

1997 Regular Session

By Senate Committee on Law & Justice (originally sponsored by Senators Swecker, Zarelli, Oke and Schow)

Read first time 02/06/97.

1 AN ACT Relating to reaffirming and protecting the institution of
2 marriage; amending RCW 26.04.010 and 26.04.020; and creating new
3 sections.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** (1) In P.L. 104-199; 110 Stat. 219, the
6 Defense of Marriage Act, Congress granted authority to the individual
7 states to either grant or deny recognition of same-sex marriages
8 recognized as valid in another state. The Defense of Marriage Act
9 defines marriage for purposes of federal law as a legal union between
10 one man and one woman as husband and wife and provides that a state
11 shall not be required to give effect to any public act or judicial
12 proceeding of any other state respecting marriage between persons of
13 the same sex if the state has determined that it will not recognize
14 same-sex marriages.

15 (2) The legislature and the people of the state of Washington find
16 that matters pertaining to marriage are matters reserved to the
17 sovereign states and, therefore, such matters should be determined by
18 the people within each individual state and not by the people or courts
19 of a different state.

1 NEW SECTION. Sec. 2. (1) It is a compelling interest of the state
2 of Washington to reaffirm its historical commitment to the institution
3 of marriage as a union between a man and a woman as husband and wife
4 and to protect that institution.

5 (2) The court in *Singer v. Hara*, 11 Wn. App. 247 (1974) held that
6 the Washington state marriage statute does not allow marriage between
7 persons of the same sex. It is the intent of the legislature by this
8 act to codify the *Singer* opinion and to fully exercise the authority
9 granted the individual states by Congress in P.L. 104-199; 110 Stat.
10 219, the Defense of Marriage Act, to establish public policy against
11 same-sex marriage in statutory law that clearly and definitively
12 declares same-sex marriages will not be recognized in Washington, even
13 if they are made legal in other states.

14 **Sec. 3.** RCW 26.04.010 and 1973 1st ex.s. c 154 s 26 are each
15 amended to read as follows:

16 (1) Marriage is a civil contract (~~((which may be entered into by~~
17 ~~persons of))~~ between a male and a female who have each attained the age
18 of eighteen years, and who are otherwise capable(~~((:—PROVIDED, That))~~).

19 (2) Every marriage entered into in which either (~~((party shall not~~
20 ~~have))~~ the husband or the wife has not attained the age of seventeen
21 years (~~((shall be))~~) is void except where this section has been waived by
22 a superior court judge of the county in which one of the parties
23 resides on a showing of necessity.

24 **Sec. 4.** RCW 26.04.020 and 1927 c 189 s 1 are each amended to read
25 as follows:

26 (1) Marriages in the following cases are prohibited:

27 (~~((1))~~) (a) When either party thereto has a wife or husband living
28 at the time of such marriage(~~((-))~~);

29 (~~((2))~~) (b) When the (~~((parties thereto))~~) husband and wife are
30 nearer of kin to each other than second cousins, whether of the whole
31 or half blood computing by the rules of the civil law; or

32 (c) When the parties are persons other than a male and a female.

33 (~~((3))~~) (2) It (~~((shall be))~~) is unlawful for any man to marry his
34 father's sister, mother's sister, daughter, sister, son's daughter,
35 daughter's daughter, brother's daughter or sister's daughter; it
36 (~~((shall be))~~) is unlawful for any woman to marry her father's brother,

1 mother's brother, son, brother, son's son, daughter's son, brother's
2 son or sister's son.

3 (3) A marriage between two persons that is recognized as valid in
4 another jurisdiction is valid in this state only if the marriage is not
5 prohibited or made unlawful under this section.

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