

1 H.758

2 Introduced by Committee on Judiciary

3 Date:

4 Subject: Domestic relations; civil marriage; civil unions

5 Statement of purpose: This bill proposes to provide, upon application, an
6 expedited process for dissolving the civil union of a couple upon their marriage
7 to one another and to provide access to a divorce or a dissolution to
8 nonresident couples who established a marriage or civil union in Vermont if
9 the parties are legally barred from divorcing or dissolving the union in their
10 state of residence, provided that the parties file a stipulation outlining an
11 agreement executed by both parties that sets out the terms and conditions of
12 resolution for all issues in the divorce or dissolution action.

13 An act relating to divorce and dissolution proceedings

14 It is hereby enacted by the General Assembly of the State of Vermont:

15 Sec. 1. LEGISLATIVE INTENT

16 (a) On July 1, 2000, Vermont became the first state to provide same-sex
17 couples the opportunity to obtain the same benefits and protections afforded by
18 state law to married opposite-sex couples by enacting civil unions. In 2009,
19 Vermont extended the right to establish a civil marriage to same-sex couples.

1 (b) Today, the United States is a patchwork of laws regarding the
2 recognition of legally joined same-sex couples. While several states now
3 recognize civil unions and same-sex marriage, most do not.

4 (c) Vermont law requires a person to have resided in Vermont for at least
5 six months prior to filing a complaint for an annulment, divorce, or dissolution
6 of a civil union. This long-standing rule is commonplace among the states and
7 prevents parties from choosing a jurisdiction most likely to provide a favorable
8 judgment. However, while an opposite-sex out-of-state couple who marries in
9 Vermont can get divorced in the state of residence of either party, most
10 same-sex out-of-state couples joined in a Vermont civil union or marriage do
11 not have this option. Thus, there are many same-sex couples who established a
12 civil union or married in Vermont who are no longer together, yet they
13 continue to be legally bound with no recourse other than moving to Vermont
14 and becoming residents.

15 (d) It is the intent of the general assembly in this act to provide access to a
16 civil union dissolution or a divorce to nonresident couples joined in a Vermont
17 civil union or Vermont marriage who are legally barred from dissolving the
18 union in their state of residence, provided that the parties file a stipulation
19 outlining an agreement executed by both parties that sets out the terms and
20 conditions of resolution for all issues in the dissolution or divorce action. The

1 provisions of this act pertaining to a divorce for nonresident couples shall
2 apply to both same-sex and opposite-sex couples.

3 Sec. 2. 15 V.S.A. § 592 is amended to read:

4 § 592. RESIDENCE

5 (a) A complaint for divorce or annulment of civil marriage may be brought
6 if either party to the marriage has resided within the state for a period of six
7 months or more, but a divorce shall not be decreed for any cause, unless the
8 plaintiff or the defendant has resided in the state one year next preceding the
9 date of final hearing. Temporary absence from the state because of illness,
10 employment without the state, service as a member of the armed forces of the
11 United States, or other legitimate and bona fide cause shall not affect the six
12 months' period or the one-year period specified in the preceding sentence,
13 provided the person has otherwise retained residence in this state.

14 (b) Notwithstanding provisions to the contrary, a complaint for divorce
15 may be filed in the family division of superior court in the county in which the
16 marriage certificate was filed by parties who are not residents of Vermont
17 provided all of the following criteria are met:

18 (1) The marriage was established in Vermont.

19 (2) Neither party's state of legal residence recognizes the couple's
20 Vermont marriage for purposes of divorce.

1 (3) There are no minor children who were born or adopted during the
2 marriage.

3 (4) The parties file a stipulation together with a complaint that resolves
4 all issues in the divorce action. The stipulation shall be signed by both parties
5 and shall include the following terms:

6 (A) An agreement that the terms and conditions of the stipulation
7 may be incorporated into a final order of divorce.

8 (B) The facts upon which the court may base a decree of divorce and
9 that bring the matter before the court's jurisdiction.

10 (C) An acknowledgment that:

11 (i) each party understands that if he or she wishes to litigate any
12 issue related to the divorce before a Vermont court, one of the parties must
13 meet the residency requirement set forth in subsection (a) of this section.

14 (ii) neither party is the subject of an abuse prevention order in a
15 proceeding between the parties.

16 (iii) there are no minor children who were born or adopted during
17 the marriage.

18 (iv) neither party's state of legal residence recognizes the couple's
19 Vermont marriage for purposes of divorce.

20 (v) each party has entered into the stipulation freely and
21 voluntarily.

1 (vi) the parties have exchanged all financial information, including
2 income, assets, and liabilities.

3 (c) The court shall waive a final hearing on any divorce action filed
4 pursuant to subsection (b) of this section unless the court determines upon
5 review of the complaint and stipulation that the filing is incomplete or that a
6 hearing is warranted for the purpose of clarifying a provision of the stipulation.
7 Final uncontested hearings in a nonresident divorce action shall be conducted
8 by telephone unless one or both of the parties choose to appear in person.

9 Sec. 3. 15 V.S.A. § 593 is amended to read:

10 § 593. PLACE FOR BRINGING ACTION; CAPTION OF DIVORCE

11 ACTION

12 (a) ~~Complaints~~ Except as provided in subsection (b) of this section,
13 complaints for divorce for any cause and for affirming or annulling the civil
14 marriage contract shall be brought in the county in which the parties or one of
15 them resides. Petitions directed to a superior judge for temporary orders under
16 the provisions of Vermont Rule of Civil Procedure 80(c) may be heard within
17 or without the county where ~~such~~ the cause is pending at ~~such~~ a place ~~as shall~~
18 ~~be~~ convenient for the parties and the judge hearing the same.

19 (b) A complaint for divorce or dissolution of a civil union shall be brought
20 in the county in which the marriage certificate or the civil union certificate was
21 filed if neither of the parties resides in Vermont.

1 (c) An action for divorce or annulment may be captioned as follows:

2 Complaint for Divorce [Annulment]-Involving: [Names of Parties]

3 Sec. 4. 15 V.S.A. § 1206 is amended to read:

4 § 1206. DISSOLUTION OF CIVIL UNIONS

5 (a) The family division of the superior court shall have jurisdiction over all
6 proceedings relating to the dissolution of civil unions. ~~The~~ Except as
7 otherwise provided, the dissolution of civil unions shall follow the same
8 procedures and be subject to the same substantive rights and obligations that
9 are involved in the dissolution of civil marriage in accordance with chapter 11
10 of this title, including any residency requirements.

11 (b) Notwithstanding the provisions of sections 592 and 593 of this title, a
12 complaint for civil union dissolution may be filed in the family division of
13 superior court in the county in which the civil union certificate was filed by
14 parties who are not residents of Vermont provided all of the following criteria
15 are met:

16 (1) The civil union of the parties was established in Vermont.

17 (2) Neither party's state of legal residence recognizes the couple's
18 Vermont civil union for purposes of dissolution.

19 (3) There are no minor children who were born or adopted during the
20 civil union.

1 (4) The parties file a stipulation together with a complaint that resolves
2 all issues in the dissolution action. The stipulation shall be signed by both
3 parties and shall include the following terms:

4 (A) An agreement that the terms and conditions of the stipulation
5 may be incorporated into a final order of dissolution.

6 (B) The facts upon which the court may base a decree of dissolution
7 of a civil union and that bring the matter before the court's jurisdiction.

8 (C) An acknowledgment that:

9 (i) each party understands that if he or she wishes to litigate any
10 issue related to the dissolution before a Vermont court, one of the parties must
11 meet the residency requirement set forth in section 592 of this title.

12 (ii) neither party is the subject of an abuse prevention order in a
13 proceeding between the parties.

14 (iii) there are no minor children who were born or adopted during
15 the civil union.

16 (iv) neither party's state of legal residence recognizes the couple's
17 Vermont civil union for purposes of dissolution.

18 (v) each party has entered into the stipulation freely and
19 voluntarily.

20 (vi) the parties have exchanged all financial information, including
21 income, assets, and liabilities.

1 (c) The court shall waive a final hearing on any dissolution action filed
2 pursuant to subsection (b) of this section unless the court determines upon
3 review of the complaint and stipulation that the filing is incomplete or that a
4 hearing is warranted for the purpose of clarifying a provision of the stipulation.
5 Final uncontested hearings in a nonresident dissolution action shall be
6 conducted by telephone unless one or both of the parties choose to appear in
7 person.

8 (d)(1) Except as provided in 18 V.S.A. § 5131(a)(4), parties to a civil union
9 *certified in Vermont* who wish to dissolve their civil union after legally
10 marrying one another may do so by following the procedures set forth in this
11 subsection and are not subject to the same substantive rights and obligations
12 that are involved in the dissolution of civil marriage in accordance with chapter
13 11 of this title, including any hearings, waiting periods, or residency
14 requirements.

15 (2) Parties to a civil union who are legally wed to one another may
16 dissolve their civil union by filing a petition for uncontested dissolution with
17 the family division of the superior court in the county in which one or both
18 reside. The application for uncontested dissolution shall be on a form
19 prescribed by the court administrator. The form shall be signed by both
20 parties. The parties shall provide a certified copy of their marriage certificate
21 with the petition.

1 (3) The grounds for dissolution pursuant to this subsection shall be that
2 the parties are legally married at the time of the dissolution of the civil union.

3 (4) The benefits, protections, and responsibilities under law, whether
4 they derive from statute, administrative or court rule, policy, common law, or
5 any other source of civil law, shall continue in the same manner.

6 (5) Upon the filing of a petition for uncontested dissolution, the court
7 may immediately grant the petition without requiring a hearing by issuing an
8 order of uncontested dissolution.

9 (6) The filing fee for a dissolution pursuant to this subsection shall be as
10 provided in 32 V.S.A. § 1431(b)(2) for a complaint filed with a stipulation for
11 a final order that is acceptable to the court.

12 Sec. 5. 18 V.S.A. § 5131 is amended to read:

13 § 5131. ISSUANCE OF MARRIAGE LICENSE; SOLEMNIZATION;

14 RETURN OF MARRIAGE CERTIFICATE

15 (a)(1) Upon application in a form prescribed by the department, a town
16 clerk shall issue to a person a civil marriage license in the form prescribed by
17 the department and shall enter thereon the names of the parties to the proposed
18 marriage, fill out the form as far as practicable and retain in the clerk's office a
19 copy thereof.

20 * * *

1 (3) At least one party to the proposed marriage shall sign the certifying
2 application to the accuracy of the facts so stated. The license shall be issued
3 by the clerk of the town where either party resides or, if neither is a resident of
4 the state, by any town clerk in the state.

5 (4)(A) Parties to a civil union ~~solemnized~~ *certified* in Vermont may elect
6 to dissolve their civil union upon marrying one another but are not required to
7 do so to form a civil marriage. The department shall clearly indicate this
8 option on the marriage application form required by subdivision (2) of this
9 subsection. If a couple elects this option, each party to the intended marriage
10 shall sign a statement on the confidential portion of the civil marriage license
11 and certificate form stating that he or she freely and voluntarily agrees to
12 dissolve the civil union between the parties.

13 (B) Dissolution pursuant to this subdivision shall become effective
14 upon solemnization of the marriage between the parties, and the parties shall
15 not be required to file a petition for an uncontested dissolution with the family
16 division of the superior court pursuant to 15 V.S.A. § 1206(d). A dissolution
17 granted pursuant to this subdivision shall be exempt from fees provided in
18 32 V.S.A. § 1431(b)(2).

19 (b) A marriage license so issued shall be delivered by one of the parties to
20 the proposed marriage, within 60 days from the date of issue to a person
21 authorized to solemnize marriages by section 5144 of this title. If the proposed

1 marriage is not solemnized within 60 days from the date of issue, such license
2 shall become void. After such person has solemnized the marriage, he or she
3 shall fill out that part of the form on the license provided for his or her use,
4 sign and certify to the same. Thereafter the document shall be known as a
5 marriage certificate.

6 (c) Such certificate shall be returned within ten days to the office of the
7 town clerk from which the license issued by the person solemnizing such
8 marriage. The town clerk shall retain and file the original according to sections
9 5007 and 5008 of this title.

Sec. 5a. 32 V.S.A. § 1431 is amended to read:

§ 1431. FEES IN SUPREME AND SUPERIOR COURTS

** * **

*(b)(2) Prior to the entry of any divorce or annulment proceeding in the
superior court, there shall be paid to the clerk of the court for the benefit of the
state a fee of \$250.00 in lieu of all other fees not otherwise set forth in this
section; ~~however, if~~ If the divorce or annulment complaint is filed with a
stipulation for a final order acceptable to the court, the fee shall be \$75.00 if
one or both of the parties are residents, and \$150.00 if neither party is a
resident.*

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10 Sec. 6. REPORT

1 (a) The office of legislative council with the assistance of the judiciary
2 shall examine how to provide access to Vermont courts to nonresidents with a
3 Vermont civil union or a Vermont marriage for the purpose of granting a
4 dissolution or divorce in cases in which issues are contested or parental rights
5 and responsibilities are involved or both.

6 (b) The office of legislative council shall report to the house and senate
7 committees on judiciary no later than January 15, 2013.

8 Sec. 7. EFFECTIVE DATE

9 This act shall take effect on July 1, 2012.