SPONSOR: Sen. Sokola & Sen. Sorenson & Rep. George & Rep. Schooley
Sens. Blevins, Henry, Bunting, Katz, McDowell & Peterson; Reps. Gilligan, Schwartzkopf, Longhurst, Barbieri, Bolden, Brady, Heffernan, Keeley, Kowalko, Mitchell, Mulrooney, Osienski, Scott, B. Short, Viola, D.E. Williams, D.P. Williams

DELAWARE STATE SENATE
146th GENERAL ASSEMBLY

SENATE BILL NO. 30

AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE RELATING TO CIVIL UNIONS.

WHEREAS, it is the intent of the Delaware General Assembly to recognize civil unions in Delaware and that parties to a civil union shall enjoy all the same rights, benefits, protections, and shall be subject to all the same responsibilities, as married persons under Delaware law. By establishing the status of civil unions in Delaware, it is not the legislature's intent to revise the definition or eligibility requirements of marriage under Chapter 1, Title 13 of the Delaware Code.

NOW THEREFORE:

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

Section 1. Amend Title 13 of the Delaware Code by adding a new chapter 2 thereof to read as follows:

"Chapter 2. Civil Unions.

§ 201. Definitions. As used in this chapter, unless the context otherwise requires:

(a) "Civil union" means a legal union between two individuals of the same sex established pursuant to this chapter.

(b) "Party" or "party to a civil union" means an individual who is a party to a civil union established pursuant to this chapter.

§ 202. Eligibility to enter into a civil union. Persons shall be eligible to enter into a civil union only if such persons both are:

(a) Not (i) a party to a civil union with a different person, (ii) a spouse in a marriage that is recognized as a marriage under chapter 1 of this title, or (iii) a party to a substantially similar legal relationship as a civil union such as, but not limited to, a domestic partnership, with a different person;

(b) At least eighteen years of age;

(c) Of the same sex; and

(d) Not related to the other proposed party to the civil union, as provided in § 203 of this chapter.

§ 203. Civil unions void; when.

(a) A civil union 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.

(b) A civil union 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) 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 civil union license, and unless such person may in other respects lawfully enter into a civil union; and, if such decree or certificate cannot be 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; or

(2) 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 civil union license a written consent to such person's proposed civil union 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 enter into a civil union.

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

(d) The guilty party or parties to a civil union prohibited by this section shall be fined $100, and in default of the payment of the fine shall be imprisoned not more than 30 days. The Superior Court shall have exclusive original jurisdiction over all proceedings for violations of this section.

§ 204. Status of children of civil unions.

The rights of parties to a civil union, with respect to a child of whom either party becomes the parent during the term of the civil union, shall be the same as the rights (including presumptions of parentage) of married spouses with respect to a child of whom either spouse becomes the parent during the marriage. Children of void or voidable civil unions shall be deemed to be legitimate. 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 party to a civil union is the legal parent of a child at the birth of the child, such party shall be entitled to have his or her name entered on the original certificate of birth as a parent of the child.

§ 205. Solemnization; license to perform; refusal to join persons in a civil union.

(a) A civil union entered into in this State shall become valid only upon completion of a solemnization in accordance with this section.

(b) 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 civil union ceremony is to be performed may solemnize a civil union between persons who may lawfully enter into a civil union. The Clerk of the Peace in each county for good cause being shown may:

(1) Allow by written permit within his or her respective county, any duly sworn member of another state's judiciary, to solemnize civil unions in the State between persons who may lawfully enter into a civil union.

(2) Allow by written permit within his or her respective county, the Clerk of the Peace from another county within the State to solemnize civil unions in the State between persons who may lawfully enter into a civil union.

Within the limits of any incorporated municipality, the Mayor thereof may solemnize civil unions between persons who may lawfully enter into a civil union. Civil unions shall be solemnized in the presence of at least 2 reputable witnesses who shall sign the certificate of civil union as prescribed by this chapter. Solemnization may be entirely secular or may be performed according to the forms and usages of any religious society. No civil union shall be solemnized without the production of a license issued pursuant to this chapter.

(c) Other than as provided in this paragraph, nothing in this section shall be construed to require any person authorized to perform solemnizations of marriages or civil unions to perform a solemnization of a civil union, and no such authorized person who fails or refuses for any reason to join persons in a civil union shall be subject to any fine or other penalty for such failure or refusal. Notwithstanding the preceding sentence, a Clerk of the Peace or deputy thereof who issues a civil union license shall be required to perform a solemnization of such civil union if requested by the applicants for such license, and such solemnization shall be afforded the same order of priority as solemnization of marriages pursuant to chapter 1 of this title. Clerks of the Peace shall act pursuant to this chapter in the same manner as they act pursuant to chapter 1 of this title, without discrimination as to whether the issue involves a marriage under chapter 1 of this title or a civil union under this chapter.

(d) In the case of the 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 civil unions.

(e) Whoever, being authorized to issue a civil union license, knowingly or wilfully issues a license for a civil union prohibited by this chapter or, being authorized to solemnize a civil union, knowingly or wilfully assists in the contracting or solemnization of a prohibited civil union, shall be fined $100, and in default of the payment of such fine shall be imprisoned not more than 30 days.

(f) Whoever, not being authorized by this section, solemnizes a civil union, shall be fined $100, and in default of the payment of such fine shall be imprisoned not more than 30 days, and such civil union 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.

(g) Notwithstanding anything to the contrary contained in § 213 of this chapter, if a civil union prohibited by this chapter is contracted or solemnized outside of the State, when the legal residence of either party to the civil union is in this State, and the parties thereto shall afterwards live and cohabitate as parties to a civil union within the State, they shall be punished in the same manner as though the civil union had been contracted in this State.

(h) The Superior Court shall have exclusive original jurisdiction over all proceedings for violations of this section.

§ 206. Applicants for civil union; license required; limitations; violations by clerk of the peace; penalties.

(a) No persons may be joined in a civil union in this State unless both parties to such civil union:

(1) Meet the requirements of § 202;

(2) Have complied with § 207; and

(3) Have been issued a license by a Clerk of the Peace at least 24 hours prior to the time of the ceremony.

(b) The Department of Health and Social Services shall prescribe a civil union license form.

(c) The several Clerks of the Peace of the various counties or their deputies, shall issue all civil union licenses and shall sign them and affix the county seal thereto. A civil union license, when issued by the Clerk of the Peace, is sufficient authority for any person authorized to perform a civil union solemnization in this State to join the parties in a civil union. A civil union license issued pursuant to this chapter shall entitle the parties thereto, subject to the other provisions of this chapter, to enter into a civil union within 30 days from the date of issuance. In the event the civil union is not solemnized within 30 days of the issuance of said license, said license shall be void and the parties must reapply to the appropriate issuing officer for another license to enter into a civil union. The procedure to secure another license shall be the same as that provided for the initial application.

(d) The Clerk of the Peace in each county for good cause being shown may:

(1) Shorten the time period specified in subsection (a)(3) of this section; or

(2) Lengthen the time period specified in subsection (c) of this section not to exceed 180 days.

(e) No civil union license shall be issued by a Clerk of the Peace when either of the parties applying for a civil union license, at the time of making the application, is under the influence of intoxicating liquor or a narcotic drug or if papers that are required by this chapter are not delivered or if the issuing officer believes there is any legal impediment, as defined in this chapter, to the civil union of such parties.

(f) The number on the civil union license shall be filled in by the issuing Clerk of the Peace, unless it has been previously affixed and shall be the same number as that appearing on the application for such license. All blanks provided on the civil union license shall be filled in by the issuing Clerk of the Peace. The issuing Clerk of the Peace shall immediately note the issuance of a civil union license in the appropriate books prescribed by the Department of Health and Social Services.

(g) Any Clerk of the Peace or deputy of such who knowingly or wilfully acts in violation of this chapter shall be fined $100, and in default of payment of such fine, shall be imprisoned not more than 30 days. The Superior Court shall have exclusive original jurisdiction over all proceedings for violations of this section.

§ 207. Application for license for persons who wish to enter into a civil union.

(a) Before any civil union license shall be issued by the issuing officer, the parties desiring to enter into a civil union shall together appear before such officer to be examined upon oath or affirmation in the presence and hearing of each other according to the form prescribed by subsections (b), (c) and (d) of this section to which the parties applying for the license shall subscribe their names. The license shall be issued only after it has been made to appear that no legal impediment to the proposed civil union exists. In the case of critical illness of 1 of the parties desiring to enter into a civil union, the physician attending such party may appear for the ill party and make an application for a civil union license for such party, if such physician first makes an affidavit and delivers it to the issuing officer stating that in the opinion of said physician the party for whom said physician is acting is at the point of death and that this person may lawfully enter into a civil union. The application for the civil union license shall be altered in such case to show that said physician acted as proxy and the affidavit of the physician shall be filed with the application.

(b) The civil union 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 civil union license application shall include the following information and such other information as prescribed by the Department of Health and Social Services; provided that such other information is also required for marriage license applications under chapter 1 of this title: 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 civil unions, domestic partnerships or marriages and termination of previous civil unions, domestic

partnerships or marriages, place and court where applicants are on probation or parole, if such they be, and time of application.

(c) The application shall contain a certification by each applicant that each applicant is not of a prohibited degree of relationship.

(d) The applicants and issuing officer shall sign the application and the issuing officer shall certify as follows:

"I believe neither party is now under the influence of intoxicating liquor nor a narcotic drug. I have demanded and examined such papers as required by law and I am satisfied that they are properly executed. I know of no legal impediment to the proposed civil union of the above applicants."

The application shall also contain an appropriate affidavit form to be signed by persons certifying that an applicant is a resident of the State, if such a certification is required.

(e) In the case of applicants for a civil union license who claim to be residents of this State, if neither of them is personally known to the civil union license issuing officer as a resident of this State, at least 1 of such applicants must be identified as a resident of this State to the satisfaction of the issuing officer by a reputable guarantor, who under oath shall fill in the proper portion on the page in the Civil Union Record Books and shall duly sign it.

(f) Every person authorized by this chapter to issue civil union licenses may administer oaths or affirmations to the parties applying for the license.

(g) Civil union licenses, and other forms and books used in connection with the issuance of civil union licenses shall be furnished by the Department of Health and Social Services on request of the Clerks of the Peace. Each page of the Civil Union Record Books for the use of the Clerks of the Peace shall be numbered serially before delivery to the Clerks of the Peace.

(h) Clerks of the Peace shall examine and satisfy themselves of the validity of papers submitted to them by divorced persons, past or present patients of insane asylums, persons on probation or parole and shall file such papers in the office of the recorder of the appropriate county. Such papers shall constitute a part of the application for civil union license, but shall be open to inspection of the public only upon order of the Resident Judge of the proper county or such person as the Judge may appoint to give such orders.

(i) Judges shall supply certificates in whatever form they see fit to such divorced persons as they believe should receive them under this chapter.

(j) Superintendents of asylums for the insane shall supply certificates in whatever form they see fit to such persons as they believe should receive them under this chapter.

(k) In the case of any adult person who is on probation or parole from any court or institution, the chief officer of such court or institution, or such person as such officer may appoint to give consent to enter into a civil union, shall supply such consent in whatever form such officer deems advisable to such applicants for civil union license as such officer believes may properly enter into a civil union.

§ 208. Forms for civil union license; certification of civil union.

(a) The Department of Health and Social Services shall prescribe a civil union license form which shall be issued by the several Clerks of the Peace and such other forms, books, dockets and records as may be necessary to properly record civil unions and the issuance of civil union licenses. The civil union license shall contain language authorizing any clergy or other person authorized by the law of this State to solemnize a civil union and shall show: The earliest and latest time the solemnization of the civil union may be performed pursuant to the license, the place of issuance of the license, the names of the parties, the signature of the issuing authority and such other wording as the Department of Health and Social Services may prescribe, but not to exceed information collected for a marriage license under chapter 1 of this title except as required to confirm eligibility under § 202 of this chapter. The license shall also contain a form of certification by the person performing the solemnization ceremony that the solemnization ceremony was performed and the date and time of such solemnization ceremony.

(b) The Department of Health and Social Services shall furnish to all persons authorized by law to solemnize civil unions a suitable form for evidencing a civil union and the date and the place thereof, which form shall be completed and delivered without charge to one party to the civil union by the person performing the solemnization ceremony immediately after the solemnization ceremony. Such form may, but need not be, the original or a copy of the civil union license.

§ 209. Record of solemnization; reported by whom; affidavit; evidentiary weight of certificate or affidavit; supplies of civil union licenses, books and other forms.

(a) The person who solemnizes a civil union shall, within fifteen (15) days after the solemnization of the civil union, return to the issuing clerk of the peace such forms and papers as the Department of Health and Social Services may prescribe. The Clerk of the Peace shall immediately enter in the books prescribed by the Department of Health and Social Services to record civil unions the date of the civil union solemnization and the name of the person performing the civil union solemnization.

(b) If any person who has solemnized a civil union fails to return the certificate of civil union to the issuing Clerk of the Peace for recording as required under subsection (a) of this section within 15 days of the solemnization of the civil union, the parties joined in the civil union may provide the Clerk of the Peace with a notarized affidavit attesting to the fact that they were joined in a civil union and stating the date and place of the solemnization of the civil union and the name of

the person performing such solemnization. Upon the recording of that affidavit by the Clerk of the Peace, the civil union of the parties shall be deemed to be valid as of the date of the solemnization of the civil union stated in the affidavit.

(c) The certificate required by subsection (a) of this section or an affidavit recorded pursuant to subsection (b) of this section shall be prima facie evidence of the facts stated therein.

(d) Any person solemnizing a civil union in this State who fails to return the certificate of civil union to the issuing Clerk of the Peace for recording within 15 days of the solemnization of the civil union shall be assessed a $50 late fee by the issuing Clerk of the Peace. Any person with an unpaid civil penalty assessed by a Clerk of the Peace shall have that person's authorization to solemnize civil unions in the State suspended until such penalty is paid in full.

(e) The person performing the civil union ceremony shall retain the original or a copy of the civil union license, as the Department of Health and Social Services shall direct, for not less than 1 year after the ceremony.

(f) The books, forms and records as may be prescribed by the Department of Health and Social Services for civil unions shall be kept by the issuing Clerk of the Peace in the issuing Clerk of the Peace's office. They shall be public records open for the inspection of the public and shall be admitted as evidence of the facts therein contained in any court of record.

§ 210. False statement; penalty.

If any person applying for a civil union license under this chapter knowingly makes false answers to any of the inquiries of the person issuing the license, after having been sworn or affirmed to answer truly, said person shall be guilty of perjury, and if any person executing papers under this chapter executes them falsely, said person shall be subject to such penalties as the court may impose. The Superior Court shall have exclusive original jurisdiction over all proceedings for violations of this section.

§ 211. Performance of civil union solemnization in violation of chapter; false certificate of civil union; penalties.

Any person or religious society having authority to solemnize civil unions who performs a civil union solemnization without the presentation of a license issued pursuant to this chapter, or who performs the same prior to the expiration of 24 hours from the time of the issuance of the license or more than 30 days after the time of the issuance of the license, shall be imprisoned not more than 6 months or fined not more than $500, or both. Any person or religious society having authority to solemnize civil unions who shall make any false certificate of civil union shall be fined $100. The Superior Court shall have exclusive original jurisdiction over all proceedings for violations of this section.

§ 212. Rights, benefits, protections and responsibilities of parties to a civil union.

(a) Parties to a civil union lawfully entered into or otherwise recognized pursuant to this chapter shall have all the same rights, protections and benefits, and shall be subject to the same responsibilities, obligations and duties under 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, as are granted to, enjoyed by or imposed upon married spouses.

(b) Former parties to a civil union lawfully entered into or otherwise recognized pursuant to this chapter shall have the same rights, protections and benefits, and shall be subject to the same responsibilities, obligations and duties under 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, as are granted to, enjoyed by or imposed upon former married spouses.

(c) A surviving party to a civil union lawfully entered into or otherwise recognized pursuant to this chapter, following the death of the other party to the civil union, shall have the same rights, protections and benefits, and shall be subject to the same responsibilities, obligations and duties under 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, as are granted to, enjoyed by or imposed upon a widow or widower.

(d) 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 parties to a civil union being treated differently than married spouses, parties to a civil union shall be treated in all respects by the laws of this State as if United States federal law recognizes a civil union in the same manner as the laws of this State.

§ 213. Legal unions performed in other jurisdictions.

A legal union between two 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 chapter 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.

§ 214. Treatment of parties to a civil union for purposes of Delaware law.

(a) A party to a civil union shall be included in any definition or use of the terms "dependent", "family", "husband and wife", "immediate family", "next of kin", "spouse", "stepparent", “tenants by the entirety”, and other terms, whether or not gender-specific, that denote a spousal relationship or a person in a spousal 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.

(b) To the extent that another provision of this Code (other than chapter 1 of this title) or other laws of this State (including, without limitation, administrative rules or regulations, court rules, governmental policies, common law, court decisions, or any other provisions or sources of law, including in equity) utilizes a term used in chapter 1 of this title relating to marriage, references a section of chapter 1 of this title, or references marital status, except to the extent otherwise set forth in this chapter, such term, section or other reference shall be deemed to also utilize, include or reference the applicable corresponding term, section or other reference relating to civil unions or civil union status as established in this chapter.

§ 215. Treatment of parties to a civil union for purposes of chapter 1 of this title.

Notwithstanding chapter 1 of this title, no person who has entered into a valid civil union pursuant to this chapter, or who has entered into a valid legal union in any other jurisdiction that is recognized as a civil union pursuant to this chapter, may be found in violation of any provision of chapter 1 of this title.

§ 216. Dissolution of a civil union.

A civil union entered into or otherwise recognized under this chapter may be dissolved in the same form and manner as marriages entered into or otherwise recognized under chapter 1 of this title; provided, however, notwithstanding §§ 1504 and 1505(d) of this title, the Family Court of this State shall have, in addition to any other basis for jurisdiction it would otherwise have, jurisdiction over all proceedings for divorce and annulment of civil unions that are solemnized in this State under this chapter 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. All persons who enter into a civil union solemnized in this State consent to the non-exclusive jurisdiction of the Family Court for all proceedings for divorce and annulment of such civil union, even if one or both parties no longer reside in this State. If neither of the parties to a civil union solemnized in this State reside in this State, any petition for divorce or annulment of such civil union shall be filed in the county in which one or both of such parties last resided in this State.

§ 217. 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 this chapter. This chapter shall be broadly construed to accomplish its intended purposes.

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

Section 2. 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 3. 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 4. This Act may be referred to as the "Civil Union and Equality Act of 2011".

Section 5. This Act shall be effective at 10 a.m. on January 1, 2012.

Ssynopsis

This Act creates the recognized legal relationship of civil union in Delaware for eligible persons. This Act further recognizes as civil unions for all purposes under Delaware law legal unions between two persons of the same sex entered into in jurisdictions outside of Delaware provided that such union and the parties thereto meet the Delaware eligibility requirements to enter into a civil union in the State of Delaware. Parties who enter into a lawful civil union in Delaware, or whose legal union is recognized as a civil union under Delaware law, will have all of the same rights, benefits, protections and responsibilities as married persons under Delaware law. It is not the intent of the Delaware General Assembly to revise the definition or eligibility requirements of marriage under Delaware law or to require any religious institution to perform solemnizations of civil unions.

Author: Senator Sokola