HOUSE BILL REPORT
ESSB 5398

As Passed House
February 14, 1997

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

Brief Description: Reaffirming and protecting the institution of marriage.

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

Brief History:
Floor Activity:
Passed House: 2/14/97, 63-35.

Background: Marriage is a civil contract extensively regulated by the state. 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 sex 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 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. The Washington Supreme Court approved the Singer analysis in *Marchioro v. Chaney*, 90 Wn. 2d 298 (1978). In *Marchioro*, the Supreme Court declared that the governing parties in a marriage must be male and female -- one of each– and equality of treatment ... is sufficient to meet the requirements of the equal rights amendment.–

In 1972, prior to the decisions in *Singer* and *Marchioro*, the people of the State of Washington approved Amendment 61 to the Washington Constitution, Article XXXI, commonly known as the Equal Rights Amendment. It declares that Equality of rights and responsibilities under the law shall not be denied or abridged on account of

sex.– It is similar to the Hawaii Constitution Equal Protection Clause with regard to discrimination based upon sex.

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. The rehearing on this issue was held last year and in an opinion released on December 3, 1996, the trial court decided that the state had failed to show a compelling government interest in prohibiting same-sex marriages. The effect of this decision is currently on hold pending an appeal to the Hawaii Supreme Court.

If Hawaii ultimately determines that marriage between persons of the same sex 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 sex that is validly contracted in Hawaii. Generally, the Full Faith and Credit Clause of the United States Constitution requires that states give recognition to the public acts, records and judicial proceedings of other states. However, this is not an absolute requirement and recognition is not required where the act or judicial proceeding in one state violates a strong public policy in another 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. Washington courts have held that other marriages prohibited under Washington statutory law, such as polygamous or incestuous marriages will not be recognized in Washington, even if valid in the jurisdiction where they were contracted.

In 1996, Congress passed and the President signed into law, the Defense of Marriage Act. The Defense of Marriage Act does two things. First, it exempts states from having to recognize or give effect to same-sex marriages from other states. Second, it defines marriage for purposes of federal law as a legal union between one man and one woman.

It is felt by some that the passage of the Defense of Marriage Act requires each state to take action in order to avoid giving effect to same-sex marriages contracted in other states or be put in the situation of recognizing those marriages by default.

Summary of Bill: The Legislature finds that marriage is a matter reserved for the sovereign states to decide individually and that decisions relating to marriage should not be decided by the people or courts of another state.

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

Marriage is defined as a civil contract between a male and a female and the parties to a marriage are a husband and wife.

Marriage between persons of the same sex is prohibited.

No bigamous marriage, incestuous marriage, marriage of relations closer than second cousins, or same-sex marriage from another jurisdiction is valid in Washington.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.