

**State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION**

Division of Insurance

**1511 Pontiac Avenue, Bldg. 69-2
Cranston, Rhode Island 02920**

Public Notice of Proposed Rule-Making

Pursuant to the provisions of R.I. Gen. Laws § 15-13.1-6 and 42-14-17, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Department of Business Regulation hereby gives notice of its intent to adopt Insurance Regulation 118 – Civil Unions.

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

The proposed regulation and concise summary of non-technical amendments are available for public inspection at www.dbr.ri.gov, in person at Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, or by email edwyer@dbr.ri.gov or by calling Elizabeth Kelleher Dwyer at (401) 462 9520.

In the development of the proposed adoption 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.

All interested parties are invited to submit written or oral comments concerning the proposed regulation by November 22, 2011 to Elizabeth Kelleher Dwyer, Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, edwyer@dbr.ri.gov. A public hearing to consider the proposed adoption shall be held on November 22, 2011 at 10:00 am at 1511 Pontiac Avenue, Cranston, Rhode Island 02920 at which time and place all persons interested therein will be heard.

All are welcome at the Rhode Island Department of Business Regulation ("DBR"). If any reasonable accommodation is needed to ensure equal access, service or participation, please contact DBR at 401-462-9551, RI Relay at 7-1-1, or email directorofficeinquiry@dbr.ri.gov at least three (3) business days prior to the hearing.

Paul McGreevy
Director, Department of Business Regulation

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INSURANCE REGULATION 118

CIVIL UNIONS

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Section 1 *Authority*

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

Section 2 *Purpose*

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

Section 3 *Applicability and Scope*

- A. This regulation applies to any person transacting the business of insurance in the State of Rhode Island.
- B. Except as expressly provided herein, this regulation applies to all insurance policies and contracts solicited, delivered, issued, or renewed in the state of Rhode Island.
- C. This regulation 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 shall not apply to a fraternal benefit society 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 would violate R.I. Gen. Laws § 15-3.1-5.

Section 4 **Definitions**

As used in this Regulation:

- A. “Civil Union” shall mean a civil union established pursuant to R.I. Gen. Laws § 15-3.1-1 *et seq.* or comparable laws of another state.
- B. “Department” shall mean the Insurance Division of the Department of Business Regulation.
- C. “Insurance policy” or “Insurance contract” shall mean 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” shall mean 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, 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” shall mean a person who has established a civil union pursuant to applicable state law.

Section 5 **Interpretation of Department Regulations**

Pursuant to R.I. Gen. Laws § 15-3.1-6, parties to a civil union and civil union couples 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 the Department’s regulations.

Section 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 civil union couples, 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. As provided in Section 7(c) of this regulation all

policies and contracts shall be amended or endorsed between January 1, 2012 and December 31, 2012.

- 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 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. 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. Where an insurer declines to provide a benefit to, or amend an insurance contract of, a party to a civil union because of the application of federal law, the insurer shall notify the party to a civil union of the declination and the specific reason for the declination.

Section 7 **Form Filings**

- A. All forms filed on or after the effective date of this regulation shall comply with this regulation.
- B. All form filings pending but not yet approved prior to the effective date of this regulation shall, if approved, receive approval conditioned upon the inclusion of an appropriate endorsement that brings the policy or contract into compliance with this regulation.
- C. All forms currently on file and approved by the Department shall be amended or endorsed to bring the policy or contract into compliance with this regulation. Such amendment or endorsement shall be included in all policies and contracts issued or renewed on or after January 1, 2012. All contracts and policies that do not contain a renewal date shall be amended or endorsed to bring the policy or contract into compliance with the regulation on the first anniversary of the policy effective date following January 1, 2012. For example, a life insurance policy issued on March 1, 1974 shall be amended or endorsed on or before March 1, 2012. For good cause shown the Department may extend these deadlines.

Section 8 **Severability**

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

Section 9 **Effective Date**

This Regulation and the amendments thereto shall be effective as indicated below.

EFFECTIVE DATE: November ____, 2011