

SENATE BILL REPORT

SB 5346

As of February 3, 1997

Title: An act relating to prohibiting gender discrimination in the granting of civil marriage licenses.

Brief Description: Prohibiting gender discrimination in the granting of civil marriage licenses.

Sponsors: Senators Thibaudeau and Prentice; by request of Governor Lowry.

Brief History:

Committee Activity: Law & Justice: 2/4/97.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Martin Lovinger (786-7443)

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.

It is felt by some that the reasoning of the courts in Hawaii is not only sound, but should be applied to the same issue in Washington. They feel that civil marriage can, through contractual obligations and benefits, support strong, healthy families, which, in turn, promote social stability and economic growth, and that this applies equally to people who are the same gender.

Summary of Bill: Washington is declared to have a compelling interest in not discriminating against people of the same gender who apply for a marriage license.

Persons of the same gender may marry.

Any reference to husband– and wife– in the marriage statutes refers to any spouse. The phrase husband and wife– refers to all spouses. This provision is added to almost every RCW chapter with references to husband,– wife,– or husband and wife.–

Appropriation: None.

Fiscal Note: Not requested.

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