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S T A T E O F R H O D E I S L A N D

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

A N A C T

RELATING TO DOMESTIC RELATIONS - PERSONS ELIGIBLE TO MARRY

Introduced By: Representatives Handy, Fox, Mattiello, Ferri, and Ruggiero

Date Introduced: January 03, 2013

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

SECTION 1. Sections 15-1-1, 15-1-2, 15-1-3, 15-1-4 and 15-1-5 of the General Laws in Chapter 15-1 entitled "Persons Eligible to Marry" are hereby amended to read as follows:

15-1-1. ~~Men forbidden to marry kindred~~ Equal access to marriage. -- ~~No man shall marry his mother, grandmother, daughter, son's daughter, daughter's daughter, stepmother, grandfather's wife, son's wife, son's son's wife, daughter's son's wife, wife's mother, wife's grandmother, wife's daughter, wife's son's daughter, wife's daughter's daughter, sister, brother's daughter, sister's daughter, father's sister, or mother's sister.~~ Any person who otherwise meets the eligibility requirements of chapters 15-1 and 15-2 may marry any other eligible person regardless of gender,

15-1-2. ~~Women forbidden to marry kindred~~ Marrying kindred forbidden. -- ~~No woman shall marry her father, grandfather, son, son's son, daughter's son, stepfather, grandmother's husband, daughter's husband, son's daughter's husband, daughter's daughter's husband, husband's father, husband's grandfather, husband's son, husband's son's son, husband's daughter's son, brother, brother's son, sister's son, father's brother, or mother's brother.~~ No person shall marry his or her sibling, parent, grandparent, child, grandchild, stepparent, grandparents' spouse, spouse's child, spouse's grandchild, sibling's child or parent's sibling.

15-1-3. Incestuous marriages void. -- If any ~~man or woman~~ person intermarries within the degrees stated in ~~section 15-1-1 or~~ section 15-1-2, the marriage shall be null and void.

15-1-4. Marriages of kindred allowed by Jewish religion. -- The provisions of sections

~~15-1-1 -- 15-1-3~~ 15-1-2 and 15-1-3 shall not extend to, or in any way affect, any marriage which shall be solemnized among the Jewish people, within the degrees of affinity or consanguinity allowed by their religion.

15-1-5. Bigamous marriages void -- Marriage of persons who are mentally incompetent. – A person is prohibited from marrying if such person is:

(1) A party to another marriage; or

(2) A party to a relationship that provides substantially the same rights, benefits and responsibilities as a marriage whether entered into in this state or another state or jurisdiction and such marriage or relationship has not been finally dissolved, unless the parties to the intended marriage will be the same as the parties to such other marriage or relationship. Any marriage entered in violation of this prohibition ~~when either of the parties at the time of the marriage has a former wife or husband living who has not been, by final decree, divorced from that party,~~ and any marriage where either of the parties is mentally incompetent at the time of the marriage, shall be absolutely void, and no life estate created by chapter 25 of title 33 shall be assigned to any ~~widow~~ surviving spouse in consequence of the marriage.

SECTION 2. Chapter 15-1 of the General Laws entitled "Persons Eligible to Marry" is hereby amended by adding thereto the following sections:

15-1-7. Marriage codification. – Marriage is the legally recognized union of two (2) people. Terms relating to the marital relationship or familial relationships shall be construed consistently with this section for all purposes throughout the law, whether in the context of statute, administrative or court rule, policy, common law, or any other source of civil law.

15-1-8. Recognition of relationships entered into in another state or jurisdiction. – If two (2) persons are within the jurisdiction of Rhode Island and have a legal union other than a marriage that provides substantially the same rights, benefits and responsibilities as a marriage and the union was validly entered into in another state or jurisdiction and the union is not prohibited by this chapter then they shall be afforded the same rights, benefits and responsibilities as a valid marriage in this state.

15-1-9. Applicability of state laws to marriages not recognized by federal law. – (a) Any provision of Rhode Island law that refers to, adopts, or relies upon provisions of federal law, including, but not limited to, those in title 44, shall apply to parties recognized as married under the laws of this state, as if federal laws recognized such marriages in the same manner as Rhode Island law.

(b) Notwithstanding the unavailability of federal financial participation, no person who is recognized as a spouse under the laws of this state shall be denied benefits that are otherwise

available to spouses under Rhode Island law, including, but not limited to, those in chapters 40-8 to 40-8.10 inclusive, due to the provisions of 1 U.S.C. section 7 or any other federal non-recognition of spouses of the same sex.

SECTION 3. Sections 15-2-1, 15-2-7 and 15-2-11 of the General Laws in Chapter 15-2 entitled "Marriage Licenses" are hereby amended to read as follows:

15-2-1. ~~License required -- Proof of divorce~~ License required -- Proof of divorce – Obligation of clerk to issue license. -- (a) Persons intending to be joined together in marriage in this state must first obtain a license from the clerk of the town or city in which:

(1) ~~The female~~ Either party to the proposed marriage resides; or ~~in the city or town in which~~

~~(2) The male party resides, if the female party is a nonresident of this state; or in the city or town in which~~

~~(3)~~(2) The proposed marriage is to be performed, if both parties are nonresidents of this state.

(b) Before any license shall be issued to any person who, having been previously married or a party to another relationship that provides substantially the same rights, benefits and responsibilities as a marriage, has been divorced, the person shall present to the town or city clerk an authenticated copy of the decree granting the divorce or an authenticated copy of the final dissolution of the previous relationship.

(c) The town or city clerk shall issue a license to any person eligible to marry under the provisions of chapter 15-1.

15-2-7. Form and contents of certificates, reports, and other returns. -- The forms of certificates, reports, and other returns required by this chapter, or by regulations adopted pursuant to this chapter, shall include as a minimum the items recommended by the federal agency responsible for national vital statistics, subject to approval of and modification by the state director of health. Both ~~the bride and groom~~ parties shall subscribe to the truth of data in the application in the presence of the local registrar or his or her assistant.

15-2-11. Consent and procedure required for license to minors and persons under guardianship. -- (a) No minor or person under the control of a parent or guardian shall be allowed to give and subscribe to the information provided for in sections 15-2-1 -- 15-2-10, or shall receive the license provided for in these sections, unless the consent in writing of the parent or guardian, given in the presence of the town or city clerk or any clerk employed in that office, has first been obtained; provided, that proof shall be submitted that the minor~~, if a female,~~ has attained the age of sixteen (16) years; and provided, that this information may be given and

subscribed to by a minor~~, if a female,~~ who has attained the age of sixteen (16) years, residing in this state upon the consent in writing of the director of public welfare of the town or city in which the minor resides, given in the presence of the town or city clerk or any clerk employed in that office.

(b) In addition to the requirements in subsection (a) of this section, no license shall be issued to any minor~~, if a female~~ under the age of sixteen (16) years~~, and if a male under the age of eighteen (18) years,~~ unless and until the following requirements have been complied with, and the town or city clerk is directed in writing to issue the license by the family court:

(1) The town or city clerk, upon receiving information provided for in sections 15-2-1 ~~--~~ through 15-2-10, shall immediately transmit a certified copy of the information to the family court. The court shall immediately transmit a copy of the information, together with a written request for a complete investigation of and a report upon the advisability of the issuance of the license, to the department of human services. The department shall within fifteen (15) days after the receipt of the information, the request, and the report file in the court its complete report in writing.

(2) The court shall then conduct a hearing in chambers to determine the advisability of the issuance of the license and shall notify the town or city clerk of its determination. The court shall have the power to summon at the hearing any persons that it may deem advisable.

(3) The court shall also file the report and a notation of its determination in the office of the clerk of the court, but any papers filed at the office of the clerk shall not be matters of public record and may be examined only upon the written authorization of the court.

(4) During the pendency of the proceedings, the court shall exercise the authority of a guardian in respect to the minor or minors involved.

SECTION 4. Chapter 15-3 of the General Laws entitled "Solemnization of Marriages" is hereby amended by adding thereto the following section:

15-3-6.1. Protection of freedom of religion in marriage. – (a) Consistent with the guarantees of freedom of religion set forth by both the First Amendment to the United States constitution and article I section 3 of the Rhode Island constitution, each religious institution has exclusive control over its own religious doctrine, policy, and teachings regarding who may marry within its faith, and on what terms, as long as such policies are consistent with sections 15-1-2, 15-1-3, 15-1-4 and 15-1-5. No court or other state or local governmental body, entity, agency or commission shall compel, prevent, or interfere in any way with any religious institution's decisions about marriage eligibility within that particular faith's tradition.

(b) Consistent with the guarantees of freedom of religion set forth by both the First

Amendment to the United States Constitution and article I section 3 of the Rhode Island constitution, no regularly licensed or ordained clergyperson, minister, elder, priest, imam, rabbi, or similar official of any church or religious denomination as described and authorized in sections 15-3-5 and 15-3-6 of the general laws to officiate at a civil marriage, is required to solemnize any marriage. A regularly licensed or ordained clergyperson, minister, elder, priest, imam, rabbi, or similar official of any church or religious denomination shall be immune from any civil claim or cause of action based on a refusal to solemnize any marriage under this chapter. No state agency or local government may base a decision to penalize, withhold benefits from, or refuse to contract with any church or religious denomination on the refusal of a person associated with such church or religious denomination to solemnize a marriage under this chapter.

(c) Notwithstanding any other provision of law, a religions organization, association, or society, and any nonprofit institution or organization operated, supervised or controlled by a religious organization, association or society, or a fraternal benefit or service organization that has among its stated purposes the promotion and support or protection of a religious organization, association or society and that restricts membership to practicing members of that religious organization, association or society, shall not be required to provide services, accommodations, advantages, facilities, goods, or privileges to an individual if the request for such services, accommodations, advantages, facilities, goods, or privileges is related to:

(1) The solemnization of a marriage or the celebration of a marriage, and such solemnization or celebration is in violation of its religious beliefs and faith; or

(2) The promotion of marriage through any social or religious programs or services, which violates the religious doctrine or teachings of religious organization, association or society. Any refusal by an entity described above or an officer, employee or member thereof acting in an official capacity on behalf of that entity to provide services, accommodations, advantages, facilities, goods, or privileges in accordance with this subsection shall not create any civil claim or cause of action. This subsection shall not be construed to limit a religious organization, association, or society, or a fraternal benefit or service organization as described in this subsection, from selectively providing services, accommodations, advantages, facilities, goods, or privileges to some individuals with respect to solemnization or celebration of a marriage but not to others.

(d) Nothing in the marriage laws of this state shall be deemed or construed to limit the protections and exemptions provided to religious organizations under GL paragraph 28-5-6(7)(ii) and subsection 34-37-4.2(a).

(e) A fraternal benefit or service organization that is operated, supervised or controlled by

a religious organization and a fraternal benefit or service organization which has among its stated purposes the promotion, support or protection of a religious organization and which restricts its membership to practicing members of that religious organization shall not be required to admit any individual as a member or to provide benefits to any individual. A refusal by a fraternal benefit or service organization by a member, officer or employee thereof acting in an official capacity on behalf of a society described herein, to admit an individual as a member or to provide benefits related to a marriage which is in violation of the religious doctrine or teachings of the religious organization to which its members are required to adhere, shall not create a civil claim or result in any government action to penalize, withhold benefits from the fraternal benefit or service organization or discriminate against a society or a member, officer or employee described herein.

SECTION 5. Chapter 15-3.1 of the General Laws entitled "Civil Unions" is hereby amended by adding thereto the following section:

15-3.1-12. Merger of civil union into marriage by action of the parties. – (a) On and after the effective date of this section, two (2) persons who are parties to a civil union entered into pursuant to this chapter may apply for and be issued a marriage license and have such marriage solemnized pursuant to chapters 15-1 to 15-3 of the general laws, provided such persons are otherwise eligible to marry under chapter 15-1 as amended herein, the parties to the marriage, a will be the same as the parties to the civil union. After the solemnization of such marriage, and upon filing of the license and certificate of marriage with the clerk in the town or city from which the license was issued pursuant to section 15-2-1, of the civil union of such persons shall be merged into the marriage by operation of law as of the date of the recording of the marriage certificate and shall be effective as of the date of the recording of the marriage certificate.

(b) Such parties may also apply to the clerk of the town or city in which their civil union is recorded to have their civil union legally designated and recorded as a marriage, without any additional requirements of payment of marriage licensing fees or solemnization contained in chapters 15-1 to 15-3 of the general laws, provided that such parties' civil union was not previously dissolved or annulled. Upon application, the parties shall be issued a marriage certificate and the civil union of such persons shall be merged into the marriage by operation of law as of the date of the recording of the marriage certificate and shall be effective as of the date of the recording of the marriage certificate.

15-3.1-13. Recognized date of marriage. – For purposes of determining the legal rights and responsibilities involving individuals who previously entered into a civil union in this state, and whose civil union has merged into a marriage under this chapter, the date of the recording of

the marriage certificate shall be the operative date by which legal rights and responsibilities are determined

SECTION 6. Sections 15-3.1-3 and 15-3.1-4 of the General Laws in Chapter 15-3.1 entitled "Civil Unions" are hereby repealed.

~~**15-3.1-3. License requirements.** – (a) Persons intending to form a civil union in this state must first obtain a license from the town or city in which:~~

~~(1) One of the parties to the civil union resides; or~~

~~(2) In the case of both parties being nonresidents of this state the city or town in which the proposed civil union is to be performed.~~

~~(b) Before any license shall be issued to any person who, having previously been married or been a party in a civil union to someone other than their intended civil union partner, the person shall present to the town or city clerk a certified copy of the decree granting the divorce or dissolving the civil union.~~

~~(c) The license required in: (a) shall be valid for three (3) months after the date of issue, and if unused at the expiration of the three (3) months, the party or parties having the possession of the license shall immediately return it to the town or city clerk from whom it was obtained.~~

~~(d) License fee. – For issuing the civil union license the town or city clerk shall collect a fee of twenty-four dollars ($24.00). The city or town shall retain eight dollars ($8.00), and transmit sixteen dollars ($16.00) to the general treasurer of the State of Rhode Island who shall be responsible for depositing eight dollars ($8.00) of the sixteen dollars ($16.00) received into the family and children trust fund created by Rhode Island general laws section 42-72-30. Each clerk shall keep an accurate account of all fees charged and received under this section and shall transmit all sums due to the general treasurer at least monthly in the manner and with the forms which the general treasurer shall prescribe.~~

~~(e) The several town and city clerks shall record, in separate books to be kept by them for that purpose, the information furnished to them and subscribed to as provided in this section. Further, town and city clerks shall treat the civil union certificate as a vital record pursuant to Rhode Island general laws chapter 23-3.~~

~~**15-3.1-4. Certification of civil unions.** – Officials empowered to certify persons in civil unions:~~

~~(1) Every ordained clergy or elder in good standing, every justice of the supreme court, superior court, family court, workers' compensation court, district court or traffic tribunal, the clerk of the supreme court, every clerk or general chief clerk of a superior court, family court, district court, or traffic tribunal, magistrates, special or general magistrates of the superior court,~~

~~family court, traffic tribunal or district court, administrative clerks of the district court, administrators of the workers' compensation court, every former justice or judge and former administrator of these courts and every former chief clerk of the district court, and every former clerk or general chief clerk of a superior court, the secretary of the senate, elected clerks of the general assembly, any former secretary of the senate or any former elected clerk of the general assembly who retires after July 1, 2007, judges of the United States appointed pursuant to Article III of the United States Constitution, bankruptcy judges appointed pursuant to Article I of the United States Constitution, and United States magistrate judges appointed pursuant to federal law, may certify a civil union in any city or town in this state; and every justice and every former justice of the municipal courts of the cities and towns in this state and of the police court of the town of Johnston and every probate judge and every former probate judge may certify a civil union in any city or town in this state, and wardens of the town of New Shoreham may certify persons in civil unions in New Shoreham.~~

~~(2) Every certification of a civil union shall be held in the presence of at least two (2) witnesses besides the person officiating the certification and no minister, justice or other authorized person shall perform the civil union certification until the persons to be certified in a civil union have presented him or her the license named in this section.~~

~~(3) Every minister, justice, or other authorized person who certifies any persons in a civil union shall endorse the "License and Certificate of Civil Union" presented to him or her by the persons and certify that the persons were certified in a civil union in accordance with the laws of the State of Rhode Island and the person who certifies the parties in the civil union shall complete all the information on the "License and Certificate of Civil Union" and file the form within ninety-six (96) hours following the date of the civil union certification with the clerk in the town or city from which the license was issued.~~

~~(4) The town or city clerk to whom the civil union certificate is returned shall carefully file and preserve the return.~~

~~(5) If any person has any lawful objection to the civil union of any two (2) persons, he or she may state the objection in writing, under his or her hand, to the minister, justice or other authorized person about to certify the civil union, at which time the minister, justice or other authorized person shall proceed no further in the civil union until the lawful objection has been removed.~~

~~(6) Every minister, justice, or other authorized person who certifies persons in a civil union without first receiving the license required by this chapter containing the required information, or whenever the certification of the civil union has been lawfully objected to and the~~

~~impediment is not removed, or when the person certifies parties in a civil union that he or she knows to have a husband, wife, or other civil union partner shall be imprisoned not exceeding six (6) months or fined not exceeding one thousand dollars ($1,000).~~

~~(7) No civil union certified before a person professing to have a license or professing to be qualified to certify the civil union shall be deemed or adjudged to be void, nor shall the validity of the civil union be in any way affected by want of jurisdiction or authority in the person by noncompliance with any of the requirements of this chapter, if the civil union is in other respects lawful and has been certified with a full belief on the part of the parties to the civil union, or either of them, that they have lawfully certified in a civil union.~~

~~(8) Every person who certifies a civil union without being legally authorized to do so shall be fined five hundred dollars ($500).~~

~~(9) If, as the result of a court decision, any civil union which has occurred in Rhode Island is declared invalid, the court shall order the state registrar of vital records to mark "invalid" the original civil union record on file at the division of vital records and to note the invalidity of the civil union on all other files or references to the civil union.~~

~~(10) Whoever provides any false information as to the requirements under this chapter, or whoever enters into a civil union without duly proceeding as is required by this chapter, shall be fined not exceeding five hundred dollars ($500).~~

SECTION 7. Severability.- If any provisions of the act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provisions or applications of this act, which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 8. This act shall take effect on August 1, 2013.

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EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

A N A C T

RELATING TO DOMESTIC RELATIONS - PERSONS ELIGIBLE TO MARRY

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This act would change terminology on marrying from gender based to non-gender based, it would address prohibitions to marriage, redefine the term marriage, address other state and federal law recognition and applicability in how the state of Rhode Island, address marriage licenses in Rhode Island, protection of freedom of religion in marriages and the merger of civil union into marriage.

This act would take effect on August 1, 2013.

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