

Senator D. Chris Buttars proposes the following substitute bill:

MARRIAGE RECOGNITION POLICY

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: D. Chris Buttars

LONG TITLE

General Description:

This bill states that the policy of this state is to only recognize as a marriage the union between a man and a woman.

Highlighted Provisions:

This bill:

- ▶ creates a marriage recognition policy for the state; and
- ▶ adds the requirement that applicants for a marriage license be a man and a woman.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

30-1-8, as last amended by Chapter 212, Laws of Utah 1995

ENACTS:

30-1-4.5, as enacted by Chapter 246, Laws of Utah 1987

30-1-4.1, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:



26 Section 1. Section 30-1-4.1 is enacted to read:

27 **30-1-4.1. Marriage recognition policy.**

28 (1) (a) It is the policy of this state to recognize as marriage only the legal union of a
29 man and a woman as provided in this chapter.

30 (b) Except for the relationship of marriage between a man and a woman recognized
31 pursuant to this chapter, this state will not recognize, enforce, or give legal effect to any law
32 creating any legal status, rights, benefits, or duties that are substantially equivalent to those
33 provided under Utah law to a man and a woman because they are married.

34 (2) Nothing in Subsection (1) impairs any contract or other rights, benefits, or duties
35 that are enforceable independently of this section.

36 Section 2. Section 30-1-4.5 is amended to read:

37 **30-1-4.5. Validity of marriage not solemnized.**

38 (1) A marriage which is not solemnized according to this chapter shall be legal and
39 valid if a court or administrative order establishes that it arises out of a contract between [~~two~~
40 consenting parties] a man and a woman who:

41 (a) are of legal age and capable of giving consent;

42 (b) are legally capable of entering a solemnized marriage under the provisions of this
43 chapter;

44 (c) have cohabited;

45 (d) mutually assume marital rights, duties, and obligations; and

46 (e) who hold themselves out as and have acquired a uniform and general reputation as
47 husband and wife.

48 (2) The determination or establishment of a marriage under this section must occur
49 during the relationship described in Subsection (1), or within one year following the
50 termination of that relationship. Evidence of a marriage recognizable under this section may be
51 manifested in any form, and may be proved under the same general rules of evidence as facts in
52 other cases.

53 Section 3. Section 30-1-8 is amended to read:

54 **30-1-8. Application for license -- Contents.**

55 (1) A marriage license may be issued by the county clerk to a man and a woman only
56 after an application has been filed in his office, requiring the following information:

57 (a) the full names of the [parties] man and the woman, including the maiden name of
58 the [female] woman;

59 (b) the Social Security numbers of the parties, unless the party has not been assigned a
60 number;

61 (c) the current address of each party;

62 (d) the date and place of birth (town or city, county, state or country, if possible);

63 (e) the names of their respective parents, including the maiden name of the mother;

64 (f) the birthplaces of fathers and mothers (town or city, county, state or country, if
65 possible); and

66 (g) the distinctive race or nationality of each of the parents.

67 (2) If the [female] woman is a widow, her maiden name shall be shown in brackets.

68 (3) If one or both of the parties is under 16 years of age, the clerk shall provide them
69 with a standard petition on a form approved by the Judicial Council to be presented to the
70 juvenile court to obtain the authorization required by Section 30-1-9.

71 (4) (a) The Social Security numbers obtained under the authority of this section may
72 not be recorded on the marriage license, and are not open to inspection as a part of the vital
73 statistics files.

74 (b) The Department of Health, Bureau of Vital Records and Health Statistics shall,
75 upon request, supply those Social Security numbers to the Office of Recovery Services within
76 the Department of Human Services.

77 (c) The Office of Recovery Services may not use any Social Security numbers obtained
78 under the authority of this section for any reason other than the administration of child support
79 services.

80 **Section 4. Effective date.**

81 If approved by two-thirds of all the members elected to each house, this bill takes effect
82 upon approval by the governor, or the day following the constitutional time limit of Utah
83 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
84 the date of veto override.

Legislative Review Note
as of 1-26-04 6:36 PM

This bill provides that the state recognizes marriage as being only between a man and a woman. This follows the pattern of over thirty other states who have passed similar statutes in recent years, none of which have been reviewed by the U.S. Supreme Court. The Supreme Court, however, has held that marriage is a fundamental right. *Zablocki v. Redhail*, 434 U.S. 374 (1978). The Court has also used due process and equal protection analyses to strike down state action addressing homosexuals. *Romer v. Evans*, 517 U.S. 620 (1996), *Lawrence v. Texas*, 123 S.Ct. 2472 (2003).

The recent decision of the Massachusetts Supreme Court in *Goodridge v. Department of Public Health*, 440 Mass. 309, 798 N.E.2d 941 (2003) has caused new debate over the constitutionality of these marriage statutes. Because the provision of Massachusetts' Constitution under which that case was decided is unique, its impact on Utah's debate is less clear. Article I, as amended by Article 106 of the Amendments to the Massachusetts Constitution states: ". . .Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin." Utah has no comparable provision in its Constitution upon which a like result might be constructed.

It would be for a court to decide if this law would withstand a challenge under the analyses used by the current U.S. Supreme Court.

Office of Legislative Research and General Counsel