

CHAPTER 263

CHILDREN AND DOMESTIC MATTERS

SENATE BILL 16-150

BY SENATOR(S) Steadman, Aguilar, Carroll, Crowder, Donovan, Garcia, Guzman, Heath, Hill, Hodge, Jahn, Johnston, Jones, Kefalas, Kerr, Martinez Humenik, Merrifield, Newell, Roberts, Todd;
also REPRESENTATIVE(S) Esgar, Arndt, Becker K., Buckner, Court, Danielson, Fields, Garnett, Ginal, Hamner, Kagan, Kraft-Tharp, Lebsock, Lee, Lontine, McCann, Melton, Mitsch Bush, Moreno, Pabon, Pettersen, Primavera, Rosenthal, Ryden, Salazar, Tyler, Vigil, Williams, Winter, Young, Hullinghorst.

AN ACT

CONCERNING MARRIAGES BY INDIVIDUALS WHO ARE PARTIES TO A CIVIL UNION, AND, IN CONNECTION THEREWITH, PROHIBITING MARRIAGES IN CIRCUMSTANCES IN WHICH ONE OF THE PARTIES IS ALREADY IN A CIVIL UNION WITH ANOTHER INDIVIDUAL, ADDRESSING THE LEGAL EFFECT OF PARTIES TO A CIVIL UNION MARRYING EACH OTHER, CLARIFYING THE DISSOLUTION PROCESS WHEN PARTIES TO A CIVIL UNION MARRY, AND AMENDING THE BIGAMY STATUTE TO INCLUDE PARTIES TO A CIVIL UNION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds a legal conflict between the Colorado constitution and the manner in which the decision in *Obergefell v. Hodges*, 576 U.S. ___ (2015), has altered the issuance of marriage licenses in Colorado.

(2) The people, through a citizen's initiative, established in the Colorado constitution a specific definition of marriage where that legal relationship is exclusively reserved for a relationship between one man and one woman. However, in the five to four *Obergefell* decision, the United States supreme court nullified a similar constitutional definition of marriage in Ohio for James Obergefell and other petitioners.

(3) As a consequence of the *Obergefell* decision, Colorado county clerks and recorders began issuing marriage licenses to couples who also held civil union licenses. Now couples who hold both civil union and marriage licenses face a more complicated legal process if they wish to dissolve their legal relationships.

(4) Senate Bill 16-150 is intended to remedy the complicated legal process of

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

dissolving a civil union and a marriage for the same couple. The ultimate constitutional question of the United States supreme court's constitutional jurisdiction and authority to redefine marriage in Colorado's constitution through a ruling on certain individual cases in other states is a matter the general assembly may take up at a different time, but Senate Bill 16-150 does not address, nor settle that concern.

SECTION 2. In Colorado Revised Statutes, 14-2-105, **amend** (1) introductory portion; and **add** (1) (b.5) as follows:

14-2-105. Marriage license and marriage certificate. (1) The executive director of the department of public health and environment shall prescribe the form for an application for a marriage license, which ~~shall~~ **MUST** include the following information:

(b.5) IF EITHER PARTY HAS PREVIOUSLY BEEN A PARTNER IN A CIVIL UNION AND, IF SO, THE NAME OF THE OTHER PARTNER IN THE CIVIL UNION, OR THE DATE, PLACE, AND COURT IN WHICH THE CIVIL UNION WAS DISSOLVED OR DECLARED INVALID, OR THE DATE AND PLACE OF DEATH OF THE FORMER PARTNER IN THE CIVIL UNION;

SECTION 3. In Colorado Revised Statutes, 14-2-110, **add** (1) (a.5) as follows:

14-2-110. Prohibited marriages. (1) The following marriages are prohibited:

(a.5) A MARRIAGE ENTERED INTO PRIOR TO THE DISSOLUTION OF AN EARLIER CIVIL UNION OF ONE OF THE PARTIES, EXCEPT A CURRENTLY VALID CIVIL UNION BETWEEN THE SAME TWO PARTIES;

SECTION 4. In Colorado Revised Statutes, 14-15-109, **add** (3) as follows:

14-15-109. Civil union license and certificate. (3) A CIVIL UNION LICENSE AND A CIVIL UNION CERTIFICATE DO NOT CONSTITUTE EVIDENCE OF THE PARTIES' INTENT TO CREATE A COMMON LAW MARRIAGE.

SECTION 5. In Colorado Revised Statutes, **repeal** 14-15-116 (1).

SECTION 6. In Colorado Revised Statutes, **add** 14-15-118.5 as follows:

14-15-118.5. Construction - effect when parties to a civil union marry - dissolution process. (1) WHEN PARTIES WHO HAVE ENTERED INTO A CIVIL UNION PURSUANT TO THIS ARTICLE SUBSEQUENTLY MARRY THE EFFECT IS A MERGER OF THE TWO RELATIONSHIP STATUSES. ONCE MERGED, THE CIVIL UNION TERMINATES AS OF THE DATE OF THE SOLEMNIZATION OF THE MARRIAGE OR DETERMINATION OF A COMMON LAW MARRIAGE AND NO SEPARATE DISSOLUTION OF THE CIVIL UNION IS REQUIRED.

(2) IF ONE OR BOTH PARTIES TO A MARRIAGE THAT HAS BEEN MERGED WITH A CIVIL UNION SUBSEQUENTLY DESIRE TO DISSOLVE THE MARRIAGE, LEGALLY SEPARATE, OR HAVE THE MARRIAGE DECLARED INVALID, ONE OR BOTH OF THE PARTIES MUST FILE A PETITION IN ACCORDANCE WITH THE PROCEDURES SPECIFIED IN ARTICLE 10 OF THIS TITLE.

(3) IF A CIVIL UNION AND MARRIAGE WERE MERGED, ANY CALCULATION OF THE DURATION OF THE MARRIAGE INCLUDES THE TIME PERIOD DURING WHICH THE PARTIES WERE IN A CIVIL UNION.

SECTION 7. In Colorado Revised Statutes, **amend** 18-6-201 as follows:

18-6-201. Bigamy. (1) Any married person who, while still married, marries, ENTERS INTO A CIVIL UNION, or cohabits in this state with another PERSON commits bigamy, unless as an affirmative defense it appears that at the time of the cohabitation, or subsequent marriage, OR SUBSEQUENT CIVIL UNION:

- (a) The accused reasonably believed the prior spouse to be dead; or
- (b) The prior spouse had been continually absent for a period of five years during which time the accused did not know the prior spouse to be alive; or
- (c) The accused reasonably believed that he OR SHE was legally eligible to remarry OR LEGALLY ELIGIBLE TO ENTER INTO A CIVIL UNION.

(1.5) ANY PERSON WHO IS A PARTNER IN A CIVIL UNION, WHILE STILL LEGALLY IN A CIVIL UNION, WHO MARRIES, ENTERS INTO ANOTHER CIVIL UNION, OR COHABITS IN THE STATE WITH ANOTHER PERSON OTHER THAN A CURRENT PARTNER IN A CIVIL UNION, COMMITS BIGAMY, UNLESS AS AN AFFIRMATIVE DEFENSE IT APPEARS THAT AT THE TIME OF THE COHABITATION OR SUBSEQUENT MARRIAGE OR SUBSEQUENT CIVIL UNION:

- (a) THE ACCUSED REASONABLY BELIEVED THE PRIOR PARTNER TO BE DEAD; OR
- (b) THE PRIOR PARTNER HAD BEEN CONTINUALLY ABSENT FOR A PERIOD OF FIVE YEARS DURING WHICH TIME THE ACCUSED DID NOT KNOW THE PRIOR PARTNER TO BE ALIVE; OR
- (c) THE ACCUSED REASONABLY BELIEVED THAT HE OR SHE WAS LEGALLY ELIGIBLE TO MARRY OR LEGALLY ELIGIBLE TO ENTER INTO A CIVIL UNION.

(2) Bigamy is a class 6 felony.

SECTION 8. Effective date - applicability. This act takes effect upon passage; except that section 7 of this act takes effect July 1, 2016, and applies to offenses committed on or after said date.

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 8, 2016