

2003 SENATE BILL 233

August 20, 2003 – Introduced by Senators S. FITZGERALD, REYNOLDS, ZIEN, STEPP, LEIBHAM, SCHULTZ, LAZICH, KANAVAS and ROESSLER, cosponsored by Representatives GUNDRUM, J. FITZGERALD, NASS, FREESE, KREIBICH, HINES, GROTHMAN, M. LEHMAN, NISCHKE, ALBERS, MONTGOMERY, LEMAHIEU, OTT, GOTTLIEB, F. LASEE, HUNDERTMARK, KESTELL, PETTIS, SERATTI, SUDER, LADWIG, WEBER, GUNDERSON, KRAWCZYK, LOTHIAN, HUEBSCH, FRISKE, PETROWSKI, TOWNS, VAN ROY, HONADEL, BIES, HAHN, OLSEN, D. MEYER, OWENS, TOWNSEND, M. WILLIAMS and VRAKAS. Referred to Committee on Judiciary, Corrections and Privacy.

1 **AN ACT** *to renumber and amend* 765.01; *to amend* 765.001 (2); and *to create*
2 765.01 (2), 990.01 (19p) and 990.01 (39) of the statutes; **relating to:** marriage
3 between one man and one woman.

Analysis by the Legislative Reference Bureau

Current law provides that marriage is a civil contract that creates the legal status of husband and wife. The consent of the parties is essential, and the parties must have the legal capacity to enter into a contract. In addition, current law prohibits certain marriages, such as a marriage between persons who are nearer of kin than second cousins or a marriage in which at least one of the persons was divorced less than six months before the marriage. If a person who is prohibited from marrying in this state leaves the state for the purpose of contracting a marriage in a state where the marriage is valid, that marriage is void in this state. Such a person will be considered to have left this state for the purpose of marrying in the other state if he or she lived in this state within 12 months before marrying in the other state and resumed residence in this state within 18 months after leaving this state, or if he or she maintained a residence in this state the entire time that he or she was away.

This bill specifies that marriage is a civil contract between one man and one woman. The bill provides that only marriage between one man and one woman will be recognized as valid in this state, regardless of whether a marriage took place in a jurisdiction that defined marriage other than between one man and one woman as valid, and regardless of whether the statute regarding marrying in another state to circumvent the marriage laws of this state applies to a marriage. The bill provides

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definitions for “spouse” and “marriage” for purposes of statutory construction. A “spouse” is defined as a party to a marriage, and “marriage” is defined as a civil contract between one man and one woman that creates the legal status for the parties of husband and wife. Finally, the bill adds, to an introductory statement in current law addressing the seriousness and significance of marriage, that it is this state’s public policy that marriage may be contracted only between one man and one woman.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 765.001 (2) of the statutes is amended to read:

2 765.001 (2) INTENT. It is the intent of chs. 765 to 768 to promote the stability
3 and best interests of marriage and the family. It is the intent of the legislature to
4 recognize the valuable contributions of both spouses during the marriage and at
5 termination of the marriage by dissolution or death. Marriage is the institution that
6 is the foundation of the family and of society. Its stability is basic to morality and
7 civilization, and of vital interest to society and the state. The consequences of the
8 marriage contract are more significant to society than those of other contracts, and
9 the public interest must be taken into account always. The seriousness of marriage
10 makes adequate premarital counseling and education for family living highly
11 desirable and courses thereon are urged upon all persons contemplating marriage.
12 The impairment or dissolution of the marriage relation generally results in injury
13 to the public wholly apart from the effect upon the parties immediately concerned.
14 It is the public policy of this state that marriage may be contracted only between one
15 man and one woman. Under the laws of this state, marriage is a legal relationship
16 between 2 equal persons, a husband and wife, who owe to each other mutual
17 responsibility and support. Each spouse has an equal obligation in accordance with
18 his or her ability to contribute money or services or both which are necessary for the

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1 adequate support and maintenance of his or her minor children and of the other
2 spouse. No spouse may be presumed primarily liable for support expenses under this
3 subsection.

4 **SECTION 2.** 765.01 of the statutes is renumbered 765.01 (1) and amended to
5 read:

6 **765.01 (1)** Marriage, so far as its validity at law is concerned, is a civil contract
7 between one man and one woman, to which the consent of the parties capable in law
8 of contracting is essential, and which creates the legal status of husband and wife.

9 **SECTION 3.** 765.01 (2) of the statutes is created to read:

10 765.01 **(2)** Regardless of whether s. 765.04 applies and regardless of whether
11 a marriage takes place in another jurisdiction in which marriage other than between
12 one man and one woman is defined as valid, only marriage between one man and one
13 woman shall be recognized as valid in this state.

14 **SECTION 4.** 990.01 (19p) of the statutes is created to read:

15 990.01 **(19p)** MARRIAGE. “Marriage” means a civil contract between one man
16 and one woman that creates the legal status for the parties of husband and wife.

17 **SECTION 5.** 990.01 (39) of the statutes is created to read:

18 990.01 **(39)** SPOUSE. “Spouse” means a party to a marriage.

19 (END)