

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2255:

O'Neal

AS INTRODUCED

An Act relating to marriage and family; creating the Oklahoma Defense of Marriage Act; amending 43 O.S. 2001, Sections 3 and 3.1, which relates to who may marry in Oklahoma; updating language; restricting marriage to only a male and female person; prohibiting recognition of marriages between certain persons from out of this state; prohibiting the recognition of common law marriage in Oklahoma; providing exception; prohibiting palimony actions; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Oklahoma Defense of Marriage Act".

SECTION 2. AMENDATORY 43 O.S. 2001, Section 3, is amended to read as follows:

Section 3. A. Any unmarried person ~~of the age of~~ who is at least eighteen (18) years ~~or upwards of age~~ and not otherwise disqualified is capable of contracting and consenting to marriage with a person of the opposite sex ~~but~~. Only a marriage between a male and female person shall be recognized and given effect in this state.

B. 1. Except as otherwise provided by this subsection, no person under the age of eighteen (18) years shall enter into the marriage relation, nor shall any license issue therefor, except:

- a. upon the consent and authority expressly given by the parent or guardian of such underage applicant in the presence of the authority issuing such license, ~~or on~~
- b. upon the written consent of the parent or guardian of such underage applicant executed and acknowledged in person before a judge of the district court or the court clerk of any county within the State of Oklahoma.—~~Provided,~~
- c. if ~~such~~ the parent or guardian resides outside of the State of Oklahoma ~~such,~~ upon the written consent ~~may be~~ of the parent or guardian executed before a judge or clerk of a court of record. ~~Such~~ The executed foreign consent shall be duly authenticated in the same manner as proof of documents from foreign jurisdictions.—~~Provided that,~~
- d. if the certificate of a duly licensed medical doctor or osteopath, acknowledged in the manner provided by law for the acknowledgment of deeds, and stating that such parent or guardian is unable by reason of health or incapacity to be present in person, is presented to such licensing authority, ~~the license may issue on~~ upon the written consent of ~~such~~ the parent or guardian, acknowledged in the same manner as the accompanying medical certificate.—~~Any such certificate and written permission shall be retained by the official issuing the marriage license; and provided that the license may issue and the marriage relation be entered into,~~
- e. if ~~such~~ the parent or guardian is on active duty with the Armed Forces of the United States, ~~on~~ upon the written permission of ~~such~~ the parent or guardian, acknowledged in the manner provided by law for

acknowledgment of deeds by military personnel authorized to administer oaths, ~~if such.~~ Such permission is shall be presented to such the licensing authority, accompanied by a certificate executed by a commissioned officer in command of ~~said the~~ applicant, to the effect that ~~said the~~ parent or guardian is on active duty in the Armed Forces of the United States. ~~Provided further, that in all cases where it is made to appear by, or~~

f. upon affidavit of three (3) reputable persons stating that both parents of ~~said the~~ minor are deceased, or mentally incompetent, or their whereabouts are unknown to the minor, and that no guardian has theretofore been appointed for ~~said the~~ minor, ~~the.~~ The judge of the district court issuing ~~said the~~ license may ~~in his discretion~~ consent to ~~said the~~ marriage in the same manner as in all cases in which consent may be given by a parent or guardian ~~and with the same effect.~~ ~~At the time of application for the license, the parent or guardian of such underage applicant or other person authorized by this section to give consent may sign a waiver, waiving the seventy-two-hour waiting period provided for in Section 5 of this title. Provided, however, every.~~

2. Every person under the age of sixteen (16) years is expressly forbidden and prohibited from entering into the marriage relation. ~~Provided, that this section shall not be construed to prevent the courts from authorizing the marriage of persons under the ages herein mentioned,~~ except when authorized by the court:

a. in settlement of ~~suits~~ a suit for seduction or paternity; ~~and the courts may also authorize the~~

~~marriage of persons under the ages herein mentioned  
when, or~~

b. if the unmarried female is pregnant, or has given birth to an illegitimate child, ~~whether or not any suits for seduction or paternity have been brought, provided that no court shall authorize the marriage of any male under the age of sixteen (16) or any female under the age of sixteen (16) when the unmarried female is pregnant unless~~ and at least one parent of each minor, or the guardian or custodian of such child, is present before the court and has an opportunity to present evidence in the event such parent, guardian, or custodian objects to the issuance of a marriage license, ~~and if.~~ If they are not present ~~said~~ the parent, guardian, or custodian may be given notice of the hearing at the discretion of the court.

3. Any certificate or written permission required by this subsection shall be retained by the official issuing the marriage license.

C. No marriage may be authorized when such marriage would be incestuous under this chapter.

SECTION 3. AMENDATORY 43 O.S. 2001, Section 3.1, is amended to read as follows:

Section 3.1 A marriage between persons of the same gender performed in another state, territory or country shall not be recognized as valid and binding in this state as of the date of the marriage.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3.2 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided for in this section, on and after November 1, 2004, a common law marriage shall not be recognized as a valid form of marriage in Oklahoma.

B. Any common law marriage recognized as valid in this state prior to November 1, 2004, shall continue to be recognized as valid in this state. A common law marriage recognized in another state shall not be recognized as valid and binding in this state in accordance with paragraph (3) of subsection (b) of Section 713 of Title 12 of the Oklahoma Statutes.

C. Palimony actions shall not be recognized in this state. Only a marriage pursuant to statute or a common law marriage shall be recognized for purposes of divorce actions in this state.

SECTION 5. This act shall become effective November 1, 2004.

49-2-7317          KSM          01/15/04