

Public Notice of Direct Final Rulemaking

Rhode Island Government Register

AGENCY: Rhode Island Department of Business Regulation (“Department”)

DIVISION: Insurance

RULE IDENTIFIER: 230-RICR-20-60-5 (formerly Insurance Regulation 118)

ORIGINAL ERLID: 6668

REGULATION TITLE: Civil Unions

RULEMAKING ACTION: Direct Final

TYPE OF FILING: Amendment

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Date of Public Notice: August 6, 2018

End of Comment Period: September 5, 2018

SUMMARY OF PROPOSED RULE:

The regulation prescribes the requirements for insurance companies to comply with the Rhode Island Civil Union law. While reformatting for incorporation into the RICR, the Department identified a number of technical non-substantive changes reflected in the attached proposal. In addition the following changes have been made:

Section 5.3(C) – the phrase “religious or denominational organization or to an organization” has been added to clarify that the provisions of R.I. Gen. Laws § 15-3.1-5 apply to this regulation.

Section 5.5 – Adds “Title 230” in place of “Department Regulations” to clarify when the RICR is enacted.

Section 5.7 – adds the actual effective date of the original regulation, December 23, 2011, to clarify the date after which forms filed with the Department must comply with the regulation.

The Department does not expect these proposed amendments to be controversial.

WHERE AMENDMENTS MAY BE INSPECTED:

A copy of the proposed amendments will be available for examination from August 6, 2018, through September 5, 2018, by mail or at the offices of the Department of Business Regulation, Attn: Elizabeth Dwyer, Esq., 1511 Pontiac Avenue, Cranston, Rhode Island 02920, or requested by emailing elizabeth.dwyer@dbr.ri.gov or by calling Elizabeth Dwyer at (401) 462-9615. Electronic copies of the proposed amendment will also be available on the DBR website at www.dbr.ri.gov and Secretary of State’s at <http://sos.ri.gov/ProposedRules/>. A copy of the proposed annotated regulations is also found below in the body of this webpage.

COMMENTS:

Interested persons may submit written objections to the proposed amendment of this regulation. If no objection is received on or before September 5, 2018, the Department will file the regulation without opportunity for public comment and the regulation will be effective on September 5, 2018. Any written objections should be sent to the following addresses and must be received no later than 11:59 PM on September 5, 2018.

elizabeth.dwyer@dbr.ri.gov

OR

Department of Business Regulation
Insurance Division
Attn: Elizabeth Dwyer
1511 Pontiac Ave, Bldg 68-2
Cranston, RI 02920

FOR FURTHER INFORMATION CONTACT:

Elizabeth Dwyer at (401) 462-9615, or at the email or mailing address listed above.

SUPPLEMENTARY INFORMATION:**Regulatory Analysis:**

These proposed amendments will result in no adverse impact for small businesses.

Authority for This Rulemaking: R.I. Gen. Laws §§ 15-3.1-6 and 42-14-17

Regulatory Findings:

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Amendment:

The Rhode Island Department of Business Regulation proposes to amend 230-RICR-20-60-5 (formerly Insurance Regulation 118) Civil Unions as follows:

TITLE 230 – DEPARTMENT OF BUSINESS REGULATION

CHAPTER 20 – INSURANCE

SUBCHAPTER 60 – MISCELLANEOUS

Part 5 – Civil Unions

5.1 Authority

This ~~regulation~~ Part is promulgated in accordance with R.I. Gen. Laws §§ 15-3.1-6, and 42-14-17. ~~and 42-35-3 et seq.~~

5.2 Purpose

The purpose of this ~~regulation~~ Part is to prohibit insurers from unfairly discriminating between married couples and parties to a civil union.

5.3 Applicability and Scope

- A. This ~~regulation~~ Part applies to any person transacting the business of insurance in the State of Rhode Island.
- B. Except as expressly provided herein, this ~~regulation~~ Part applies to all insurance policies and contracts solicited, delivered, issued, or renewed in the state of Rhode Island.
- C. This ~~regulation~~ Part shall not be construed to affect the ability of a fraternal benefit society to determine the admission of its members as provided under R.I. Gen. Laws § 27-25-6 or to determine the scope of beneficiaries in accordance with R.I. Gen. Laws § 27-25-17. Further this ~~regulation~~ Part shall not apply to a ~~fraternal benefit society~~ religious or denominational organization, or to an organization that has been established and is operating for charitable or educational purpose and which is operated, supervised or controlled by or in connection with a religious organization where compliance with this ~~regulation~~ Part would violate R.I. Gen. Laws § 15-3.1-5.
- D. Nothing herein shall be construed to prevent or prohibit a self-insured or self-funded entity from extending insurance to civil union spouses.

5.4 Definitions

- A. “Civil union” means a comprehensive statewide domestic partnership established pursuant to R.I. Gen. Laws § 15-3.1-1 *et seq.* or laws of another state.

- B. “Department” means the Insurance Division of the Department of Business Regulation.
- C. “Insurance policy” or “Insurance contract” includes but not be limited to any contract of insurance, indemnity, medical, dental, optometric, hospital service, suretyship, or annuity, issued, proposed for issuance, or intended for issuance by any insurer.
- D. “Insurer” means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurers, fraternal benefit society, hospital or medical service corporations, health maintenance organization, managed care organization, or any other legal entity engaged in the business of insurance including producers, brokers, appraisers and adjusters. For the purpose of this ~~regulation~~ Part, insurance shall also include third party administrators and other agents and contractors of persons engaged in the business of insurance in Rhode Island.
- E. “Party to a civil union” means a person who has established a civil union pursuant to applicable state law.

5.5 Interpretation of Title 230 ~~Department Regulations~~

Pursuant to R.I. Gen. Laws § 15-3.1-6, parties to a civil union shall be included in any definition or use of the terms “marriage,” “spouse,” “family,” “immediate family,” “dependent,” “next of kin,” and any other terms that denotes a marital or spousal relationship, as those terms are used throughout this Title. ~~the Department’s regulations.~~

5.6 Coverage Standards for Civil Unions

- A. Insurance contracts and policies offered by insurers to married couples, spouses, and their families shall also be offered to parties to a civil union, and their families. Except as specifically provided herein, all insurance contracts and policies shall provide coverage to parties to a civil union and their families that is equivalent to coverage provided to married persons and their families. At the request of a civil union party, insurers shall endorse or amend any such policy or contract to include policy or contract language which is consistent with this ~~regulation~~ Part.
- B. Effective January 1, 2012, any party to a civil union wishing to change his or her insurance contract or policy into a joint contract or policy shall be entitled to make that change to the extent a married person would be allowed to change his or her policy, without incurring any penalty as the result of such change. Any such change may be subject to standard and routine underwriting of the party to be added to the policy or contract.

- C. Insurers shall not use the fact that an applicant or insured is a party to a civil union as a means to include sexual orientation in the underwriting process or in the determination of insurability. Use of sexual orientation as an underwriting standard or practice or as an eligibility requirement constitutes an unfair trade practice that is prohibited by R.I. Gen. Laws § 27-29-4.
- D. Nothing in this ~~regulation~~ Part shall be construed to prohibit insurers from setting rates for insurance in accordance with reasonable classifications based on relevant actuarial data or actual cost experience unrelated to civil union status. Preferential rates or discounts offered to a married person shall also be made equally available to the parties to a civil union.
- E. The existence of a civil union shall automatically create, for each party to a civil union, an insurable interest in the other party as that term is used in R.I. Gen. Laws § 27-4-27. Both parties in a civil union shall also automatically have an insurable interest in a child for whom one party in a civil union becomes the natural or adoptive parent during the term of a civil union.
- F. An insurer shall not require any party to a civil union to produce proof of the existence of a valid civil union if that insurer does not also require married persons to produce proof of the existence of a valid marriage. Insurers may require an applicant to produce proof of the existence of a valid civil union only where the insurer would also require proof of the existence of a valid marriage under the same circumstances.
- G. Insurers are not required to provide a benefit available to a married person to a party to a civil union, or amend an insurance policy or contract of a party to a civil union when application of federal law prohibits such action or limits the benefit to married person. If an insurer declines to provide a benefit or to amend an insurance contract because it determines that the application of federal law affects the provision of a benefit available to a married person to a party to a civil union, the insurer shall:
 - 1. notify the party to a civil union of the declination and the specific reason why the insurer takes the position that federal law prohibits extension of the benefit and
 - 2. notify the Department of its determination.

5.7 Form Filings

- A. All forms filed on or after December 23, 2011, ~~the effective date of this regulation~~ will not be approved if the term “spouse” or “marriage” or any other synonym does not include parties to a civil union.

- B. The Department will not require the re-filing of forms previously approved. Such forms shall be amended by operation of law to include parties to a civil union in the definition of “spouse” or “marriage” or any synonym to those terms.

5.8 Severability

If any provision of this ~~regulation~~ Part or the application thereof to any person or circumstances is held invalid or unconstitutional, the invalidity or unconstitutionality of such provision shall not affect other provisions or applications of this ~~regulation~~ Part which can be given effect without the invalid or unconstitutional provision or application, and to this end, the provisions of this ~~regulation~~ Part are severable.