

**As Reported by the Senate Finance and Financial Institutions
Committee**

**125th General Assembly
Regular Session
2003-2004**

Sub. H. B. No. 272

**Representatives Seitz, McGregor, Calvert, Fessler, Wolpert, Hoops, Clancy,
Schmidt, Willamowski, Schneider, Setzer, Aslanides, Raga, Young, Wagner,
Webster, Buehrer, Daniels, Collier, Hagan, Cates, Schaffer, Gilb, Reidelbach,
Niehaus, Latta, Seaver, Faber, D. Evans, Flowers, Taylor, Grendell, Brinkman,
Blasdel, Distel, C. Evans, Gibbs, Jolivette, Martin, Raussen, Schlichter,
White, Widener
Senators Harris, Blessing, Amstutz, Carey, Hottinger**

A B I L L

To amend sections 3101.01 and 3105.12 of the Revised	1
Code to specifically declare that same-sex	2
marriages are against the strong public policy of	3
the state, to declare that the recognition or	4
extension by the state of the specific statutory	5
benefits of legal marriage to nonmarital	6
relationships is against the public policy of the	7
state, and to make other declarations regarding	8
same-sex marriages.	9

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3101.01 and 3105.12 of the Revised	10
Code be amended to read as follows:	11

Sec. 3101.01. <u>(A)</u> Male persons of the age of eighteen years,	12
and female persons of the age of sixteen years, not nearer of kin	13

than second cousins, and not having a husband or wife living, may 14
be joined in marriage. A marriage may only be entered into by one 15
man and one woman. A minor ~~must~~ shall first obtain the consent of 16
the minor's parents, surviving parent, parent who is designated 17
the residential parent and legal custodian of the ~~child~~ minor by a 18
court of competent jurisdiction, guardian, or any one of the 19
following who has been awarded permanent custody of the minor by a 20
court exercising juvenile jurisdiction: 21

~~(A)~~(1) An adult person; 22

~~(B)~~(2) The department of job and family services or any child 23
welfare organization certified by ~~such~~ the department; 24

~~(C)~~(3) A public children services agency. 25

A (B) For the purposes of division (A) of this section, a 26
minor shall not be required to obtain the consent of a parent who 27
resides in a foreign country, has neglected or abandoned ~~such~~ the 28
minor for a period of one year or longer immediately preceding the 29
minor's application for a marriage license, has been adjudged 30
incompetent, is an inmate of a state mental or correctional 31
institution, has been permanently deprived of parental rights and 32
responsibilities for the care of the ~~child~~ minor and the right to 33
have the ~~child~~ minor live with the parent and to be the legal 34
custodian of the ~~child~~ minor by a court exercising juvenile 35
jurisdiction, or has been deprived of parental rights and 36
responsibilities for the care of the ~~child~~ minor and the right to 37
have the ~~child~~ minor live with the parent and to be the legal 38
custodian of the ~~child~~ minor by the appointment of a guardian of 39
the person of the minor by the probate court or by ~~any other~~ 40
another court of competent jurisdiction. 41

(C)(1) Any marriage between persons of the same sex is 42
against the strong public policy of this state. Any marriage 43
between persons of the same sex shall have no legal force or 44

effect in this state and, if attempted to be entered into in this
state, is void ab initio and shall not be recognized by this
state.

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(2) Any marriage entered into by persons of the same sex in
any other jurisdiction shall be considered and treated in all
respects as having no legal force or effect in this state and
shall not be recognized by this state.

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(3) The recognition or extension by the state of the specific
statutory benefits of a legal marriage to nonmarital relationships
between persons of the same sex or different sexes is against the
strong public policy of this state. Any public act, record, or
judicial proceeding of this state, as defined in section 9.82 of
the Revised Code, that extends the specific statutory benefits of
legal marriage to nonmarital relationships between persons of the
same sex or different sexes is void ab initio. Nothing in division
(C)(3) of this section shall be construed to do either of the
following:

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(a) Prohibit the extension of specific benefits otherwise
enjoyed by all persons, married or unmarried, to nonmarital
relationships between persons of the same sex or different sexes,
including the extension of benefits conferred by any statute that
is not expressly limited to married persons, which includes but is
not limited to benefits available under Chapter 4117. of the
Revised Code;

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(b) Affect the validity of private agreements that are
otherwise valid under the laws of this state.

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(4) Any public act, record, or judicial proceeding of any
other state, country, or other jurisdiction outside this state
that extends the specific benefits of legal marriage to nonmarital
relationships between persons of the same sex or different sexes
shall be considered and treated in all respects as having no legal

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force or effect in this state and shall not be recognized by this
state.

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Sec. 3105.12. (A) Except as provided in division (B) of this
section, proof of cohabitation and reputation of the marriage of a
man and woman is competent evidence to prove their marriage, and,
in the discretion of the court, that proof may be sufficient to
establish their marriage for a particular purpose.

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(B)(1) On and after ~~the effective date of this amendment~~
October 10, 1991, except as provided in divisions (B)(2) and (3)
of this section, common law marriages are prohibited in this
state, and the marriage of a man and woman may occur in this state
only if the marriage is solemnized by a person described in
section 3101.08 of the Revised Code and only if the marriage
otherwise is in compliance with Chapter 3101. of the Revised Code.

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(2) Common law marriages that occurred in this state prior to
~~the effective date of this amendment~~ October 10, 1991, and that
have not been terminated by death, divorce, dissolution of
marriage, or annulment remain valid on and after ~~the effective~~
~~date of this amendment~~ October 10, 1991.

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(3) Common law marriages that satisfy all of the following
remain valid on and after ~~the effective date of this amendment~~
October 10, 1991:

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(a) They came into existence prior to ~~the effective date of~~
~~this amendment~~ October 10, 1991, or come into existence on or
after that date, in another state or nation that recognizes the
validity of common law marriages in accordance with all relevant
aspects of the law of that state or nation.

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(b) They have not been terminated by death, divorce,
dissolution of marriage, annulment, or other judicial
determination in this or another state or in another nation.

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(c) They are not otherwise deemed invalid under section 3101.01 of the Revised Code. 106
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(4) On and after ~~the effective date of this amendment~~ October 10, 1991, all references in the Revised Code to common law marriages or common law marital relationships, including the references in sections 2919.25, 3113.31, and 3113.33 of the Revised Code, shall be construed to mean only common law marriages as described in divisions (B)(2) and (3) of this section. 108
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Section 2. That existing sections 3101.01 and 3105.12 of the Revised Code are hereby repealed. 114
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Section 3. In enacting new division (C) of section 3101.01 of the Revised Code in this act, all the following apply: 116
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(A) The General Assembly declares and reaffirms the state of Ohio's historical commitment to the institution of marriage as a union between a man and a woman as husband and wife. 118
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(B) The General Assembly declares its intent to define marriage and clarify that relationships that are intended as substitutes for marriage, including but not limited to "civil unions" as provided for in Vt. Stat. Ann. tit. 15, §1202 (2003), will not be recognized in this state. It is not the intent of the General Assembly to prohibit the extension of specific benefits otherwise enjoyed by all persons, married or unmarried, to relationships between persons of the same sex or different sexes. 121
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(C) The General Assembly declares its intent not to make substantive changes in the law of this state that is in effect on the day prior to the effective date of this act with respect to the validity of marriages heretofore occurring within this state. 129
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