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BILL ANALYSIS



Telephone: (517) 373-5383  
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Senate Bill 937 (as enrolled)  
House Bill 5662 (as enrolled)  
Sponsor: Senator William Van Regenmorter (S.B. 937)  
Representative Deborah Whyman (H.B. 5662)  
Senate Committee: Local, Urban and State Affairs  
House Committee: Human Services

**PUBLIC ACT 324 of 1996**  
**PUBLIC ACT 334 of 1996**

Date Completed: 10-3-96

**RATIONALE**

Following a 1993 Hawaii Supreme Court ruling in *Baehr v Lewin* (852 P.2d 44, 74 Haw. 530), there reportedly has been a steady rise in the number of lawsuits by gay and lesbian couples challenging laws that limit marriage licenses to heterosexual couples. Three homosexual couples in Hawaii had filed suit in that state's circuit court contending that Hawaii's marriage statute was unconstitutional because it violated their equal protection rights under Hawaii's constitution, which explicitly prohibits discrimination based on sex. A Hawaii circuit court dismissed the complaints in 1991 and the couples appealed to the Hawaii Supreme Court. In reversing the lower court decision, the Hawaii Supreme Court ruled that the marriage statute "imposed a gender-based classification" by restricting marriage to a male and female, thus violating the couples' equal protection rights. The case was sent back to the trial court with the requirement that the state provide compelling state interests to justify its actions. Opening statements in a civil trial were presented in Honolulu on September 11, 1996. If same-sex marriages eventually are sanctioned in Hawaii, it is believed that these marriages would have to be recognized as legal in Michigan due to provisions in the U.S. Constitution that require states to respect judgments rendered by courts in other states. Furthermore, since Michigan law does not specifically ban such marriages, some people believe that Michigan would have to recognize these unions if homosexual couples were married legally in Hawaii and decided to relocate in this State.

**CONTENT**

Senate Bill 937 amended Chapter 83 of the Revised Statutes of 1846 (entitled "Of marriage and the solemnization thereof") to specify that a marriage contracted between individuals of the

same sex is invalid in the State, and to prohibit a man from marrying another man and prohibit a woman from marrying another woman. In addition, the bill specifies that "[m]arriage is inherently a unique relationship between a man and a woman." The bill also states that as a matter of public policy, the State "has a special interest" in encouraging, supporting, and protecting that unique relationship in order to promote, among other goals, the stability and welfare of society and its children."

House Bill 5662 amended Public Act 168 of 1939, which provides for the validation of marriages contracted by residents of the State and solemnized in another state by authorized persons, to limit its provisions to marriages contracted between a man and a woman and to specify that the provisions validating out-of-State marriages do not apply to a marriage contracted between individuals of the same sex, which marriage will be invalid in this State. The bill also specifies, "This state recognizes marriage as inherently a unique relationship between a man and a woman...", as prescribed by Chapter 83 of the Revised Statutes of 1846, "and therefore a marriage that is not between a man and a woman is invalid in this state regardless of whether the marriage is contracted according to the laws of another jurisdiction".

The bill is tie-barred to Senate Bill 937.

MCL 551.2-551.4 (Senate Bill 937)  
MCL 551.271 & 555.272 (House Bill 5662)

**ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

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." Thus, the Constitution generally requires states to recognize the legal proceedings of other states. Michigan and the other 49 states currently recognize marriages performed within each other's jurisdictions. Given this practice and the constitutional requirements, Michigan could be forced to recognize homosexual marriages performed in other states, including Hawaii where the matter is before the courts. The bills prevent this from happening by specifically prohibiting same-sex marriages. Marriage should be between one man and one woman. This concept of marriage received support recently when Congress approved the Defense of Marriage Act, which defines marriage in Federal law as a legal union between one man and one woman and allows a state to refuse to honor a same-sex marriage performed in any other state. Under the Act, which the President has signed into law, states will still have the authority to legalize gay marriages, even though the Federal government will not recognize them. By sanctioning homosexual unions, however, the State would be redefining the traditional marital relationship, which is a fundamental component of the fabric of our society. The traditional family unit already faces serious challenges. Same-sex marriages would weaken the moral standards that underpin the traditional marriage and would open the possibility of sanctioning other types of alternative unions, such as polygamy. Furthermore, permitting same-sex marriages could have serious financial implications for public and private employers, since gay spouses could be eligible for their partner's insurance and pension. Legal recognition of same-sex marriages also could complicate child adoption proceedings.

**Response:** Although the "traditional" family unit in this country may be one man and one woman, marriage also was traditionally understood as providing a man with ownership of his wife--a concept that has been abandoned because it was wrong and unfair. "Tradition" also resulted in laws that prohibited interracial couples from marrying, and have been deemed unconstitutional.

### **Opposing Argument**

By prohibiting same-sex marriage, these bills will deny gay and lesbian people their basic rights to

liberty and the pursuit of happiness guaranteed to all citizens by the U.S. Constitution. Lesbians and gay men have the same rights of citizenship as do heterosexual people, and deserve the same protections. These bills are similar to miscegenation laws in this country that banned marriages between people of different races, and also are comparable to former laws that banned marriages between people of different religions. Marriage is a fundamental liberty that cannot be fairly abridged by any state. These bills, however, will sanction discrimination against gays and lesbians. Proponents of the ban contend that permitting same-sex marriages will undermine the institution of marriage and threaten the traditional family unit. These institutions already have been affected by the increase in divorce and the rise of single-parent families among heterosexuals. Same-gender couples are no different than heterosexual couples who support family values and desire to marry and share fully in their commitment to marriage.

### **Opposing Argument**

Denying lesbians and gay men the right to marry has serious practical ramifications. The consequences of marriage can include many things that heterosexual couples take for granted--such as filing joint tax returns, receiving government benefits, obtaining joint insurance policies, inheriting automatically upon the spouse's death, taking sick leave to care for an ill partner or child, or choosing a final resting place for a deceased partner. Many of these consequences cannot be duplicated by private contractual arrangements, even when the parties can afford a lawyer.

Legislative Analyst: L. Arasim

### **FISCAL IMPACT**

The bills will have an indeterminate fiscal impact. The amount will depend on the number of additional individuals who would be eligible for spousal benefits if the bills were not enacted. These include insurance, retirement benefits, and other legal rights.

Fiscal Analyst: M. Ortiz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.