



MATTHEW G. BEVIN  
GOVERNOR

EXECUTIVE ORDER

Secretary of State  
Frankfort  
Kentucky

2015-048  
December 22, 2015

**RELATING TO THE COMMONWEALTH'S  
MARRIAGE LICENSE FORM**

**WHEREAS**, the Constitution of the Commonwealth of Kentucky, Section 233a states: "Only a marriage between one man and one woman shall be valid or recognized as a marriage in Kentucky. A legal status identical or substantially similar to that of marriage for unmarried individuals shall not be valid or recognized"; and

**WHEREAS**, on June 26, 2015, the Supreme Court of the United States issued a decision styled *Obergefell v. Hodges*, 135 S. Ct. 2584, holding that a fundamental right to marry is guaranteed to same-sex couples under the United States Constitution; and

**WHEREAS**, the Kentucky Constitution, Section 233a, is now in conflict with the Constitution of the United States; and

**WHEREAS**, as a result of the Supreme Court decision in *Obergefell v. Hodges*, the offices of the County Clerks of the Commonwealth are now required to issue marriage licenses in accordance with KRS Chapter 402 to all eligible applicants, including those intending to enter into same-sex marriages; and

**WHEREAS**, KRS 446.350 (the Kentucky Religious Freedom Restoration Act, or "RFRA"), states:

**KRS 446.350 – Prohibition upon government substantially burdening freedom of religion – Showing of compelling governmental interest – Description of "burden."** Government shall not substantially burden a person's freedom of religion. The right to act or refuse to act in a manner motivated by a sincerely held religious belief may not be substantially burdened unless the government proves by clear and convincing evidence that it has a compelling governmental interest in infringing the specific act or refusal to act and has used the least restrictive means to further that interest. A "burden" shall include indirect burdens such as withholding benefits, assessing penalties, or an exclusion from programs or access to facilities; and



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**WHEREAS**, the issuance of marriage licenses on the form currently prescribed by the Kentucky Department for Libraries and Archives (“KDLA”) creates a substantial burden on the freedom of religion of some County Clerks and employees of their offices because the current form bears the name of the issuing County Clerk, and some County Clerks and their employees sincerely believe that the presence of their name on the form implies their personal endorsement of, and participation in, same-sex marriage, which conflicts with their sincerely held religious beliefs; and

**WHEREAS**, KRS 446.350 requires use of the least restrictive means available to carry out compelling governmental interests, and there are less restrictive means available to further the governmental interest of issuing marriage licenses to all applicants who qualify than the form that is currently being used; and

**WHEREAS**, there is no compelling governmental interest, particularly under the heightened “clear and convincing evidence” standard required by KRS 446.350, necessitating that the name and signature of County Clerks be present on the marriage license form used in the Commonwealth; and

**WHEREAS**, the KDLA can readily prescribe a different form that reasonably accommodates the interests protected by KRS 446.350, while at the same time complying with the United States Constitution, *i.e.*, that allows for County Clerks to issue marriage licenses to same-sex couples, thereby satisfying the compelling governmental interest and complying with the decision in *Obergefell*, without substantially burdening the free exercise of religion by those County Clerks and their employees who hold sincerely-held religious beliefs that conflict with same-sex marriage.



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**NOW, THEREFORE**, in consideration of the foregoing and by virtue of the authority vested in me by Section 69 of the Constitution of the Commonwealth of Kentucky and KRS 446.350, I, Matthew G. Bevin, Governor of the Commonwealth of Kentucky, do hereby Order and Direct the following effective immediately:

- I. That the Kentucky Department for Libraries and Archives, through its duly appointed commissioner or other authorized officials, shall forthwith create, prescribe and publish to all County Clerks in the Commonwealth a marriage license form substantially identical to the form attached hereto, henceforth to be used by the offices of all County Clerks in the Commonwealth.
- II. This Executive Order requires modification only to the existing "Marriage License" form but not to the existing "Marriage Certificate" form and "Certificate of Marriage" form.

  
MATTHEW G. BEVIN, GOVERNOR  
Commonwealth of Kentucky

  
ALISON LUNDERGAN GRIMES  
Secretary of State

