

BILL ANALYSIS

C.S.H.B. 38
By: Chisum
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current state law prohibits issuing a marriage license for persons of the same sex. However, due to the Full Faith and Credit Clause of the United States Constitution, it is possible that Texas may be legally required to recognize civil unions performed in other states. This constitutional clause requires states to recognize the public acts, records, and judicial proceedings in other states. However, constitutional principles provide that one state may refuse to recognize a legal contract executed in another state if the contract is contrary to the public policy of the forum state. The purpose of C.S.H.B. 38 is to prohibit the recognition of a same-sex marriage or a civil union legitimized in another state.

RULEMAKING AUTHORITY

It is the opinion of the committee that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 38 amends Subchapter C, Chapter 6, of the Family Code to prohibit the state or an agency or political subdivision of the state from giving effect to a right or claim to any legal protection, benefit, or responsibility asserted as a result of a same-sex marriage or a civil union in this state or in any other jurisdiction. The bill also prohibits the state or an agency or political subdivision of the state from giving effect to a public act, record, or judicial proceeding that creates, recognizes, or validates a same-sex marriage or a civil union in this state or in any other jurisdiction. The bill provides that a same-sex marriage or a civil union is contrary to the public policy of, and is void in, this state. The bill contains legislative findings.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2003. The Act applies to a same-sex marriage or a civil union regardless of whether the marriage or civil union was entered into before, on, or after the effective date of the Act.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 38 adds new language that redefines the term "civil union" to include any relationship status other than marriage that is intended as an alternative to marriage or applies primarily to cohabitating persons, and grants to the parties of the relationship legal protections, benefits, or responsibilities granted to the spouses of a marriage. C.S.H.B. 38 adds new language to provide that same-sex marriages and civil unions are contrary to the state's public policy and are void in this state. The substitute adds legislative findings concerning existing mechanisms that may be used without the existence of any legally recognized familial relationships to protect legal interests. The substitute also adds new language to clarify that the Act applies to a same-sex marriage or a civil union regardless of whether the marriage or civil union was entered into before, on, or after the effective date of the Act.

BILL ANALYSIS

C.S.H.B. 38
By: Chisum
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current state law prohibits issuing a marriage license for persons of the same sex. However, due to the Full Faith and Credit Clause of the United States Constitution, it is possible that Texas may be legally required to recognize civil unions performed in other states. This constitutional clause requires states to recognize the public acts, records, and judicial proceedings in other states. However, constitutional principles provide that one state may refuse to recognize a legal contract executed in another state if the contract is contrary to the public policy of the forum state. The purpose of C.S.H.B. 38 is to prohibit the recognition of a same-sex marriage or a civil union legitimized in another state.

RULEMAKING AUTHORITY

It is the opinion of the committee that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 38 amends Subchapter C, Chapter 6, of the Family Code to prohibit the state or an agency or political subdivision of the state from giving effect to a right or claim to any legal protection, benefit, or responsibility asserted as a result of a same-sex marriage or a civil union in this state or in any other jurisdiction. The bill also prohibits the state or an agency or political subdivision of the state from giving effect to a public act, record, or judicial proceeding that creates, recognizes, or validates a same-sex marriage or a civil union in this state or in any other jurisdiction. The bill provides that a same-sex marriage or a civil union is contrary to the public policy of, and is void in, this state. The bill contains legislative findings.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2003. The Act applies to a same-sex marriage or a civil union regardless of whether the marriage or civil union was entered into before, on, or after the effective date of the Act.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 38 adds new language that redefines the term "civil union" to include any relationship status other than marriage that is intended as an alternative to marriage or applies primarily to cohabitating persons, and grants to the parties of the relationship legal protections, benefits, or responsibilities granted to the spouses of a marriage. C.S.H.B. 38 adds new language to provide that same-sex marriages and civil unions are contrary to the state's public policy and are void in this state. The substitute adds legislative findings concerning existing mechanisms that may be used without the existence of any legally recognized familial relationships to protect legal interests. The substitute also adds new language to clarify that the Act applies to a same-sex marriage or a civil union regardless of whether the marriage or civil union was entered into before, on, or after the effective date of the Act.

