



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5170

Introduced 2/8/2012, by Rep. Greg Harris - Deborah Mell - Kelly M. Cassidy - Ann Williams

SYNOPSIS AS INTRODUCED:

See Index

Creates the Religious Freedom and Marriage Fairness Act. Contains provisions regarding purposes, rules of construction, and severability. Provides that: all laws of this State applicable to marriage apply equally to marriages of same-sex and different-sex couples and their children; parties to a marriage and their children, regardless of whether the marriage is of a same-sex or different-sex couple, have the same benefits, protections, and responsibilities under law; parties to a marriage are included in any definition or use of terms such as "spouse", "family", "immediate family", "dependent", "next of kin", "wife", "husband", "bride", "groom", "wedlock", and other terms that refer to or denote the spousal relationship, as those terms are used throughout the law, regardless of whether the parties to a marriage are of the same sex or different sexes; and, to the extent laws this State adopt, refer to, or rely upon provisions of federal law as applicable to this State, parties to a marriage of the same sex and their children shall be treated under the law of this State as if federal law recognized the marriages of same-sex couples in the same manner as the law of this State. Amends the Illinois Marriage and Dissolution of Marriage Act by making various changes concerning: parties who may marry; solemnization; prohibited marriages; jurisdiction; and other matters. Amends the Illinois Religious Freedom Protection and Civil Union Act. Makes various changes and additions regarding recognition of marriages. Authorizes the voluntary conversion of a civil union to a marriage under specified circumstances. Makes other changes.

LRB097 17195 AJO 62395 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Religious Freedom and Marriage Fairness Act.

6 Section 5. Purposes; rules of construction. This Act shall
7 be liberally construed and applied to promote its underlying
8 purpose, which is to provide same-sex and different-sex couples
9 and their children equal access to the status, benefits,
10 protections, rights, and responsibilities of civil marriage.

11 Section 10. Equal access to marriage.

12 (a) All laws of the State of Illinois, whether they derive
13 from statute, administrative or court rule, policy, common law,
14 or any other source of civil or criminal law, applicable to
15 marriage shall apply equally to marriages of same-sex and
16 different-sex couples and their children.

17 (b) Parties to a marriage and their children, regardless
18 of whether the marriage consists of a same-sex or different-sex
19 couple, shall have all the same benefits, protections, and
20 responsibilities under law, whether they derive from statute,
21 administrative or court rule, policy, common law, or any other
22 source of civil or criminal law.

1 (c) Parties to a marriage shall be included in any
2 definition or use of terms such as "spouse", "family",
3 "immediate family", "dependent", "next of kin", "wife",
4 "husband", "bride", "groom", "wedlock", and other terms that
5 refer to or denote the spousal relationship, as those terms are
6 used throughout the law, regardless of whether the parties to a
7 marriage are of the same sex or different sexes.

8 (d) To the extent any of the laws of Illinois adopt, refer
9 to, or rely upon provisions of federal law as applicable to
10 this State, parties to a marriage of the same sex and their
11 children shall be treated under the law of this State as if
12 federal law recognized the marriages of same-sex couples in the
13 same manner as the law of this State.

14 Section 15. Severability. If any part of this Act or its
15 application to any person or circumstance is adjudged invalid,
16 such adjudication or application shall not affect the validity
17 of this Act as a whole or of any other part.

18 Section 905. The Illinois Marriage and Dissolution of
19 Marriage Act is amended by changing Sections 201, 209, and 212
20 and by adding Section 220 as follows:

21 (750 ILCS 5/201) (from Ch. 40, par. 201)

22 Sec. 201. Formalities.) A marriage between 2 persons ~~a man~~
23 ~~and a woman~~ licensed, solemnized and registered as provided in

1 this Act is valid in this State.

2 (Source: P.A. 80-923.)

3 (750 ILCS 5/209) (from Ch. 40, par. 209)

4 Sec. 209. Solemnization and Registration.)

5 (a) A marriage may be solemnized by a judge of a court of
6 record, by a retired judge of a court of record, unless the
7 retired judge was removed from office by the Judicial Inquiry
8 Board, except that a retired judge shall not receive any
9 compensation from the State, a county or any unit of local
10 government in return for the solemnization of a marriage and
11 there shall be no effect upon any pension benefits conferred by
12 the Judges Retirement System of Illinois, by a judge of the
13 Court of Claims, by a county clerk in counties having 2,000,000
14 or more inhabitants, by a public official whose powers include
15 solemnization of marriages, or in accordance with the
16 prescriptions of any religious denomination, Indian Nation or
17 Tribe or Native Group, provided that when such prescriptions
18 require an officiant, the officiant be in good standing with
19 his or her religious denomination, Indian Nation or Tribe or
20 Native Group. Either the person solemnizing the marriage, or,
21 if no individual acting alone solemnized the marriage, both
22 parties to the marriage, shall complete the marriage
23 certificate form and forward it to the county clerk within 10
24 days after such marriage is solemnized.

25 (a-5) Nothing in this Act shall be construed to require any

1 religious denomination, Indian Nation or Tribe or Native Group,
2 or any officiant acting as a representative of a religious
3 denomination, Indian Nation or Tribe or Native Group, to
4 solemnize any marriage. Instead, any religious denomination,
5 Indian Nation or Tribe or Native Group is free to choose which
6 marriages it will solemnize.

7 (b) The solemnization of the marriage is not invalidated by
8 the fact that the person solemnizing the marriage was not
9 legally qualified to solemnize it, if either party to the
10 marriage believed him or her to be so qualified or by the fact
11 that the marriage was inadvertently solemnized in a county in
12 Illinois other than the county where the license was issued.

13 (Source: P.A. 95-775, eff. 1-1-09.)

14 (750 ILCS 5/212) (from Ch. 40, par. 212)

15 Sec. 212. Prohibited Marriages.

16 (a) The following marriages are prohibited:

17 (1) a marriage entered into prior to the dissolution of
18 an earlier marriage of one of the parties;

19 (2) a marriage between an ancestor and a descendant or
20 between siblings ~~a brother and a sister~~, whether the
21 relationship is by the half or the whole blood or by
22 adoption;

23 (3) a marriage between an uncle and a niece, between an
24 uncle and a nephew, ~~or~~ between an aunt and a nephew, or
25 between an aunt and a niece, whether the relationship is by

1 the half or the whole blood;

2 (4) a marriage between cousins of the first degree;
3 however, a marriage between first cousins is not prohibited
4 if:

5 (i) both parties are 50 years of age or older; or

6 (ii) either party, at the time of application for a
7 marriage license, presents for filing with the county
8 clerk of the county in which the marriage is to be
9 solemnized, a certificate signed by a licensed
10 physician stating that the party to the proposed
11 marriage is permanently and irreversibly sterile;

12 (5) (blank). ~~a marriage between 2 individuals of the~~
13 ~~same sex.~~

14 (b) Parties to a marriage prohibited under subsection (a)
15 of this Section who cohabit after removal of the impediment are
16 lawfully married as of the date of the removal of the
17 impediment.

18 (c) Children born or adopted of a prohibited or common law
19 marriage are the lawful children of the parties.

20 (Source: P.A. 94-229, eff. 1-1-06.)

21 (750 ILCS 5/220 new)

22 Sec. 220. Consent to jurisdiction. Members of a same-sex
23 couple who enter into a marriage in Illinois consent to the
24 jurisdiction of the courts of Illinois for the purpose of any
25 action relating to the marriage even if one or both parties

1 cease to reside in this State. A court shall enter a judgment
2 of dissolution of marriage if at the time the action is
3 commenced it meets the grounds for dissolution of marriage set
4 forth in this Act.

5 (750 ILCS 5/213.1 rep.)

6 Section 910. The Illinois Marriage and Dissolution of
7 Marriage Act is amended by repealing Section 213.1.

8 Section 915. The Illinois Religious Freedom Protection and
9 Civil Union Act is amended by changing Section 60 and by adding
10 Section 65 as follows:

11 (750 ILCS 75/60)

12 Sec. 60. Respect for marriages and civil unions entered
13 into in other jurisdictions ~~Reciprocity~~. ~~A marriage between~~
14 ~~persons of the same sex, a civil union, or a substantially~~
15 ~~similar legal relationship other than common law marriage,~~
16 ~~legally entered into in another jurisdiction, shall be~~
17 ~~recognized in Illinois as a civil union. A marriage, whether of~~
18 ~~the same sex or different sexes and providing that it is not a~~
19 ~~common law marriage, legally entered into in another~~
20 ~~jurisdiction, shall be recognized in Illinois as a marriage in~~
21 ~~accordance with the provisions of the Illinois Marriage and~~
22 ~~Dissolution of Marriage Act except that Section 216 of the~~
23 ~~Illinois Marriage and Dissolution of Marriage Act shall not~~

1 apply to marriages of same-sex couples validly entered into in
2 another jurisdiction.

3 (Source: P.A. 96-1513, eff. 6-1-11.)

4 (750 ILCS 75/65 new)

5 Sec. 65. Voluntary conversion of civil union to marriage.

6 (a) Parties to a civil union may apply for and receive a
7 marriage license and have such marriage solemnized and
8 registered pursuant to Section 209 of the Illinois Marriage and
9 Dissolution of Marriage Act, provided the parties are otherwise
10 eligible to marry and the parties to the marriage are the same
11 as the parties to the civil union. The fee for application for
12 a marriage license shall be waived in such circumstances.

13 (b) For a period of one year following the effective date
14 of this amendatory Act of the 97th General Assembly, parties to
15 a civil union may have their civil union legally designated and
16 recorded as a marriage, deemed effective on the date of
17 solemnization of the civil union, without payment of any fee,
18 provided the parties' civil union has not been dissolved and
19 there is no pending proceeding to dissolve the civil union.
20 Upon application to a county clerk, the parties shall be issued
21 a marriage certificate. The parties' signatures on the marriage
22 certificate and return of the signed certificate for recording
23 shall be sufficient to convert the civil union into a marriage.
24 The county clerk shall notify the Department of Public Health
25 within 45 days by furnishing a copy of the certificate to the

1 Department of Public Health.

2 (c) When parties to a civil union have married, or when
3 their civil union has been converted to a marriage under this
4 Section, the parties, as of the date stated in the marriage
5 certificate, shall no longer be considered in a civil union and
6 shall be in a legal marriage.

1 INDEX

2 Statutes amended in order of appearance

3 New Act

4 750 ILCS 5/201 from Ch. 40, par. 201

5 750 ILCS 5/209 from Ch. 40, par. 209

6 750 ILCS 5/212 from Ch. 40, par. 212

7 750 ILCS 5/220 new

8 750 ILCS 5/213.1 rep.

9 750 ILCS 75/60

10 750 ILCS 75/65 new