

SUBJECT: Prohibiting recognition of a same-sex marriage or civil union

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 6 ayes — Marchant, Madden, J. Davis, B. Cook, Elkins, Gattis

2 nays — Lewis, Villarreal

1 absent — Goodman

WITNESSES: For — Jan Barstow, Texas Coalition of Women and Children; Sharon Brady, Texas Coalition for Traditional Marriage; Rev. David Dukes, Rescue the Family and Christ in America Ministries; Carolyn Galloway, Texas Eagle Forum; David Muralt, Citizens for Excellence in Education; Dan Panetti, National Coalition for the Protection of Children and Families; Kelly Shackelford, Free Market Foundation and Liberty Legal Institute; 32 individuals; *(Registered, but did not testify:)* approximately 790 individuals

Against — Laurie Bridwell, Christ Quest Ministry; Randall Ellis, Lesbian and Gay Rights Lobby of Texas; Kristin Frederiksen and Gina Varrichio, Lesbian and Gay Rights Lobby; Rev. Sid Hall, Trinity United Methodist Church; Elizabeth Huddleston, Texas Civil Rights Project; Michael Milliken, Texas Stonewall Democratic Caucus; Corri Planck, Family Pride Coalition; Hannah Riddering, Texas National Organization for Women; John Rundin, American Civil Liberties Union of Texas; 28 individuals; *(Registered, but did not testify:)* approximately 220 individuals

BACKGROUND: Family Code, sec. 2.001(b) prohibits issuance of a marriage license for the marriage of people of the same sex. Family Code, ch. 6 governs dissolution of a marriage. The U.S. Constitution, Art. IV, sec. 1 requires that each state give full faith and credit to the public acts, records, and judicial proceedings of every other state. The 1996 federal Defense of Marriage Act establishes that a state need not give full faith and credit to a same-sex relationship treated as marriage by another state. It also specifies that federal references to marriage mean only a legal union between one man and one woman as husband and wife and that the word “spouse” refers only to a husband or wife of the opposite sex.

In early 2003, a state district court judge in Beaumont granted a divorce to two men who had been granted a civil union in Vermont. Upon a petition by the Texas attorney general, the judge vacated the divorce in March 2003.

DIGEST:

CSHB 38 would declare that same-sex marriages or civil unions are contrary to Texas' public policy and are void. It would prohibit the state or any agency or political subdivision from recognizing a same-sex marriage or civil union granted in Texas or in any other jurisdiction, or any legal rights asserted as a result of such a marriage or union.

The bill would define a civil union as any relationship status other than marriage that is intended as an alternative to marriage or applies primarily to cohabitants and that grants the parties legal protections, benefits, or responsibilities granted to spouses in a marriage.

CSHB 38 would present the Legislature's finding that people without a legally recognized familial relationship adequately may arrange rights relating to hospital visitation, property, and life insurance by designating guardians, appointing agents, and using private contracts.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003. It would apply to a same-sex marriage or civil union regardless of when granted.

**SUPPORTERS
SAY:**

CSHB 38 would preserve Texas' right under the federal Defense of Marriage Act not to recognize same-sex marriages from other states. Though state law already prohibits same-sex marriages from being granted in Texas, the state could be required under the "full faith and credit" clause of the U.S. Constitution to recognize civil unions granted in Vermont or elsewhere unless the Legislature enacts this bill. Also, Texas has no law that specifically addresses civil unions. Vermont is the only state that now grants civil unions, but other states may do so in the future. The Legislature should act now to protect the sovereignty of Texas voters and their elected officials in making this policy decision, rather than allowing it to be made by politicians and voters in other states.

Texas courts are confused, as demonstrated by the recent district court ruling in Beaumont and its subsequent reversal. In that instance, the attorney general persuaded the judge that granting a divorce to two men required recognition of their civil union's validity, which is inconsistent with Texas law. However, it is not the job of the attorney general or the courts to make policy. The Legislature bears that responsibility and should act decisively. Had the Beaumont court's decision not been reversed, other states may have been put in the position of being obligated to give full faith and credit to recognition by a Texas court of the Vermont civil-union law. HB 38 would eliminate any legal ambiguity about whether Texas courts should recognize same-sex marriages or civil unions from other states.

Texas law already allows people with no family relationship to seek a power of attorney, directive to a physician, and other legal contracts to ensure that a same-sex partner would have the same rights and decision-making authority as a spouse. CSHB 38 would not deny same-sex couples those rights. Nor would it prohibit private corporations from granting benefits to an employee's same-sex partner if they wished to do so.

No studies have shown or quantified a correlation between legal toleration of alternative lifestyles and greater economic growth. In fact, enactment of CSHB 38 could encourage additional companies to do business in Texas, because they could perceive that the state would protect them against having to provide benefits to same-sex partners.

Government should not give preferential treatment to homosexuals or any other group. CSHB 38 would defend the state's marriage statute against dilution by those who would like special treatment.

The state has an interest in protecting the institution of heterosexual marriage, which gives women and children the surest protection against poverty and abuse, provides for the healthy psychological development of children, avoids health risks of same-sex relations and promiscuity, and encourages self-sacrifice. Heterosexual marriage works well because men's and women's different qualities complement each other, especially in child rearing. Recognition of same-sex unions granted in other states would create a new class of children without mothers or fathers, depending on a family's composition. Such breakdown of the family would increase costs to

corporations and governmental entities that would have to step in to meet needs no longer met by the family unit. However, children of same-sex couples who have had their union dissolved in another state still would be protected under this bill, because it would not prevent child support and other liabilities from being enforced based on parental responsibility or contractual grounds that make no reference to marriage.

Though same-sex marriages do not affect individual heterosexual marriages, the state's recognition of the former would affect the institution of marriage and society's ability to transmit its value effectively to younger generations. The relationship between a man and a woman is a fundamental institution whose purpose is the propagation of the species in humanity's collective interest. The procreational ability of heterosexual acts thus merits the state's protection. This bill is informed by dominant Judeo-Christian ethics, like much of federal and state law, but it would not violate separation of church and state. It simply would formalize into law what most Texans believe, that marriage is an esteemed institution between a man and a woman.

Recognizing same-sex marriages could lead to the recognition of bigamy, voluntary incest, pedophilia, and group marriage. If the state does not draw the line here, it would be difficult to draw anywhere. This bill is not hate-oriented, nor would it violate gay rights. It simply would define restrictions on marriage, which the state already has restricted from some minors, blood-related family members, and those already married.

**OPPONENTS
SAY:**

CSHB 38 would deny legal recognition of same-sex couples' commitment to each other. It would not prevent homosexual couples from loving one another, committing to each other, or marrying before God and family, nor would it change the legality of their sexual behavior. However, it would deny them important rights, such as hospital visitation and inheritance, that come from the state's recognition of marriage and that are granted automatically to married heterosexual spouses.

As recently as the 1950s, Texas had a similar law that prohibited recognition of interracial marriages performed in other states. The discriminatory nature of that law is clear in hindsight, yet now the Legislature is considering this bill that future generations will consider equally discriminatory because it would single out a group of people for differential treatment. When people

become accustomed to treating homosexuals differently for one purpose, it can seem more natural to treat them differently for other purposes. In this way, the bill would contribute to an atmosphere of discrimination and could lead to an increase in hate crimes.

Same-sex couples already are legally prohibited from marrying by state and federal law, and their legal unions can be ignored under the federal Defense of Marriage Act. CSHB 38 would do nothing more to prevent the recognition of same-sex marriage. In this context, the bill would seem a gratuitous effort to insult and demoralize same-sex couples and to convey that homosexual people are not worthy of the same respect as heterosexuals.

Tradition can be valuable but is not always justifiable. For example, democratic societies generally agree that the traditions of monarchy and slavery are better abandoned. Jurisdictions that openly tolerate nontraditional lifestyles are finding that they experience greater economic growth than others. Many private corporations have personnel policies based on equal opportunity and nondiscrimination, and some offer benefits for same-sex partners. In adopting this bill, Texas could discourage these companies from doing business in the state for fear that their policies would not be supported or enforced by the state's legal system.

CSHB 38 would violate privacy rights and blur the line between church and state. A constitutional democracy protects minorities from tyranny by the majority, regardless of the majority's political clout. It should not be the government's role to establish correct ideology or theology or to intervene in the private lives of adult citizens whose consensual actions harm no one. Texas traditionally has been a libertarian, freedom-cherishing state and should remain committed to keeping government out of adults' private lives.

The U.S. Constitution's "full faith and credit" clause exists for the purpose of preventing state lawmakers from making decisions about what governments in other states do. If Texas makes an exception to this responsibility, it could set a precedent for future constitutional violations. Texas expects other states to recognize its laws, and it should honor and enforce the laws of other states.

While a homosexual person today can appoint his or her partner as an agent, solicit a physician's directive, and use private contracts to establish and

protect his or her rights, seeking those protections is expensive. Same-sex partners married or united in other states should have these rights recognized automatically in Texas, as do heterosexual couples married in other states. Also, hospital and law enforcement personnel may be unfamiliar with the other legal directives and unwilling to enforce them vigorously.

Marriage is not under attack, but if the intent of CSHB 38 is to strengthen heterosexual marriages, it would fail. Adultery, violence, addiction, lack of commitment, and other ills that contribute to the breakdown of the traditional family all happen inside of heterosexual marriages. Better support services, education, and economic development could strengthen heterosexual marriages, but the bill would address none of those approaches. In fact, the bill would diminish the value of heterosexual marriage by establishing that the love and commitment between two people is less important than their sexual orientation. Encouraging commitments among people should be the goal of public policy, because committed people relieve burdens from the state and strengthen the social fabric.

Heterosexual unions should not be preferred at the expense of homosexual unions merely because the former may be procreative. Many heterosexual couples cannot have children, and others choose not to, but those marriages are protected no less than procreative marriages. Denying homosexual couples the protection of marriage on the grounds that they cannot conceive children naturally would be as senseless as denying that protection to heterosexual couples who cannot or do not conceive a child.

This bill would prevent courts from enforcing child-support and property orders from dissolved unions in other states, because enforcement implicitly would recognize the previous civil union and its dissolution. If enough states recognized civil unions, people would have the incentive to flee to Texas to avoid paying child-support and other liabilities. Also, this bill would prevent courts from ruling effectively about parental rights for same-sex couples who moved to Texas after having adopted a child in another jurisdiction. This would put children at risk and would threaten the bonds they had formed with their parents. Same-sex families exist, and their children deserve to be protected by having both parents' parental rights recognized.

NOTES: The committee substitute would expand the definition of a civil union, state

that same-sex marriages and civil unions are contrary to the state's public policy and void, and include findings about the sufficiency of existing legal means to secure rights for people with no familial relationship.

The identical companion bill, SB 7 by Wentworth, et. al., passed the Senate on April 15 by voice vote, with nine senators (Barrientos, Ellis, Gallegos, Hinojosa, Shapleigh, Van de Putte, West, Whitmire, and Zaffirini) asking to be recorded as voting nay. SB 7 was reported favorably, without amendment, by the House State Affairs Committee on April 23, making it eligible for consideration in lieu of CSHB 38.