House File 399 - Introduced

A BILL FOR

1 An Act relating to the validity of common law marriages in the
2   state.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. **595.21 Common law marriage ——**
2 **validity.**
3 1. A common law marriage contracted on or after July 1,
4 2017, is not valid in this state.
5 2. *a.* A valid common law marriage contracted prior to July
6 1, 2017, that has not been terminated by death, dissolution of
7 marriage, or annulment, is valid on or after July 1, 2017.
8 *b.* (1) All of the following requirements must be met for
9 a common law marriage contracted prior to July 1, 2017, to be
10 valid:
11 (a) The parties to the common law marriage had the capacity
12 to enter into the marriage relationship at the time the parties
13 entered into the marriage relationship.
14 (b) The party asserting the claim shall prove all of the
15 following elements relative to the parties by a preponderance
16 of the evidence:
17 (i) A present intent and mutual agreement of the parties to
18 be married.
19 (ii) Continuous cohabitation of the parties as spouses.
20 (iii) A public declaration or a general and substantial
21 holding out to the public by the parties that the parties are
22 spouses.
23 (2) A specific duration relative to the existence of a
24 common law marriage is not necessary to establish a valid
25 common law marriage.
26 (3) The burden of proof to establish a valid common law
27 marriage is on the party asserting the claim.
28 Sec. 2. Section 252A.3, subsection 6, Code 2017, is amended
29 to read as follows:
30 6. A child or children born of parents who held or hold
31 themselves out as husband and wife by virtue of a <u>valid</u>
32 common law marriage <u>pursuant to section 595.21</u> are deemed the
33 legitimate child or children of both parents.
34 Sec. 3. Section 252A.3, subsection 7, paragraph a,
35 unnumbered paragraph 1, Code 2017, is amended to read as

1 follows:

2 A child born of parents who at any time prior to the birth
3 of the child held themselves out as spouses by virtue of a
4 <u>valid</u> common law marriage <u>pursuant to section 595.21</u> is deemed
5 the legitimate child of both parents, if all of the following
6 conditions are met:

7 Sec. 4. Section 252A.3, subsection 8, Code 2017, is amended
8 to read as follows:

9 8. A man or woman who was or is held out as the person's
10 spouse by a person by virtue of a <u>valid</u> common law marriage
11 <u>pursuant to section 595.21</u> is deemed the legitimate spouse of
12 such person.

13 <div align="center">EXPLANATION</div>

14 **The inclusion of this explanation does not constitute agreement with**
15 **the explanation's substance by the members of the general assembly.**

16 This bill relates to common law marriage in the state.
17 The bill provides that a common law marriage contracted on
18 or after July 1, 2017, is not valid in this state. However,
19 a valid common law marriage contracted prior to July 1, 2017,
20 that has not been terminated by death, dissolution of marriage,
21 or annulment, is valid on or after July 1, 2017.
22 The bill provides that for a common law marriage contracted
23 prior to July 1, 2017, to be valid, the parties to the common
24 law marriage must have had the capacity to enter into the
25 marriage relationship at the time the parties entered into
26 the marriage relationship, and, all of the following elements
27 relative to the parties must be proven by the party asserting
28 the claim by a preponderance of the evidence: a present
29 intent and mutual agreement of the parties to be married;
30 continuous cohabitation of the parties as spouses; and a public
31 declaration or a general and substantial holding out to the
32 public by the parties that the parties are spouses. A valid
33 common law marriage does not require a specific duration, and
34 the burden of proof to establish a valid common law marriage is
35 on the party asserting the claim.

1   The bill also makes conforming changes in the Code to reflect
2 the provisions of the bill relative to Code chapter 252A
3 (support of dependents).