

# HOUSE BILL No. 1041

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 3-5-7-4; IC 16-19-5-2; IC 31-11; IC 31-14-7-1; IC 33-32-5.

**Synopsis:** Marriage. Eliminates the requirement that: (1) individuals obtain a marriage license before being married; (2) a marriage be solemnized by an individual specified by state law; and (3) a marriage license be filed with a circuit court clerk and the state department of health. Provides for marriage by marriage contract by any two individuals who are competent to contract in Indiana or otherwise permitted to marry in Indiana.

**Effective:** July 1, 2016.

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January 5, 2016, read first time and referred to Committee on Judiciary.

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Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

# HOUSE BILL No. 1041

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 3-5-7-4 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2016]: Sec. 4. (a) For purposes of placement of  
3 a candidate's name on the ballot, a candidate's legal name is determined  
4 under this section.  
5 (b) Except as provided in subsection (c), a candidate's legal name is  
6 considered to be the name shown on the candidate's birth certificate.  
7 (c) If a candidate:  
8 (1) uses a name after marriage as described in subsection (d); or  
9 (2) takes a name through a judicial proceeding that is different  
10 from the name shown on the candidate's birth certificate;  
11 the most recent name used after marriage or taken in the judicial  
12 proceeding is considered to be the candidate's legal name.  
13 (d) A name a candidate uses after marriage is considered the  
14 candidate's legal name if the name satisfies any of the following:  
15 (1) The name is the name appearing on the candidate's birth  
16 certificate.  
17 (2) The name is the name used by the candidate as an applicant



1 for the marriage license **or on a marriage contract.**

2 (3) The name is any combination of the names the candidate and  
3 the candidate's spouse used as applicants for their marriage  
4 license **or a marriage contract.**

5 SECTION 2. IC 16-19-5-2 IS AMENDED TO READ AS  
6 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. In addition to other  
7 fees provided by this title, the state department shall charge and collect  
8 the following fees:

9 (1) For performance of any standard serological test, ~~for an~~  
10 ~~applicant for a marriage license~~; two dollars and fifty cents  
11 (\$2.50).

12 (2) Fees prescribed in IC 16-19-3-21.

13 SECTION 3. IC 31-11-0.1 IS REPEALED [EFFECTIVE JULY 1,  
14 2016]. (Legislative Intent).

15 SECTION 4. IC 31-11-0.2 IS ADDED TO THE INDIANA CODE  
16 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
17 JULY 1, 2016]:

18 **Chapter 0.2. Civil Recognition of Marriage**

19 **Sec. 1. A marriage is legally created and shall be recognized for**  
20 **all legal purposes in Indiana if:**

21 (1) **the manner in which it was entered into complies with the**  
22 **law governing marriage in Indiana, in force at the time of**  
23 **formation; and**

24 (2) **under the law governing marriage in Indiana, in force at**  
25 **the time of formation, the parties to the marriage have the**  
26 **general capacity to enter into a contract in Indiana or are**  
27 **otherwise permitted by Indiana law to marry.**

28 **Sec. 2. This article does not prohibit individuals being married**  
29 **from mutually agreeing to engage in additional procedures not**  
30 **required by this article as part of a marriage ceremony.**

31 **Sec. 3. This article does not prohibit a religious organization**  
32 **from imposing additional procedures or other requirements for**  
33 **individuals to be considered married for the religious purposes of**  
34 **the religious organization.**

35 **Sec. 4. (a) After June 30, 2016, the clerk of a circuit court may**  
36 **not issue a marriage license, and solemnization of a marriage**  
37 **contract in conformity with IC 31-11-4 (repealed) and IC 31-11-6**  
38 **(repealed) is not required.**

39 (b) **Subject to subsections (c) and (d), this article, as effective**  
40 **after June 30, 2016, applies to marriages and marriage contracts**  
41 **entered into after June 30, 2016, only if at least one (1) of the**  
42 **individuals entering into the marriage is a resident of Indiana at**



1 the time the marriage and marriage contract are entered into  
2 under IC 31-11-3.5.

3 (c) Notwithstanding the repeal of IC 31-11-4 and IC 31-11-6,  
4 effective July 1, 2016, two (2) individuals to whom a marriage  
5 license was issued after May 1, 2016, and before July 1, 2016, may  
6 elect to have a marriage solemnized and recorded after June 30,  
7 2016, and before the date on which the marriage license would  
8 otherwise expire, in conformity with IC 31-11-4 (repealed July 1,  
9 2016) and IC 31-11-6 (repealed July 1, 2016). For purposes of this  
10 subsection, IC 31-11-4 (repealed July 1, 2016) and IC 31-11-6  
11 (repealed July 1, 2016) apply to the expiration of the marriage  
12 license, the individual solemnizing the marriage, the clerks of the  
13 circuit court, and the state department of health to the same extent  
14 as if these provisions had not been repealed.

15 (d) This article does not apply to a marriage or marriage  
16 contract formed under the laws of another jurisdiction.

17 SECTION 5. IC 31-11-1-1 IS REPEALED [EFFECTIVE JULY 1,  
18 2016]. Sec. 4. (a) Only a female may marry a male. Only a male may  
19 marry a female.

20 (b) A marriage between persons of the same gender is void in  
21 Indiana even if the marriage is lawful in the place where it is  
22 solemnized.

23 SECTION 6. IC 31-11-1-3 IS AMENDED TO READ AS  
24 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. Two (2) individuals  
25 may not marry each other if either individual has a husband or wife  
26 spouse who is alive.

27 SECTION 7. IC 31-11-1-6 IS AMENDED TO READ AS  
28 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. (a) Two (2)  
29 individuals may marry each other if:

30 (1) the individuals are not prohibited from marrying for a reason  
31 set forth in this article (**other than age under section 4 of this**  
32 **chapter and competency to contract under IC 31-11-3.5-3**);  
33 and

34 (2) a circuit or superior court of the county of residence of either  
35 individual considers the information required to be submitted by  
36 subsection (b) and authorizes the clerk of the circuit court to issue  
37 the individuals a marriage license. and authorizes the waiver of  
38 the age and competency requirements.

39 (b) A court may not authorize the clerk of the circuit court to issue  
40 a marriage license waiver under subsection (a) unless:

41 (1) the individuals have filed with the court a verified petition that  
42 includes allegations that:



- 1 (A) ~~the one (1) of the individuals is a female who~~ is at least  
 2 fifteen (15) years of age;  
 3 (B) the female is pregnant or is a mother;  
 4 (C) each of the individuals who is less than eighteen (18) years  
 5 of age has received the consent required by IC 31-11-2;  
 6 (D) the **other individual is a male who** is at least fifteen (15)  
 7 years of age and is either:  
 8 (i) the putative father of the expected child of the female; or  
 9 (ii) the father of the female's child; and  
 10 (E) the individuals desire to marry each other;  
 11 (2) the court has provided notice of the hearing required by this  
 12 section to both parents of both petitioners or, if applicable to  
 13 either petitioner:  
 14 (A) to the legally appointed guardian or custodian of a  
 15 petitioner; or  
 16 (B) to one (1) parent of a petitioner if the other parent:  
 17 (i) is deceased;  
 18 (ii) has abandoned the petitioner;  
 19 (iii) is mentally incompetent;  
 20 (iv) is an individual whose whereabouts is unknown; or  
 21 (v) is a noncustodial parent who is delinquent in the  
 22 payment of court ordered child support on the date the  
 23 petition is filed;  
 24 (3) a hearing is held on the petition in which the petitioners and  
 25 interested persons, including parents, guardians, and custodians,  
 26 are given an opportunity to appear and present evidence; and  
 27 (4) the allegations of the petition filed under subdivision (1) have  
 28 been proven.  
 29 (c) ~~A court's authorization granted under subsection (a):~~  
 30 ~~(1) constitutes part of the confidential files of the clerk of the~~  
 31 ~~circuit court; and~~  
 32 ~~(2) may be inspected only by written permission of a circuit,~~  
 33 ~~superior, or juvenile court.~~  
 34 **(c) The court may seal the file at the request of the petitioning**  
 35 **individuals.**  
 36 SECTION 8. IC 31-11-2-3 IS AMENDED TO READ AS  
 37 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 3. (a) An individual  
 38 who is less than eighteen (18) years of age may marry if:  
 39 (1) the individual petitions the judge of the circuit or superior  
 40 court of a county that is:  
 41 (A) the county of residence of the individual or the county of  
 42 residence of the individual that the individual intends to



- 1 marry; or
- 2 (B) a county that adjoins a county described in clause (A);
- 3 (2) the judge of the circuit or superior court ~~directs the clerk of~~ **authorizes the** individuals who
- 4 ~~the circuit court to issue the~~ **authorizes the** individuals who
- 5 intend to marry each other a ~~license to marry~~ without obtaining
- 6 the consent required by section 1 of this chapter; and
- 7 (3) the individual is not prohibited from marrying for a reason set
- 8 forth in IC 31-11-1.
- 9 (b) The petition made under subsection (a)(1) may be made in
- 10 writing or orally. The judge of the court may conduct investigations and
- 11 hold hearings on the petition. The judge may, by written order, ~~direct~~
- 12 ~~the clerk of the circuit court to issue a marriage license~~ **authorize the**
- 13 **individuals to marry** under subsection (a)(2) if the judge:
- 14 (1) considers the facts relevant to the issue presented by the
- 15 petition;
- 16 (2) finds that good and sufficient reason for the order has been
- 17 shown; and
- 18 (3) finds that the order is in the best interest of all persons
- 19 concerned with the issues raised in the petition.
- 20 SECTION 9. IC 31-11-3.5 IS ADDED TO THE INDIANA CODE
- 21 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 22 JULY 1, 2016]:
- 23 **Chapter 3.5. Formation of Marriage**
- 24 **Sec. 1. Two (2) individuals who are not prohibited from**
- 25 **marrying each other for a reason set forth in this article may**
- 26 **marry each other by entering into a marriage contract in**
- 27 **conformity with this article.**
- 28 **Sec. 2. A marriage contract must be in writing.**
- 29 **Sec. 3. Except as permitted by this article, the two (2)**
- 30 **individuals being married must be generally competent in Indiana**
- 31 **to enter into enforceable contracts.**
- 32 **Sec. 4. A marriage contract must be signed by both individuals**
- 33 **being married in the presence of each other and in the presence of**
- 34 **at least two (2) other individuals who are attesting witnesses.**
- 35 **Sec. 5. (a) Both witnesses to the marriage contract must sign the**
- 36 **marriage contract and attest under penalties of perjury that:**
- 37 **(1) the individuals being married who sign the marriage**
- 38 **contract are the individuals named in the marriage contract;**
- 39 **(2) the individuals being married who sign the marriage**
- 40 **contract declared in the witnesses' presence that the**
- 41 **individuals voluntarily and, based on each party's own free**
- 42 **will, agree to enter into the marriage and the provisions of the**



1 marriage contract; and

2 (3) to the best of each witness's knowledge and belief, the  
3 individuals being married are not prohibited by this article  
4 from becoming married.

5 (b) An attestation under subsection (a) may be in any form that  
6 states with reasonable certainty the facts specified in subsection  
7 (a).

8 (c) Both witnesses must sign the marriage contract as witnesses  
9 in the presence of the individuals being married and each other.

10 (d) Any individual competent to be a witness generally in  
11 Indiana may be an attesting witness to the formation of a marriage  
12 contract, and any subsequent death or incompetency does not  
13 invalidate the validity of the marriage or the marriage contract.

14 Sec. 6. A marriage contract must state with reasonable certainty  
15 the names of the two (2) individuals being married and the  
16 individuals witnessing the formation of the marriage contract.

17 Sec. 7. A marriage contract must include a statement that  
18 expresses with reasonable certainty that the two (2) individuals  
19 being married voluntarily and, based on each party's own free will,  
20 mutually agree to become married.

21 Sec. 8. Subject to this article, a marriage contract may include  
22 other terms and conditions, including any term or condition that  
23 may be included in a premarital agreement subject to IC 31-11-3.

24 Sec. 9. Subject to this article, a marriage contract may include  
25 other declarations, including birthplace, residence, age, names of  
26 dependent children, date on which the marriage contract was  
27 entered into, court proceedings under IC 31-11-1-6, or consents  
28 required under IC 31-11-2. Failure to include these declarations  
29 does not void a marriage or a marriage contract.

30 Sec. 10. A marriage contract is enforceable without  
31 consideration.

32 Sec. 11. The marriage and the marriage contract for the  
33 marriage are effective when signed in accordance with section 5 of  
34 this chapter.

35 Sec. 12. Any statute of limitations applicable to an action  
36 asserting a claim for relief related to a provision of a marriage  
37 contract is tolled during the marriage of the parties to the  
38 agreement. However, equitable defenses limiting the time for  
39 enforcement, including laches and estoppel, are available to either  
40 party.

41 Sec. 13. A marriage contract may be submitted to an entity  
42 requesting proof of marriage in lieu of a marriage license.



1 SECTION 10. IC 31-11-4 IS REPEALED [EFFECTIVE JULY 1,  
2 2016]. (Marriage Licenses and Certificates).

3 SECTION 11. IC 31-11-6 IS REPEALED [EFFECTIVE JULY 1,  
4 2016]. (Authority to Solemnize Marriages).

5 SECTION 12. IC 31-11-7-5 IS ADDED TO THE INDIANA CODE  
6 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY  
7 1, 2016]: **Sec. 5. A spouse is not liable for the contracts or torts of**  
8 **the individual's other spouse.**

9 SECTION 13. IC 31-11-8-2 IS AMENDED TO READ AS  
10 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. A marriage is void  
11 if either party to the marriage had a ~~wife or husband~~ **spouse** who was  
12 living when the marriage was solemnized.

13 SECTION 14. IC 31-11-8-6 IS AMENDED TO READ AS  
14 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. A marriage is void  
15 if the parties to the marriage:

16 (1) are residents of Indiana;

17 (2) had their marriage solemnized in another state with the intent  
18 to:

19 (A) evade IC 31-11-4-4 (**before its repeal on July 1, 2016**),  
20 **or** IC 31-11-4-11 (**before its repeal on July 1, 2016**), or  
21 IC 31-7-3-3 or IC 31-7-3-10 (before their repeal); and

22 (B) subsequently return to Indiana and reside in Indiana; and  
23 (3) without having established residence in another state in good  
24 faith, return to Indiana and reside in Indiana after the marriage is  
25 solemnized.

26 SECTION 15. IC 31-11-8-7 IS ADDED TO THE INDIANA CODE  
27 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY  
28 1, 2016]: **Sec. 7. A marriage and a marriage contract are void if a**  
29 **party to the marriage contract proves that the party did not**  
30 **execute the marriage contract voluntarily and based on the party's**  
31 **own free will.**

32 SECTION 16. IC 31-11-10.4 IS ADDED TO THE INDIANA  
33 CODE AS A **NEW CHAPTER TO READ AS FOLLOWS**  
34 [EFFECTIVE JULY 1, 2016]:

35 **Chapter 10.4. Void Marriage Contract Provisions; Modification**  
36 **of Marriage Contracts**

37 **Sec. 1. A provision of a marriage contract that limits the**  
38 **duration of a marriage is void.**

39 **Sec. 2. A provision of a marriage contract that limits or waives**  
40 **the duty of support under the law to a spouse during the duration**  
41 **of the marriage is void.**

42 **Sec. 3. A provision of a marriage contract that limits or waives**





1 the duty of support under the law to a child of the spouses,  
2 including an adopted child, during or after a marriage is void.

3 **Sec. 4. A provision of a marriage contract that adversely affects**  
4 **the right of a child to support is void.**

5 **Sec. 5. A provision of a marriage contract that violates public**  
6 **policy or a statute imposing a criminal penalty, including the**  
7 **personal rights and obligations of the parties, is void.**

8 **Sec. 6. A provision of a marriage contract that limits or waives**  
9 **the application of IC 31-15 to the termination of a marriage or the**  
10 **powers of a judge under IC 31-15 to approve the terms of a legal**  
11 **separation or dissolution of marriage is void. However, except for**  
12 **a term or condition that is void or voided under this article, after**  
13 **marriage, a provision of a marriage contract that does not**  
14 **terminate the marriage may be amended or revoked by a written**  
15 **agreement signed by the parties. The amended agreement or the**  
16 **revocation is enforceable without consideration.**

17 SECTION 17. IC 31-11-10.6 IS ADDED TO THE INDIANA  
18 CODE AS A NEW CHAPTER TO READ AS FOLLOWS  
19 [EFFECTIVE JULY 1, 2016]:

20 **Chapter 10.6. Voidable Marriage Contract Provisions**

21 **Sec. 1. (a) A provision of a marriage contract, including an**  
22 **amendment or revocation of a provision of the marriage contract**  
23 **after marriage, is voidable if the provision was unconscionable**  
24 **when the agreement was executed.**

25 **(b) If:**

26 **(1) a provision of a marriage contract modifies or eliminates**  
27 **spousal maintenance; and**

28 **(2) the modification or elimination causes one (1) party to the**  
29 **agreement extreme hardship under circumstances not**  
30 **reasonably foreseeable at the time of the execution of the**  
31 **marriage contract;**

32 **a court, notwithstanding the terms of the agreement, may require**  
33 **the other party to provide spousal maintenance to the extent**  
34 **necessary to avoid extreme hardship.**

35 **(c) A court shall decide an issue of unconscionability of a**  
36 **provision of a marriage contract as a matter of law.**

37 **(d) If:**

38 **(1) requested by a party against whom a provision in the**  
39 **marriage contract applies;**

40 **(2) the provision of the marriage contract is unconscionable;**  
41 **and**

42 **(3) required to provide appropriate relief;**



1 **a court may void the marriage.**

2 SECTION 18. IC 31-11-11-1, AS AMENDED BY P.L.158-2013,  
3 SECTION 307, IS AMENDED TO READ AS FOLLOWS  
4 [EFFECTIVE JULY 1, 2016]: Sec. 1. A person who knowingly  
5 furnishes false information to a clerk of the circuit court when the  
6 person applies for a marriage license under IC 31-11-4 (**repealed July**  
7 **1, 2016**) commits a Level 6 felony.

8 SECTION 19. IC 31-11-11-3, AS AMENDED BY P.L.158-2013,  
9 SECTION 309, IS AMENDED TO READ AS FOLLOWS  
10 [EFFECTIVE JULY 1, 2016]: Sec. 3. An applicant for a marriage  
11 license who **before July 1, 2016**, knowingly furnishes false  
12 information concerning the applicant's physical condition to the clerk  
13 of a circuit court commits a Level 6 felony.

14 SECTION 20. IC 31-11-11-5 IS AMENDED TO READ AS  
15 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 5. A person who:

- 16 (1) is authorized to solemnize marriages by IC 31-11-6 (**before its**  
17 **repeal**); and  
18 (2) solemnizes a marriage in violation of this article (**as effective**  
19 **before July 1, 2016**) or **as provided in IC 31-11-0.2-4**;  
20 commits a Class C infraction.

21 SECTION 21. IC 31-11-11-6 IS AMENDED TO READ AS  
22 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. A person who:

- 23 (1) attempts to solemnize a marriage **as provided in IC 31-11-4**  
24 **(repealed) or IC 31-11-0.2-4**; and  
25 (2) is not authorized to solemnize marriages by IC 31-11-6  
26 **(before its repeal)**;  
27 commits a Class B misdemeanor.

28 SECTION 22. IC 31-11-11-8 IS AMENDED TO READ AS  
29 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 8. A person who:

- 30 (1) solemnizes a marriage; and  
31 (2) fails to file the marriage license **that was issued before July**  
32 **1, 2016**, and a duplicate marriage certificate with the clerk of the  
33 circuit court not later than ninety (90) days after the date the  
34 marriage was solemnized;  
35 commits a Class C infraction.

36 SECTION 23. IC 31-14-7-1 IS AMENDED TO READ AS  
37 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. A man is presumed  
38 to be a child's biological father if:

- 39 (1) the:  
40 (A) man and the child's biological mother are or have been  
41 married to each other; and  
42 (B) child is born during the marriage or not later than three



- 1           hundred (300) days after the marriage is terminated by death,  
 2           annulment, or dissolution;  
 3       (2) the:  
 4           (A) man and the child's biological mother attempted to marry  
 5           each other by a marriage ~~solemnized~~ in apparent compliance  
 6           with the law, even though the marriage:  
 7               (i) is void under ~~IC 31-11-8-2, IC 31-11-8-3, IC 31-11-8-4,~~  
 8               ~~or IC 31-11-8-6; IC 31-11-8;~~ or  
 9               (ii) is voidable under IC 31-11-9; and  
 10           (B) child is born during the attempted marriage or not later  
 11           than three hundred (300) days after the attempted marriage is  
 12           terminated by death, annulment, or dissolution; or  
 13       (3) the man undergoes a genetic test that indicates with at least a  
 14           ninety-nine percent (99%) probability that the man is the child's  
 15           biological father.  
 16       SECTION 24. IC 33-32-5 IS REPEALED [EFFECTIVE JULY 1,  
 17       2016]. (Marriage Licenses and Distress Sales).

