House
Legislative
Analysis
Section

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BAN SAME-SEX MARRIAGES

House Bill 5661 as introduced
House Bill 5662 with committee amendment
Sponsor: Rep. Deborah Whyman
Committee: Human Services

Senate Bill 937 as passed by the Senate
Sponsor: Senator William Van Regenmorter
House Committee: Human Services
Senate Committee: Local, Urban and State Affairs

First Analysis (5-28-96)

THE APPARENT PROBLEM:

Recent occurrences in Hawaii have caused seven other states to pass laws banning marriages between members of the same sex. In Hawaii, several couples of the same sex applied for, and were denied, marriage licenses. The ensuing court case wound its way to the Hawaii Supreme Court, and it is anticipated that the court will rule on the case this summer. Same-sex marriages are currently not recognized in Michigan. However, if the Hawaii Supreme Court approves same-sex marriages, it is believed that such marriages would become legal here, since the "full faith and credit" clause in the U.S. Constitution obligates every state to respect the judgments of courts in other states. Some fear that gay couples would then marry in Hawaii and return to Michigan, where the state would be forced to recognize the legitimacy of such unions. To circumvent this process, legislation has been proposed that would ban same-sex marriages and specify that such marriages would not be recognized here, even if considered legal in another state.

THE CONTENT OF THE BILLS:

House Bill 5661 would amend the act entitled "Of marriage and the solemnization thereof," (MCL 551.3 and 551.4), while House Bill 5662 would amend the section 1 of Public Act 168 of 1939 (MCL 551.271), which validates marriages of Michigan residents solemnized in another state. The bills, respectively, would prohibit marriage between two persons of the same sex in Michigan and would provide that such marriages, even if solemnized and legal in another state, would not be recognized as valid in Michigan.

House Bill 5662 is tie-barred to House Bill 5661 or Senate Bill 937.

Senate Bill 937 would amend the act entitled "Of marriage and the solemnization thereof" (MCL 551.2-551.4) Currently, the act specifies that marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of parties capable in law of contracting, is essential. The bill would specify that marriage "is a civil contract between a man and a woman", prohibit a man from marrying another man, and prohibit a woman from marrying another woman.

FISCAL IMPLICATIONS:

The House Fiscal Agency estimates that House Bills 5661 and 5662 would have no impact on state funds. (5-17-96)

The Senate Fiscal Agency estimates that Senate Bill 937 would have an indeterminate impact on state funds, depending on the number of additional individuals who would be eligible for spousal benefits -- including insurance, retirement benefits, and other legal rights -- if the bill was not enacted. (5-15-96)

ARGUMENTS:

For:

Many believe that Michigan has the right to maintain its institutions without interference from other states, and also that, if there are some within the state who believe

that these institutions should be changed, then the burden of proof should rest on those who seek the change. However, Article IV, Section 1 of the U.S. Constitution states:

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

This means that, should the Supreme Court of the State of Hawaii rule that same-sex marriages must be recognized there, then, under this "full faith and credit clause," all other states would be required to accept its decision. Consequently, such marriages would become legal in Michigan, without any input from its citizens or its legislature. The bills would prevent this from happening by specifically prohibiting same-sex marriages. It would then be incumbent on those who sought to copy Hawaii's example to petition to have Michigan's laws changed.

Moreover, the bills would express a strong public policy in favor of the traditional institution of marriage between a man and a woman, which proponents of the bills have called "the basic unit in the fabric of society". Same-sex marriages have many potential societal implications, including many practical implications, such as increased costs for spousal benefits (insurance, retirement benefits, and the like), increased use of the court system for divorce matters, complications in adoption proceedings, and so on. These matters, as well as the fundamental philosophical and moral issues implicit in the matter, are important public policy questions and must not be ignored.

Against:

The provisions of the bills would probably be challenged in court, since the U.S. Supreme Court has consistently ruled that the "full faith and credit clause" of the U.S. Constitution obligates every state to recognize the judicial proceedings of other states, and no exceptions have ever been made based on "policy" exemptions. As noted by the American Civil Liberties Union (ACLU), in testimony before the House Human Services Committee, "states that disagree with the policy behind a law on which a judgement is based must enforce the judgement nonetheless." The ACLU also notes that the provisions of the bills would probably violate the Fifth Amendment's equal protection guarantee. In fact, according to the ACLU, in a May 20, 1996, decision, the U.S. Supreme Court struck down a 1992 amendment to Colorado's constitution and ruled that gays and lesbians cannot be singled out and treated differently on the basis of their sexual orientation. The bills also raise legal questions regarding the divorce of a homosexual who has obtained a legal marriage in another state, since, under the "full faith and credit clause," Michigan would be required to enforce such divorce decrees. Since there can be no divorce without there first having been a marriage, the point might be made that the marriage itself must also be legal.

Further, opponents say that the bills are fundamentally unfair, and would promote discrimination against a class of people singled out for one characteristic, their sexual orientation. There are enormous civil and legal consequences attached to marriage, including the right to care for a sick or dying partner, the right to inherit property, spousal benefits, and so forth. Opponents also point out that denial of legal rights reinforces and legitimizes discrimination and violence against gay and lesbian people.

POSITIONS:

The Michigan Family Forum supports House Bills 5661 and 5662. (5-23-96)

Majority Opposing Special Treatment (MOST) supports House Bills 5661 and 5662. (5-23-96)

The Michigan Catholic Conference supports House Bills 5661 and 5662. (5-23-96)

The American Civil Liberties Union (ACLU) opposes House Bills 5661 and 5662. (5-23-96)

Parents, Families, and Friends of Lesbians and Gays (P-FLAG) opposes House Bills 5661 and 5662. (5-23-96)

American Friends Service Committee opposes House Bills 5661 and 5662. (5-23-96)

The Michigan Counseling Association opposes House Bills 5661 and 5662. (5-23-96)

The Triangle Foundation, a Detroit based civil rights advocacy organization, opposes House Bills 5661 and 5662. (5-23-96)

The Lansing Equal Rights Task Force opposes House Bills 5661 and 5662. (5-23-96)

Representatives of the following organizations submitted testimony to the House Human Services Committee opposing House Bills 5661 and 5662 (5-23-96):

* The National Organization for Women, Michigan Conference
* The National Association of Social Workers (NASW)

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.