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H.B. 636
135th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Whitted and Somani

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SUMMARY

- Allows for same-sex marriage in Ohio statutory law in accordance with federal law.
- Eliminates statutory declarations on the state of Ohio's public policy regarding same-sex marriage and the recognition or extension of benefits of legal marriage to nonmarital relationships.
- Prohibits Ohio and its political subdivisions from prohibiting marriage between individuals of different races.

DETAILED ANALYSIS

Same-sex marriage

Background

Currently, the marriage statute in the Revised Code states that marriage is allowed only between one man and one woman. However, the statute was struck down by the U.S. Supreme Court in *Obergefell v. Hodges*.¹ In *Obergefell*, the U.S. Supreme Court held that the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution require a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed in another state. *Obergefell* was later reaffirmed in *Pavan v. Smith*.² Under the U.S. Constitution's Supremacy Clause, federal law preempts state laws, and a court may require a state to refrain from enforcing a state law if the state law conflicts with the federal law.³

¹ 576 U.S. 644 (2015).

² 582 U.S. 563 (2017).

³ Article VI, Clause 2.

Consequently, the statute does not have any force or effect regarding the restrictions on same-sex marriage.

Under the bill

The bill, in provisions governing who may marry, replaces gendered language with gender neutral language. This has the effect of allowing same-sex marriage in statute. Under the bill, two persons (rather than one man and one woman, as in current law) who do not have a spouse (rather than husband or wife) living may enter into marriage (rather than be joined in marriage). Continuing law allows marriage only between two individuals who are at least 18 years old, unless consent for minor marriage is granted by a juvenile court, and who are not nearer of kin than second cousins.⁴

Additionally, the bill eliminates the following declarations:

- That same-sex marriage is against the state of Ohio’s strong public policy, has no legal force or effect regardless of the jurisdiction of the marriage, and, if attempted to be entered into in Ohio, is void ab initio⁵ and is not recognized.
- That the recognition or extension by the state of Ohio of the specific statutory benefits of legal marriage to nonmarital relationships is against the state of Ohio’s strong public policy.
- That any public act, record, or judicial proceeding of the state of Ohio or any other jurisdiction that extends the benefits of legal marriage to nonmarital relationships is void ab initio and is not recognized.⁶

Interracial marriage

Under the bill, the state of Ohio and its political subdivisions cannot prohibit marriage between individuals of different races.⁷

HISTORY

Action	Date
Introduced	06-27-24

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⁴ R.C. 3101.01(A); R.C. 3101.02, not in the bill.

⁵ “Void ab initio” means null from the beginning, as from the first moment when a contract is entered into. A contract is void ab initio if it seriously offends law or public policy, in contrast to a contract that is merely voidable at the election of one party to the contract. *Black’s Law Dictionary*, 7th ed. 1999.

⁶ R.C. 3101.01(B), repealed.

⁷ R.C. 3101.011.