SPONSOR: Rep. M. Smith & Rep. Schwartzkopf & Rep. Longhurst & Sen. Sokola & Sen. Blevins
Reps. Barbieri, Baumbach, Bolden, Brady, Heffernan, Keeley, Kowalko, Mulrooney, Osienski, Ramone, B. Short, Viola, D.E. Williams, K. Williams; Sens. McDowell, Peterson, Poore, Townsend

HOUSE OF REPRESENTATIVES
147th GENERAL ASSEMBLY

HOUSE BILL NO. 75

AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE RELATING TO DOMESTIC RELATIONS TO PROVIDE FOR SAME-GENDER CIVIL MARRIAGE AND TO CONVERT EXISTING CIVIL UNIONS TO CIVIL MARRIAGES.

WHEREAS, it is the intent of the Delaware General Assembly to establish civil marriage equality for all families by allowing two persons to marry regardless of their genders, to recognize same-gender marriages and substantially similar legal unions solemnized outside of Delaware as marriages, to convert existing civil unions previously solemnized in Delaware to civil marriages, and to clarify that persons in a same-gender marriage shall enjoy all the rights, benefits and protections, and shall be subject to all the same responsibilities, obligations and duties as different-gender married persons under Delaware law.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §101, Title 13 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 101. Void and voidable marriages.

(a) A marriage is prohibited and void between a person and his or her ancestor, descendant, brother, sister, half brother, half sister, uncle, aunt, niece, nephew~~,~~ or first cousin ~~or between persons of the same gender~~.

(b) A marriage is prohibited, and is void from the time its nullity is declared by a court of competent jurisdiction at the instance of the innocent party, if either party thereto is:

(1)-(5) [Repealed.]

(6) Divorced, unless a certified copy of the divorce decree (last decree if such person has been divorced more than once) or a certificate of such divorce from the clerk of the court granting the divorce is inspected by the clerk of the peace to whom such person makes application for a marriage license, and unless such person may in other respects lawfully marry; and, if such decree or certificate cannot be

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obtained, the Resident Judge of the county where such license is desired or the person designated by the Resident Judge to grant such certificates as may be accepted under this paragraph may grant a certificate of the facts as stated by the applicant and the certificate may, for the purposes of this chapter, be accepted in lieu of a certified copy of a divorce decree;

(7) On probation or parole from any court or institution, unless such person first files with the clerk of the peace to whom such person makes application for a marriage license a written consent to such person's proposed marriage from the chief officer of such court or institution or from someone who is appointed by such officer to give such consent, and unless in other respects the applicant may lawfully marry.

(c) [Repealed.]

(d) A marriage obtained or recognized outside the State between persons prohibited by subsection (a) of this section shall not constitute a legal or valid marriage within the State.

(e) For all purposes of the laws of this State, two persons of the same gender who are parties to a legal union other than a marriage (whether designated as a civil union, a domestic partnership or another relationship) established in another jurisdiction shall be afforded and shall be subject to the same rights, benefits, protections, responsibilities, obligations and duties as are afforded and imposed upon married spouses (whether derived from statutes, administrative rules or regulations, court rules, governmental policies, common law, court decisions, or any other provisions or sources of law, including in equity) if:

(1) such legal union was validly entered into in such other jurisdiction;

(2) such legal union would not be prohibited as a marriage by reason of subsection (a) of this section; and

(3) such legal union affords and imposes on such individuals under the laws of the jurisdiction establishing such union substantially the same rights, benefits, protections, responsibilities, obligations and duties as a marriage.

Section 2. Amend §106, Title 13 of the Delaware Code by making insertions as shown by underlining as follows:

§ 106. Solemnization of marriages; production of license; penalty; registration of persons authorized to solemnize marriages.

(a) A clergyperson or minister of any religion, current and former Judges of this State's Supreme Court, Superior Court, Family Court, Court of Chancery, Court of Common Pleas, Justice of the Peace Court, federal

Judges, federal Magistrates, clerks of the peace of various counties and current and former judges from other jurisdictions with written authorization by the clerk of the peace from the county in Delaware where the ceremony is to be performed may solemnize marriages between persons who may lawfully enter into the matrimonial relation. The Clerk of the Peace in each county for good cause being shown may:

(1) Allow by written permit within that Clerk's respective county, any duly sworn member of another state's judiciary, to solemnize marriages in the State between persons who may lawfully enter into the matrimonial relation.

(2) Allow by written permit within that Clerk's respective county, the Clerk of the Peace from another county within the State to solemnize marriages in the State between persons who may lawfully enter into the matrimonial relation.

Within the limits of any incorporated municipality, the Mayor thereof may solemnize marriages between persons who may lawfully enter into matrimonial relation. Marriages shall be solemnized in the presence of at least 2 reputable witnesses who shall sign the certificate of marriage as prescribed by this chapter. Marriages may also be solemnized or contracted according to the forms and usages of any religious society. No marriage shall be solemnized or contracted without the production of a license issued pursuant to this chapter.

(b) For purposes of this section, the words "resident of this State" shall include the son or daughter of a person who has been domiciled within the State for 1 year or more, notwithstanding the actual place of residence of the son or daughter immediately prior to the date of the marriage.

(c) In the case of absence or disability of the duly elected Clerk of the Peace, the chief deputy or, if there is no chief deputy, a deputy employed in the office of the Clerk of the Peace, shall be authorized to solemnize marriages.

(d) Whoever, not being authorized by this section, solemnizes a marriage, shall be fined $100, and in default of the payment of such fine shall be imprisoned not more than 30 days, and such marriage shall be void, unless it is in other respects lawful and is consummated with the full belief of either of the parties in its validity.

(e) Other than as provided in this subsection, nothing in this section shall be construed to require any person (including any clergyperson or minister of any religion) authorized to solemnize a marriage to solemnize any marriage, and no such authorized person who fails or refuses for any reason to solemnize a marriage shall be subject to any fine or other penalty for such failure or refusal. Notwithstanding the preceding sentence, a clerk of the peace who issues a marriage license, or a deputy thereof, shall be required to perform a solemnization of such marriage if requested by the applicants for such license.

Section 3. Amend §122(a), Title 13 of the Delaware Code by making insertions as shown by underlining as follows:

§ 122. Marriage license application.

(a) The marriage license application shall be in the form prescribed and provided by the Department of Health and Social Services and shall be permanently preserved by the issuing officer in the manner as prescribed by the Department of Health and Social Services. The marriage license application shall include the following information and such other information as prescribed by the Department of Health and Social Services: Date of application, full name, sex, race, social security number, birth date and occupation of applicants, names and addresses of parents of applicants, date and place of previous marriages, civil unions, domestic partnerships or other substantially similar legal unions, and termination of previous marriages, civil unions, domestic partnerships or other substantially similar legal unions, place and court where applicants are on probation or parole, if such they be, and time of application.

Section 4. Amend Chapter 1, Title 13 of the Delaware Code by adding a new section by making insertions as shown by underlining as follows:

§ 129. Equal Treatment of Marital Relationships.

(a) All laws of this State applicable to marriage or married spouses or the children of married spouses, whether derived from statutes, administrative rules or regulations, court rules, governmental policies, common law, court decisions, or any other provisions or sources of law, including in equity, shall apply equally to same-gender and different-gender married couples and their children.

(b) Parties to a marriage shall be included in any definition or use of terms such as "dependent", "family", "husband", "wife", "widow", "widower", "immediate family", "next of kin", "spouse", "stepparent", "tenants by the entirety" and other terms, whether or not gender specific, that denote a spousal or familial relationship, or a person in a spousal or familial relationship, as those terms are used throughout the Code, administrative rules or regulations, court rules, governmental policies, common law, court decisions, or any other provisions or sources of the laws of this State, including in equity, regardless of whether the parties to a marriage are the same gender or different genders.

(c) To the extent that provisions of the laws of this State, whether derived from statutes, administrative rules or regulations, court rules, governmental policies, common law, court decisions, or any other provisions or sources of law, including in equity, adopt, refer to, or rely upon in any manner, provisions of United States federal law that would have the effect of treating differently same-gender married spouses or their children as compared to different-gender married spouses or their children, same-gender married spouses and their children shall be treated in all respects by the laws of this State as

if United States federal law recognizes a marriage between persons of the same gender in the same manner as the laws of this State.

(d) The rights of same-gender married spouses, with respect to a child of whom either spouse becomes the parent during their marriage, shall be the same as the rights (including presumptions of parentage, paternity and maternity in chapter 8 of this title) of different-gender married spouses with respect to a child of whom either spouse becomes the parent during their marriage.

(e) Notwithstanding anything to the contrary contained in, and in addition to any other rights afforded under, Title 16, chapter 31 of this Code, if a married person is the legal parent of a child at the birth of the child, including pursuant to subsection (d) of this section, such person shall be entitled to have his or her name entered on the original certificate of birth as a parent of the child.

(f) All persons who enter into same-gender marriages that are solemnized in this State or are created by conversion from a civil union under the laws of this State consent to the nonexclusive jurisdiction of the Family Court of this State for all proceedings for divorce and annulment of such marriage, even if one or both parties no longer reside in this State, as set forth in § 1504 of this title.

Section 5. Amend §213, Title 13 of the Delaware Code by deleting the section in its entirety as shown by strike through as follows:

~~§ 213. Legal unions performed in other jurisdictions.~~

~~A legal union between 2 individuals of the same sex that was validly formed in another jurisdiction, regardless of whether such legal union is recognized under Chapter 1 of this title or is referred to as a civil union, shall be recognized as a validly established civil union under this chapter for all purposes of the laws of this State, provided that the legal union meets the eligibility requirements of § 202 of this title for a civil union and such legal union affords to and imposes on the parties thereto substantially similar rights, benefits, protections, responsibilities and duties as those afforded to and imposed on parties to a civil union entered into in this State under this chapter.~~

Section 6. Amend Chapter 2, Title 13 of the Delaware Code by adding a new section by making insertions as shown by underlining as follows:

§ 218. Conversion of Civil Unions to Marriages.

(a) Notwithstanding the provisions of this chapter, no civil union licenses shall be issued, no persons shall be eligible to enter into new civil unions, and no new civil unions shall be solemnized, on or after July 1, 2013.

(b) Notwithstanding any provision of chapter 1 of this title, on or after July 1, 2013, and prior to July 1, 2014, both parties to a civil union entered into pursuant to this chapter may apply to the clerk of the peace in the county in which

their civil union license was issued, for a marriage license, in accordance with procedures established by such clerk of the peace, to have their civil union legally converted to a marriage by operation of law without requirement of solemnization, provided that such civil union has not been previously dissolved or annulled and is not subject to a pending proceeding for dissolution, annulment or legal separation. Upon application for a marriage license in accordance with such procedures, such parties shall be issued a certificate of marriage and the civil union of such parties shall be converted to a marriage by operation of law. For all purposes of the laws of this State, the effective date of such marriage shall be deemed to be the date of solemnization of such original civil union.

Alternatively, on or after July 1, 2013, and prior to July 1, 2014, both parties to a civil union entered into pursuant to this chapter may apply to the clerk of the peace, in the county in which their civil union license was issued, for a marriage license pursuant to chapter 1 of this title and such parties may have such marriage solemnized, prior to July 1, 2014, pursuant to chapter 1 of this title, provided that such persons are otherwise eligible to marry under § 101 of this title, such civil union has not been previously dissolved or annulled, and such civil union is not subject to a pending proceeding for dissolution, annulment or legal separation. Upon the solemnization of such marriage, the civil union of such parties shall be converted at such time to a marriage by operation of law. For all purposes of the laws of this State, the effective date of such marriage shall be deemed to be the date of solemnization of such original civil union.

(c) Subject to subsection (d) of this section, on July 1, 2014, two persons who are parties to a civil union entered into pursuant to this chapter, which civil union has not been converted to a marriage pursuant to subsection (b) of this section, shall be deemed married under chapter 1 of this title and such civil union shall be automatically converted to a marriage by operation of law. Upon application by either party to the clerk of the peace of the county in which their civil union license was issued, in accordance with procedures established by such clerk of the peace, such party shall be issued a certificate of marriage, without any requirement for solemnization of such marriage. For all purposes of the laws of this State, the effective date of such marriage shall be deemed to be the date of solemnization of such original civil union.

(d) Notwithstanding subsection (c) of this section, parties to a civil union with respect to which a proceeding for dissolution, annulment or legal separation is pending on July 1, 2014 shall not be deemed to be married on such date and their civil union shall not be converted to a marriage by operation of law pursuant to subsection (c) of this section, and such civil union shall continue to be governed by the provisions of chapter 2 of this title and the laws relating to civil unions in effect prior to July 1, 2013; provided, however, that if any such proceeding is terminated without resulting in the dissolution or annulment of the civil union and the parties remain in a civil union, such civil union shall be automatically converted to a marriage by operation of law. Upon application by either party to the clerk of the peace of the county in which their civil union license was issued, in accordance with procedures established by such clerk of the peace, such party shall be issued a

certificate of marriage, without requirement of solemnization of such marriage. For all purposes of the laws of this State, the effective date of such marriage shall be deemed to be the date of solemnization of such original civil union.

(e) For purposes of determining the legal rights and responsibilities of parties to a civil union entered into in this State that has been converted to a marriage under this chapter, the date of the solemnization of the original civil union shall be the date by which the origination of legal rights and responsibilities are determined.

Section 7. Amend §1504, Title 13 of the Delaware Code by making insertions as shown by underlining as follows:

§ 1504. Jurisdiction; residence; procedure.

(a) The Family Court of the State has jurisdiction over all actions for divorce and annulment of marriage where either petitioner or respondent, at the time the action was commenced, actually resided in this State, or was stationed in this State as a member of the armed services of the United States, continuously for 6 or more months immediately preceding the commencement of the action. Notwithstanding the immediately preceding sentence, in addition to any other basis for jurisdiction it may otherwise have, the Family Court of this State has jurisdiction over all proceedings for divorce and annulment of same-gender marriages that are solemnized in this State or created by conversion of civil unions pursuant to the laws of this State, notwithstanding that the domicile or residency of the petitioner and the respondent are not in this State, if the jurisdiction of domicile or residency of the petitioner and/or the respondent does not by law affirmatively permit such a proceeding to be brought in the courts of that jurisdiction. If neither of the parties to a same-gender marriage solemnized in this State or created by conversion of a civil union pursuant to the laws of this State reside in this State, any petition for divorce or annulment of such marriage shall be filed in the county in which one or both of such parties last resided in this State.

Section 8. Religious Freedom. Nothing in this Act is intended to, nor shall this Act be construed in a manner that would, violate any person's rights under the First Amendment to the United States Constitution or §§1, 2 or 5 of Article I of the Constitution of this State, including protected rights of freedom of religion thereunder. Nothing in this Act shall interfere with or regulate the religious practice of any religious society. Any religious society is free to choose which marriages it will solemnize.

Section 9. Rules of Construction.

(a) The rule of construction that statutes in derogation of the common law are to be strictly construed shall have no application to the provisions of this Act. This Act, and the statutes enacted hereby, shall be broadly construed to accomplish their intended purposes.

(b) The rule of construction that specific statutory provisions should prevail over general statutory provisions shall have no application to this Act except to the extent that the provisions of this Act are considered specific as opposed to general provisions.

Section 10. Except as expressly set forth herein, this Act does not affect rights, duties or obligations that matured or were owed, penalties that were incurred, or proceedings that were begun, before its effective date.

Section 11. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application; and, to that end, the provisions of this Act are declared to be severable.

Section 12. This Act may be referred to as the "Civil Marriage Equality and Religious Freedom Act of 2013".

Section 13. This Act shall be effective on July 1, 2013.

SYNOPSIS

This Act repeals the prohibition on same-gender marriage that was enacted in 1996. The effect of this Act is to allow two individuals, whether of the same or different genders, to marry if otherwise eligible. Upon the effectiveness of this Act, no new civil unions will be formed in Delaware. This Act allows both parties to a civil union that is not subject to a pending proceeding for dissolution, annulment or legal separation to convert their civil union to a marriage prior to July 1, 2014 by application for a marriage license to the clerk of the peace of the county in which their civil union license was issued, with or without further solemnization of such marriage. On July 1, 2014, all remaining civil unions not currently subject to a proceeding for dissolution, annulment or legal separation will automatically convert to marriages.

This Act also provides that for legal unions other than marriages between two persons of the same gender established in another jurisdiction, both parties to such legal union will be afforded the same rights, benefits and protections, and will be subject to the same responsibilities, obligations and duties, as a marriage for purposes of Delaware law. In order for such recognition to apply, such union must be validly formed in such other jurisdiction, the parties thereto must meet the eligibility requirements to enter into a marriage in the State of Delaware, and such union must afford and impose on the parties thereto substantially the same rights, benefits, protections, responsibilities, obligations and duties of marriage.

This Act provides for the equal application of all laws of the State of Delaware relating to marriage, married spouses or their children to same-gender or different-gender married spouses and their children.

This Act protects religious freedoms of religious societies and other persons. The Act specifically protects the freedom of religion guaranteed under the United States Constitution and the Delaware Constitution. Further, the Act specifies that it shall not interfere with or regulate the religious practice of any religious society. Any religious society is free to choose which marriages it will solemnize, and religious societies, clergypersons and ministers of any religion will not be required to solemnize any marriage that does not conform to its religious beliefs.

This Act becomes effective on July 1, 2013.