

SB0081S02 compared with SB0081S01

~~text~~ shows text that was in SB0081S01 but was deleted in SB0081S02.

text shows text that was not in SB0081S01 but was inserted into SB0081S02.

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Senator Todd D. Weiler proposes the following substitute bill:

COUNTY CLERK AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: {} Todd D. Weiler

House Sponsor: {} _____

LONG TITLE

General Description:

This bill modifies provisions related to the solemnization of marriages.

Highlighted Provisions:

This bill:

- ▶ establishes requirements for solemnization of marriage when one or both participants are not physically present in the state;
- ▶ prohibits the use of a power of attorney to secure a marriage license for another individual;
- ▶ permits the use of a state identification card to be used to verify the age of a minor seeking a marriage license;
- ▶ requires parties to the marriage to consent to personal jurisdiction of the state and county for purposes of divorce or annulment if neither party is physically present in

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the state at the time of solemnization of the marriage:

- ▶ creates a criminal penalty for an officiant who knowingly or intentionally makes a false statement on a marriage certificate; and
- ▶ updates language for clarity.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-1-5, as last amended by Laws of Utah 2011, Chapter 297

30-1-7, as last amended by Laws of Utah 2021, Chapter 305

30-1-8, as last amended by Laws of Utah 2021, Chapter 305

30-1-9, as last amended by Laws of Utah 2021, Chapter 305

30-1-10, as last amended by Laws of Utah 2019, Chapter 317

30-1-11, as last amended by Laws of Utah 2019, Chapter 420

30-3-1, as last amended by Laws of Utah 1997, Chapter 47

30-3-4.5, as last amended by Laws of Utah 2010, Chapter 34

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

Section 1. Section **30-1-5** is amended to read:

30-1-5. Marriage solemnization -- Before unauthorized person -- Validity.

(1) A marriage solemnized before a person professing to have authority to perform marriages may not be invalidated for lack of authority, if consummated in the belief of the parties or either of them that the person had authority and that they have been lawfully married.

(2) [This] Except as otherwise explicitly provided by law, this section may not be construed to validate a marriage that:

~~(a)~~ is prohibited or void under Section 30-1-2[-]; or

~~(b)a~~ fails to meet the requirements of Section 30-1-7, as validated by a court with jurisdiction.

Section 2. Section **30-1-7** is amended to read:

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30-1-7. Marriage licenses -- Use within state -- Solemnization requirements -- Expiration.

(1) [~~No marriage may be~~] A marriage may not be solemnized in this state without a license issued by the county clerk of any county of this state.

(2) (a) A license issued within this state by a county clerk may only be used within this state.

(b) A license is considered used within this state if the officiant is physically present in the state at the time of solemnization of the marriage.

(3) A marriage is considered solemnized if:

(a) ~~{The}~~ the parties to the marriage have a valid marriage license;

(b) ~~{Each}~~ each party to the marriage willingly, and without duress, declares their intent to enter into the marriage;

(c) ~~{An}~~ an officiant pronounces the parties as married; {and}

(d) ~~{At}~~ at least two individuals 18 years old or older witness the declarations of intent and the pronouncement {,}; and

(e) when neither party to the marriage is physically present in the state at the time of solemnization of the marriage, the affidavits required under Subsection 30-1-10(1)(b) have been provided to the county clerk.

~~{3}~~ (4) A license that is not used within 32 days after the day on which the [~~licensed~~] license is issued is [~~void~~] invalid.

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

30-1-8. Application for license -- Contents -- Power of attorney not permitted.

(1) As used in this section, "minor" means the same as that term is defined in Section 30-1-9.

(2) A county clerk may issue a marriage license only after:

(a) the age, legal name, and identity of each applicant is verified; and

(b) an application is filed with the county clerk's office, requiring the following information:

~~{a}~~ (i) the full names of the applicants, including the maiden or bachelor name of each applicant;

~~{b}~~ (ii) the social security numbers of the applicants, unless an applicant has not been

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assigned a number;

~~[(c)]~~ (iii) the current address of each applicant;

~~[(d)]~~ (iv) the date and place of birth, including the town or city, county, state or country, if possible;

~~[(e)]~~ (v) the names of the applicants' respective parents, including the maiden name of a mother; and

~~[(f)]~~ (vi) the birthplaces of the applicants' respective parents, including the town or city, county, state or country, if possible.

(3) A power of attorney may not be used to secure a marriage license on behalf of a party to a marriage.

~~[(3)]~~ (4) (a) If one or both of the applicants is a minor, the county clerk shall provide each minor with a standard petition on a form provided by the Judicial Council to be presented to the juvenile court to obtain the authorization required by Section 30-1-9.

(b) The form described in Subsection ~~[(3)(a)]~~ (4)(a) shall include:

(i) all information described in Subsection ~~[(2)]~~ (2)(b);

(ii) in accordance with Subsection 30-1-9(2)(a), a place for the parent or legal guardian to indicate the parent or legal guardian's relationship to the minor;

(iii) an affidavit for the parent or legal guardian to acknowledge the penalty described in Section 30-1-9.1 signed under penalty of perjury;

(iv) an affidavit for each applicant regarding the accuracy of the information contained in the marriage application signed under penalty of perjury; and

(v) a place for the clerk to sign that indicates that the following have provided documentation to support the information contained in the form:

(A) each applicant; and

(B) the minor's parent or legal guardian.

~~[(4)]~~ (5) (a) The social security numbers obtained under the authority of this section may not be recorded on the marriage license, and are not open to inspection as a part of the vital statistics files.

(b) The Department of Health ~~{ and Human Services }~~, ~~Bureau of Vital Records and Health~~ and Human Services, Office of Vital Records and Statistics shall, upon request, supply the social security numbers to the Office of Recovery Services within the Department of Health

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and Human Services.

(c) The Office of Recovery Services may not use a social security number obtained under the authority of this section for any reason other than the administration of child support services.

Section 4. Section 30-1-9 is amended to read:

30-1-9. Marriage by minors -- Consent of parent or guardian -- Juvenile court authorization.

(1) For purposes of this section, "minor" means an individual that is 16 or 17 years old.

(2) (a) If at the time of applying for a license the applicant is a minor, and not before the minor is married, a license may not be issued without the signed consent of the minor's parent or legal guardian given in person to the clerk, except that:

(i) if the parents of the minor are divorced, consent shall be given by the parent having legal custody of the minor as evidenced by an oath of affirmation to the clerk;

(ii) if the parents of the minor are divorced and have been awarded joint custody of the minor, consent shall be given by the parent having physical custody of the minor the majority of the time as evidenced by an oath of affirmation to the clerk; or

(iii) if the minor is not in the custody of a parent, the legal guardian shall provide the consent and provide proof of guardianship by court order as well as an oath of affirmation.

(b) Each applicant and if an applicant is a minor, the minor's consenting parent or legal guardian, shall appear in person before the clerk and provide legal documentation to establish the following information:

(i) the legal relationship between the minor and the minor's parent or legal guardian;

(ii) the legal name and identity of the minor; and

(iii) the birth date of each applicant.

(c) An individual may present the following documents to satisfy a requirement described in Subsection (2)(b):

(i) for verifying the legal relationship between the minor and the minor's parent or legal guardian, one of the following:

(A) the minor's certified birth certificate with the name of the parent, and an official translation if the birth certificate is in a language other than English;

(B) a report of a birth abroad with the name of the minor and the parent;

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(C) a certified adoption decree with the name of the minor and the parent; or

(D) a certified court order establishing custody or guardianship between the minor and the parent or legal guardian;

(ii) for verifying the legal name and identity of the minor, one of the following:

(A) an expired or current passport;

(B) a driver's license;

(C) a certificate of naturalization;

(D) a military identification;

(E) a state identification card; or

~~(E)~~ (F) a government employee identification card from a federal, state, or municipal government; and

(iii) for verifying the birth date of each applicant, one of the following for each applicant:

(A) a certified birth certificate;

(B) a report of a birth abroad;

(C) a certificate of naturalization;

(D) a certificate of citizenship;

(E) a passport;

(F) a driver's license; or

(G) a state identification card.

(d) An individual may not use a temporary or altered document to satisfy a requirement described in Subsection (2)(b).

(3) (a) The minor and the parent or legal guardian of the minor shall obtain a written authorization to marry from:

(i) a judge of the court exercising juvenile jurisdiction in the county where either party to the marriage resides; or

(ii) a court commissioner as permitted by rule of the Judicial Council.

(b) Before issuing written authorization for a minor to marry, the judge or court commissioner shall determine:

(i) that the minor is entering into the marriage voluntarily; and

(ii) the marriage is in the best interests of the minor under the circumstances.

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(c) The judge or court commissioner shall require that both parties to the marriage complete premarital counseling, except the requirement for premarital counseling may be waived if premarital counseling is not reasonably available.

(d) The judge or court commissioner may require:

(i) that the minor continue to attend school, unless excused under Section 53G-6-204;

and

(ii) any other conditions that the court deems reasonable under the circumstances.

(e) The judge or court commissioner may not issue a written authorization to the minor if the age difference between both parties to the marriage is more than seven years.

(4) (a) The determination required in Subsection (3) shall be made on the record.

(b) Any inquiry conducted by the judge or commissioner may be conducted in chambers.

Section ~~{4}~~5. Section **30-1-10** is amended to read:

30-1-10. Affidavit before the clerk -- Criminal penalty.

(1) A county clerk may not issue a license until the county clerk receives:

(a) an affidavit [is ~~{}~~ made before ~~{}~~ provided to] the clerk, which shall be filed and preserved by the clerk, by a from at least one party applying for the license, showing that there is no lawful reason [in the way of] preventing the marriage;

~~(2) [; and~~

(b) if neither party to the marriage will be physically present in the state at the time of solemnization of the marriage, an affidavit from each party to the marriage stating that that party consents to personal jurisdiction of the state, and the county issuing the marriage license, for the purposes of filing a divorce or annulment of the marriage.

(2) A county clerk shall file and preserve each affidavit provided under this section.

(2)(3) A party who makes an affidavit described in Subsection (1), or a subscribing witness to the affidavit, who falsely swears in the affidavit is guilty of perjury and may be prosecuted and punished as provided in Title 76, Chapter 8, Part 5, Falsification in Official Matters.

Section ~~{5}~~6. Section **30-1-11** is amended to read:

30-1-11. Return of license after ceremony -- Penalty for failure to return -- Criminal penalty for false statement.

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(1) The individual solemnizing the marriage shall within 30 days after solemnizing the marriage return the license to the clerk of the county that issues the license, with a certificate of the marriage over the individual's signature, giving the date and place of celebration and the names of two or more witnesses present at the marriage.

(2) An individual described in Subsection (1) who fails to return the license is guilty of an infraction.

(3) An individual described in Subsection (1) who knowingly or intentionally makes a false statement on a certificate of marriage is guilty of perjury and may be prosecuted and punished as provided in Title 76, Chapter 8, Part 5, Falsification in Official Matters.

Section 7. Section 30-3-1 is amended to read:

30-3-1. Divorce proceedings -- Procedure -- Residence -- Grounds.

(1) Proceedings in divorce are commenced and conducted as provided by law for proceedings in civil causes, except as provided in this chapter

(2) The court may decree a dissolution of the marriage contract between the petitioner and respondent on the grounds specified in Subsection (3) in all cases where:

(a) the petitioner or respondent has been an actual and bona fide resident of this state and of the county where the action is brought[~~-, or if members~~];

(b) the petitioner is a member of the armed forces of the United States [~~who are not legal residents of this state, where the petitioner~~], is not a legal resident of this state, but has been stationed in this state under military orders[~~;~~] for three months [~~next prior to the~~] immediately before commencement of the action[~~;~~]; or

(c) both parties have consented to personal jurisdiction for divorce or annulment under Subsection 30-1-10(1)(b).

(3) Grounds for divorce:

(a) impotency of the respondent at the time of marriage;

(b) adultery committed by the respondent subsequent to marriage;

(c) willful desertion of the petitioner by the respondent for more than one year;

(d) willful neglect of the respondent to provide for the petitioner the common necessities of life;

(e) habitual drunkenness of the respondent;

(f) conviction of the respondent for a felony;

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(g) cruel treatment of the petitioner by the respondent to the extent of causing bodily injury or great mental distress to the petitioner;

(h) irreconcilable differences of the marriage;

(i) incurable insanity; or

(j) when the husband and wife have lived separately under a decree of separate maintenance of any state for three consecutive years without cohabitation.

(4) A decree of divorce granted under Subsection (3)(j) does not affect the liability of either party under any provision for separate maintenance previously granted.

(5) (a) A divorce may not be granted on the grounds of insanity unless:

(i) the respondent has been adjudged insane by the appropriate authorities of this or another state prior to the commencement of the action; and

(ii) the court finds by the testimony of competent witnesses that the insanity of the respondent is incurable.

(b) The court shall appoint for the respondent a guardian ad litem who shall protect the interests of the respondent. A copy of the summons and complaint shall be served on the respondent in person or by publication, as provided by the laws of this state in other actions for divorce, or upon his guardian ad litem, and upon the county attorney for the county where the action is prosecuted.

(c) The county attorney shall investigate the merits of the case and if the respondent resides out of this state, take depositions as necessary, attend the proceedings, and make a defense as is just to protect the rights of the respondent and the interests of the state.

(d) In all actions the court and judge have jurisdiction over the payment of alimony, the distribution of property, and the custody and maintenance of minor children, as the courts and judges possess in other actions for divorce.

(e) The petitioner or respondent may, if the respondent resides in this state, upon notice, have the respondent brought into the court at trial, or have an examination of the respondent by two or more competent physicians, to determine the mental condition of the respondent. For this purpose either party may have leave from the court to enter any asylum or institution where the respondent may be confined. The costs of court in this action shall be apportioned by the court.

Section 8. Section 30-3-4.5 is amended to read:

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30-3-4.5. Motion for temporary separation order.

(1) A petitioner may file an action for a temporary separation order without filing a petition for divorce by filing a petition for temporary separation and motion for temporary orders if:

(a) the petitioner is lawfully married to the respondent; and

(b) (i) both parties are residents of the state for at least 90 days prior to the date of filing[-]; or

(ii) both parties have consented to personal jurisdiction for divorce or annulment under Subsection 30-1-10(1)(b).

(2) The temporary orders are valid for one year from the date of the hearing, or until one of the following occurs:

(a) a petition for divorce is filed and consolidated with the petition for temporary separation; or

(b) the case is dismissed.

(3) If a petition for divorce is filed and consolidated with the petition for temporary separation, orders entered in the temporary separation shall continue in the consolidated case.

(4) Both parties shall attend the divorce orientation course described in Section 30-3-11.4 within 60 days of the filing of the petition, for petitioner, and within 45 days of being served, for respondent.

(5) Service shall be made upon respondent, together with a 20-day summons, in accordance with the rules of civil procedure.

(6) The fee for filing the petition for temporary separation orders is \$35. If either party files a petition for divorce within one year from the date of filing the petition for temporary separation, the separation filing fee shall be credited towards the filing fee for the divorce.

Section ~~6~~9. **Effective date.**

This bill takes effect on May 1, 2024.