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## 2005 LEGISLATIVE REPORT

### **Surrogate parenting**

SB 14, “Uniform Parentage Act,” allows some married couples to contract with gestational surrogate mothers to carry and deliver their babies. Gestational agreements have not been recognized in Utah since the state’s surrogacy law was ruled unconstitutional in 2002, and the legislature rightly recognized the importance of finding a constitutional way to reinstate surrogacy as an option for people who want children. Unfortunately, SB 14 raises several constitutional concerns. Specifically, the bill violates the parental rights of the gestational surrogate mother by only allowing her to terminate the contract before she is implanted with an embryo rather than after she is pregnant or has given birth; requires medical evidence that “the intended mother is unable to bear a child or is unable to do so without unreasonable risk to her physical or mental health or to the unborn child;” limits gestational agreements to married couples; and may limit the gestational mother’s control over her medical care by only allowing her to make treatment decisions that will safeguard her health or that of the fetus. Despite these concerns, lawmakers passed the bill.

### **Right to protest**

HB 131, “Access to Health Care Facilities and Places of Worship,” would have limited demonstration and leafleting activities near health care facilities and places of worship by creating an eight-foot floating buffer zone around patients or churchgoers who are within one hundred feet of an entrance to either type of building. In addition to providing criminal penalties for protesters who violate the law, the bill also would have allowed a patient or churchgoer to sue protesters for civil damages. Although the U.S. Supreme Court upheld a similar Colorado law aimed at anti-abortion protesters, it did so only after carefully examining that state’s unique history of violent protests on both sides of the abortion issue and evidence of intimidation of those who sought abortion services. With the exception of a few altercations between members of the Worldwide Fellowship of Street Preachers and LDS Church conference attendees—incidents that have been appropriately addressed by Salt Lake City regulations regarding demonstrations near the LDS Church’s Main Street Plaza—there is no similar history of conflict to justify a statewide restriction on free speech. The ACLU of Utah testified in opposition to the bill, which the sponsor eventually withdrew after pledging to introduce it in a future session.

### **Rights for lesbians and gay men**

Lawmakers were characteristically squeamish about extending basic rights to lesbians and gay men. SB 89, “Mutual Dependence Benefits Contract Act,” sought to ameliorate some of the harm done by last fall’s passage of a constitutional amendment prohibiting same-sex marriage. The bill would have allowed two adults not eligible for marriage to create “mutual dependence benefits contracts” to provide for shared rights and responsibilities regarding property ownership and health-related matters. SB 89 died early in the session. Also, for the ninth year in a row, legislators failed to amend the state’s hate crimes law, and many believe that as in past years, the failure of HB 50, “Criminal Penalty Amendment,” was due in large part to the inclusion of sexual orientation in the bill’s list of biases.

### **Internet speech**

HB 260 S3, “Amendments Related to Pornographic and Harmful Materials,” seeks to put the government in charge of what should be the responsibility of parents—namely identifying and restricting Internet sites that are inappropriate for children. In doing so, the law unconstitutionally limits the free speech rights of Internet content providers and may negatively impact Internet users who have no wish to restrict the sites to which they have access. The bill, which has a \$250,000 fiscal note, requires the Attorney General’s Office to create an “adult content registry” containing the URLs of all Internet sites worldwide that are not “access restricted” and that contain “material harmful to minors,” speech that is unlawful to intentionally distribute to children yet is lawful for adults to access. Once contacted by the Attorney General’s Office, Utah-based content providers will have to restrict access to their sites through an as-yet-to-be-defined rating system to avoid being charged with a third-degree felony crime. Additionally, the bill requires Internet service providers, at customer request, to block access to sites listed on the adult content registry as well as to those sites they can identify as containing material harmful to minors. As we stated in our letters of opposition to both the House of Representatives and to Governor Huntsman, a number of U.S. Supreme Court cases have established that the First Amendment does not allow the government to compel speakers to say something they do not want to say, and that includes pejorative ratings like those mandated by HB 260. Further troubles with the bill include technical problems with blocking systems, a vague definition of what it means to be a Utah-based content provider, and the lack of an appeals process for content providers who wish to challenge the Attorney General’s Office’s designation that their sites contain material harmful to minors.

### **Treatment for drug offenders**

For the second year in a row, legislators chose not to allocate funds for a bill that, according to many in the criminal justice system, would have offered a more effective and humane way of dealing with drug offenders. Known as DORA, SB 22, “Drug Offender Reform Act,” would have placed first-time, non-violent drug offenders in intensive drug treatment rather than jail, and would have provided more resources for drug courts, inmate evaluations and treatment plans, and drug rehabilitation programs. The *Deseret Morning News* reports that more than 80 percent of those in prison have a foundational drug addiction, and, according to state estimates, drug offenders who undergo treatment are half as likely of reoffending. What limited drug treatment programs there are have long waiting lists and cannot begin to address the needs of so many inmates. Despite a surplus in this year’s budget, lawmakers did not appropriate the \$6 million dollars needed for SB 22. The costs of not passing DORA, however, may be much greater in the long run, since the majority of offenders will be released from prison or jail without ever having addressed their drug addiction.

### **Drug and alcohol crimes**

While lawmakers could not bring themselves to endorse DORA, they did pass several bills strengthening Utah’s laws pertaining to criminal drug and alcohol use. HB 55, “Drug Offense Penalty Enhancements,” upgrades penalties for drug possession after someone has previously been charged with distribution. SB 42 S1, “Alcohol Restricted Drivers,” defines an “alcohol restricted driver” as someone who has previously been convicted of driving under the influence of drugs or alcohol. They are now guilty of a class B misdemeanor if they are found to be driving with any measurable amount of alcohol in their system, even if that amount is within the legal limit for other drivers. And HB 311, “Controlled Substance Law Amendments,” changes the common sense understanding of drug consumption to mean not just ingestion, but also as “having any measurable amount of a controlled substance” in one’s body. Under this new law, a positive drug test is now proof that an illegal act has occurred.

### **Health care equality**

According to a 2001 survey by the Kaiser Family Foundation, only 64 percent of employers cover oral contraceptives and only 41 percent cover all five of the leading FDA-approved reversible contraceptives. In contrast, 98 percent of employers cover prescription drugs in general. Additionally, women of reproductive age spend 68 percent more in out-of-pocket health care costs than men. SB 111, “Amendments Prohibiting Health Insurance Discrimination,” sought to improve women’s access to basic health care by addressing this alarming gender inequity in the coverage of prescription drugs, and would have required health insurance policies and health maintenance organization contracts to provide coverage for the cost of prescriptive contraceptives. The bill was in accordance with decisions from the Equal Employment Opportunity Commission and a federal district court in Washington state, which in 2001 both concluded that an employer’s failure to cover contraceptives in employee health plans that cover other prescription drugs and devices constitutes unlawful gender discrimination. Twenty-two states have adopted laws similar to SB 111, which never made it out of senate committee.

### **Driver’s licenses**

Up until this legislative session, Utah was one of eleven states that provided driver’s licenses and state identification cards to people who are not eligible for a Social Security Number (SSN) yet who have an IRS-issued Individual Tax Identification Number (ITIN). This meant that non-citizens, including undocumented immigrants, were able to legally obtain Utah driver’s licenses, a situation that was effectively ended by the legislature’s passage of SB 227, “Public Safety Driving Privilege and Identification Card Amendments.” Now, non-citizens who do not have an SSN are ineligible for a state driver’s license or identification card, and can only obtain a newly created “driving privilege card,” which in look and effect, will be substantially different. Marked “For Driving Privileges Only—Not Valid for Identification,” the driving privilege card will not be accepted by government agencies as valid identification, and it is unclear whether private companies, such as banks and insurance companies, will follow suit. There are many public policy reasons to oppose SB 227’s creation of a separate system for non-citizens, many of who pay taxes and are productive and important members of our communities. The bill was passed in the shadow of proposed federal legislation that would force states to deny driver’s licenses to undocumented immigrants and that in effect, seeks to transform state driver’s licenses into national identification cards.

Lawmakers also passed HB 223, “Amendments to Driver License and Identification Cards,” allowing people without ITINs to get a driving privilege card if they can provide proof that they are from another country, do not qualify for an SSN, and are legally in the United States; and SB 167 S1, “Penalties for False Driver Licenses and Identification Cards,” setting penalties for using false information for obtaining a driver’s license or for using a false driver’s license or identification card.

### **Immigration**

The legislature considered HB 130, “Income Tax Subtraction for Specialized Immigrant Services,” which would have created a tax benefit for companies that provide English and government courses to undocumented immigrants and that maintain databases of their clients using “biometric security.” Although some lawmakers questioned whether anyone would participate in such a program, they sent the bill to an interim committee for further study.

## **Elections**

Lawmakers passed HB 211 S1, “Integrity of Election Results,” which attempts to address some of the concerns people have regarding electronic voting by requiring that all voting equipment “be capable of producing an auditable, voter verified paper trail of votes cast.” Under this law, voters who have used an automated system must be able to inspect a paper record of their vote before they leave the polling place, and this paper record will be available for any recount or challenge of the election results. HB 211 also allows poll watchers to “observe the election process and ensure its integrity.” Lawmakers did not pass HB 267, “Election Day Voter Registration,” which would have allowed individuals to register to vote at their polling place on the day of the election, or SB 67, “Election Law – Voter Requirements,” which would have required proof of citizenship for voter registration.

## **Open records**

Utah’s Government Records Access and Management Act (GRAMA)—the law setting rules regarding public access to information about state and local governments—was under scrutiny at the legislature this year. Lawmakers passed HB 75, “Government Records Access & Management Task Force,” establishing a task force to look into issues such as electronic records under GRAMA, when the government should receive compensation for releasing a record, and whether personally identifiable records must be disclosed. SB 44 S1, “Government Records Amendments,” provides some clarifications to the law. Both HB 226, “Government Records Access and Management Act Requirements Regarding Animal Identification Program,” and SB 179, “Protection of Government Records,” categorize certain records as protected, the first for records about programs “providing for the identification, tracing, or control of livestock,” and the second for records about business secrets at state universities. Recently, a study by the Better Government Association and Investigative Reporters and Editors ranked Utah’s GRAMA as one of the top five state open records laws in the country, and our hope is that lawmakers choose to make changes that strengthen, rather than weaken, access to information about our public servants.

## **Ballot initiatives**

Utah citizens are constitutionally entitled to make laws through ballot initiatives. Not surprisingly, legislators have repeatedly found ways to erect barriers to a lawmaking process that effectively leaves them out of the picture. In a move that actually may make the ballot initiative process a little easier, lawmakers passed SB 11, “Initiative Petition Amendments,” which provides county clerks with another method of verifying whether a signer of an initiative petition is a registered voter. In addition to an exact address and name match—a verification process that disqualifies a potentially large number of people who have moved and forgotten to update their voting records—county clerks can now compare the signer’s name and birth date with their official registries.

More true to form, legislators also passed HB 142, “Issues Submitted to Voters,” which requires the Governor’s Office of Planning and Budget to provide an “initial fiscal impact review” of all proposed statewide and local ballot initiatives; requires that that review is prominently displayed on the petition signature sheet and on the ballot; and authorizes the legislature to repeal or amend a successful ballot initiative if the final fiscal impact statement exceeds the initial fiscal impact review by 15 percent or more. One wonders what would happen if legislators enacted a similar law regarding their own bills.