

MARRIAGES

457:1 Purpose and Intent. The purpose of this chapter is to affirm the right of 2 individuals desiring to marry and who otherwise meet the eligibility requirements of this chapter to have their marriage solemnized in a religious or civil ceremony in accordance with the provisions of this chapter.

457:1-a Equal Access to Marriage. Marriage is the legally recognized union of 2 people. Any person who otherwise meets the eligibility requirements of this chapter may marry any other eligible person regardless of gender. Each party to a marriage shall be designated “bride,” “groom,” or “spouse.”

457:2 Marriages Prohibited. No person shall marry his or her father, mother, father’s brother, father’s sister, mother’s brother, mother’s sister, son, daughter, brother, sister, son’s son, son’s daughter, daughter’s son, daughter’s daughter, brother’s son, brother’s daughter, sister’s son, sister’s daughter, father’s brother’s son, father’s brother’s daughter, mother’s brother’s son, mother’s brother’s daughter, father’s sister’s son, father’s sister’s daughter, mother’s sister’s son, or mother’s sister’s daughter. No person shall be allowed to be married to more than one person at any given time.

457:3 Recognition of Out-of-State Marriages. Every marriage legally contracted outside the state of New Hampshire, which would not be prohibited under RSA 457:2 if contracted in New Hampshire, shall be recognized as valid in this state for all purposes if or once the contracting parties are or become permanent residents of this state subsequent to such marriage, and the issue of any such marriage shall be legitimate. Marriages legally contracted outside the state of New Hampshire which would be prohibited under RSA 457:2 if contracted in New Hampshire shall not be legally recognized in this state. Any marriage of New Hampshire residents recognized as valid in the state prior to the effective date of this section shall continue to be recognized as valid on or after the effective date of this section.

457:4 Marriageable. No male below the age of 14 years and no female below the age of 13 years shall be capable of contracting a valid marriage that is entered into by one male and one female, and all marriages contracted by such persons shall be null and void. No male below the age of 18 and no female below the age of 18 shall be capable of contracting a valid marriage between persons of the same gender, and all marriages contracted by such persons shall be null and void.

457:5 Of Consent. – The age of consent shall be in the male and in the female, 18 years. Any marriage contracted by a person below the age of consent, except as hereinafter provided, may in the discretion of the superior court be annulled at the suit of the party who at the time of contracting such marriage was below the age of consent, or at the suit of his or her parent or guardian, unless such party after arriving at such age shall have confirmed the marriage.

457:5-a Petition for Annulment; Orders by Court. In the event a petition for annulment is filed by the parent or guardian of a minor, as provided in RSA 457:5, the superior court is hereby authorized to make such orders as in the discretion of the court will protect the interest of the minor child, including but not limited to orders directing the minor child to return to its parents or guardian and such orders may be issued ex parte. The party against whom the orders are issued may file a written request with the clerk of the superior court and request a hearing thereon. Such a hearing shall be held no later than 5 days after the request is received by the clerk. The request shall be filed with the clerk of court for the county in which the petition of annulment is filed.

457:6 Petition by Party Under Age. If special cause exists rendering desirable the marriage of a person resident in this state, or the marriage of a person who is a nonresident in this state who applies for permission to marry a resident in this state, either person being below the age of consent and above the ages specified in RSA 457:4, the parties desiring to contract such marriage, with the parent or guardian having the custody of such party below such age, if there be such parent or guardian, may apply in writing to a justice of the superior court, or to the judge of probate of the county in which one of them resides, for permission to contract such marriage. No waiver shall be granted to persons below the age of consent if both parties are nonresidents.

457:6-a Fee. – [Repealed 1998, 155:10, III, eff. July 8, 1998.]

457:7 Granting of Permission. Such justice or judge shall at once hear the parties, and, if satisfied that special cause exists making such marriage desirable, shall grant permission therefor, which shall be filed with the court and shall be reported to the division of vital records. The division shall note the fact of the granting of such permission upon the certificate and upon all copies thereof which are by law required to be kept.

457:8 Prohibitions. No town clerk shall issue any certificate for the marriage of any person below the age of consent, and no magistrate or minister of religion shall solemnize the marriage of any such person, if such clerk, magistrate or minister knows or has reasonable cause to believe that such person is below such age, unless permission for such marriage has been given under this subdivision. No magistrate or minister of religion shall solemnize any marriage by proxy.

457:9 Penalty. Any person violating any of the provisions of RSA 457:8, or any person knowingly making any false statement as to the age of any person, with intent to induce any clerk to issue a certificate for the marriage of any person below the age of consent, or to induce any magistrate or minister of religion to solemnize the marriage of any such person, shall be guilty of a misdemeanor.

457:10 to 457:16 Repealed. – [Repealed 1975, 69:1, eff. June 6, 1975.]

457:16-a to 457:16-e Repealed. – [Repealed 1959, ch. 99, eff. July 13, 1959.]

457:17 Marriage. – [Repealed 1986, 198:23, XLVI, eff. Aug. 2, 1986.]

457:18 Duty of Physicians. – [Repealed 1986, 198:23, XLVII, eff. Aug. 2, 1986.]

457:19 Notice to Division of Public Health Services. – [Repealed 1986, 198:23, XLVIII, eff. Aug. 2, 1986.]

457:20 Certificate Not Issuable Without Division's Consent. – [Repealed 1986, 198:23, XLIX, eff. Aug. 2, 1986.]

457:21 Penalty. – [Repealed 1986, 198:23, III, eff. Aug. 2, 1986.]

457:22 Completion of Marriage License Application. All persons proposing to be joined in marriage within the state shall complete a marriage license application with all facts required by RSA 5-C:41 to be entered in any town clerk's office. The clerk shall record the application in a book to be kept for that purpose.

457:23 Requirements.

I. No marriage license shall be issued by any town or city clerk until the applicants have each provided for inspection the following documents:

- (a) Proof of age;
- (b) A copy of the final divorce decree, if either or both parties are divorced; and

(c) A copy of the death record of spouse, if either or both parties are widowed.
II, III. [Repealed.]

457:24 Penalty. Any person violating the provisions of RSA 457:23 shall forfeit \$60 for each such offense.

457:25 Confidential Report, Optional Destruction. [Repealed 1981, 95:3, eff. June 19, 1981.]

457:26 Marriage License. The town clerk shall deliver to the parties a marriage license embodying the facts required in RSA 457:22, specifying the time when the application was entered, which license shall be delivered to the minister or magistrate who is to officiate, before the marriage is solemnized. The license shall be valid for not more than 90 days from the date of filing.

457:27 Shortening Period. [Repealed 2006, 86:5, eff. July 4, 2006.]

457:28 Procedure. The procedure upon such application shall be as provided in RSA 457:7.

457:28-a Brochures Relative to Family Planning Services, Fetal Alcohol Syndrome, and Human Immunodeficiency Virus. The town clerk shall make available to the public, in the office of the town clerk, a list of family planning agencies and services available in the state, the informational brochure relative to fetal alcohol syndrome prepared pursuant to RSA 132:2, XI, and the informational brochure relative to human immunodeficiency virus prepared pursuant to RSA 141-F:3, XIII. The department of health and human services shall supply each town clerk with a sufficient quantity of the brochures initially, to be resupplied upon the request of the town clerk.

457:28-b Destruction of Records. The clerk of the superior court and the register of probate may destroy petitions by parties under age under RSA 457:6 and related documents after 5 years from the time of filing.

457:29 Marriage License Fee. The fee for the marriage license shall be \$45 to be paid by the parties entering into the marriage. The clerk shall forward \$38 from each fee to the department of health and human services for the purposes of RSA 173-B:15. The clerk shall retain the remaining \$7 as the fee for making the records of notice, issuing the certificate of marriage, and forwarding the \$38 portion of the marriage license fee.

457:30 Marriage Outside the State. [Repealed 1977, 530:8, eff. Sept. 13, 1977.]

457:31 Solemnization of Marriage. A marriage may be solemnized in the following manner:

- I. In a civil ceremony by a justice of the peace as commissioned by the state and by judges of the United States appointed pursuant to Article III of the United States Constitution, by bankruptcy judges appointed pursuant to Article I of the United States Constitution, or by United States magistrate judges appointed pursuant to federal law; or
- II. In a religious ceremony by any minister of the gospel in the state who has been ordained according to the usage of his or her denomination, resides in the state, and is in regular standing with the denomination; by any member of the clergy who is not ordained but is engaged in the service of the religious body to which he or she belongs, and who resides in the state, after being licensed therefor by the secretary of state; or within his or her parish, by any minister residing out of the state, but having a pastoral charge wholly or partly in this state.

457:31-a Secretary of State. The secretary of state may issue a license to an unordained clergy who is a resident of this state and who is a member of and engaged in the service of a religious body which is chartered by the state if he or she presents a certification from that body that he or she is in its service. Said license shall authorize the clergy to solemnize marriage in this state. The fee for such license shall be \$5.

457:31-b Solemnization of Marriage; Applicability. I. Nothing contained in this chapter shall affect the right of Jewish Rabbis residing in this state, or of the people called Friends or Quakers, to solemnize marriages in the way usually practiced among them, and all marriages so solemnized shall be valid. Jewish Rabbis residing out of the state may obtain a special license as provided in RSA 457:32.

II. Nothing in this chapter shall be construed to prohibit a person authorized to solemnize a marriage in a religious ceremony from solemnizing a marriage in a civil ceremony.

457:32 Special Commission. The secretary of state may issue a special license to an ordained or non-ordained minister residing out of the state, or to an individual residing out of state who is authorized or licensed by law to perform marriages in such individual's state of residence, authorizing him or her in a special case to marry a couple within the state. In the case of an individual residing out of state who is authorized or licensed by law to perform marriages in such individual's state of residence, the secretary of state may require the submission of a copy of a valid commission or other indicia of authority to marry in the individual's state of residence as proof of existence of that authority. The names and residences of the couple proposed to be married in such special case shall be stated in the license, and no power shall be conferred to marry any other parties than those named therein. The fee for such license shall be \$25. The secretary of state shall keep a permanent record of all such special licenses, which record shall contain the names and residences of the couple to be married and the name and residence of the minister to whom the license is issued.

457:32-a Judges of the United States. The secretary of state may issue a special license to a judge of the United States residing in this state who is appointed pursuant to Article III of the United States Constitution, to a judge of the United States Bankruptcy Court residing in this state and appointed pursuant to Article I of the United States Constitution, or to a United States magistrate judge residing in this state and appointed pursuant to federal law, to marry a couple within the state. There shall be a fee of \$25 for each such license, and the secretary of state shall maintain a record of all such special licenses issued. A copy of the marriage license of the couple proposed to be married shall be filed with the secretary of state who shall maintain a permanent record of all such marriage licenses and the name and residence of the judge or magistrate performing the ceremony

457:33 Fee for Solemnizing. The persons joined in marriage by a minister or justice of the peace shall pay the minister or justice a minimum of \$5.

457:34 Penalty for Solemnization Without Valid Certificate. If a minister or justice of the peace shall join any persons in marriage without having first received a certificate of the town clerk, or shall join any persons in marriage with a certificate which he knows to be invalid, he shall forfeit for each offense \$60

457:35 Penalty for Solemnization by Unauthorized Person. If a person not authorized by this chapter to solemnize marriages shall join any persons in marriage, with or without a certificate, he shall be guilty of a misdemeanor.

457:36 Effect of Informality. No marriage solemnized before a person professing to be a justice of the peace or minister of the gospel shall be void, nor shall its validity be affected on account of want of jurisdiction or authority in such supposed justice or minister, or on account of any omission or informality in the certificate of intention of marriage, if the marriage is in other respects lawful and has been consummated with the belief on the part of either of the parties thereto that they were lawfully married.

457:37 Affirmation of Freedom of Religion in Marriage.

Each religious organization, association, or society has exclusive control over its own religious doctrine, policy, teachings, and beliefs regarding who may marry within their faith.

I. Members of the clergy as described in RSA 457:31 or other persons otherwise authorized under law to solemnize a marriage shall not be obligated or otherwise required by law to officiate at any particular civil marriage or religious rite of marriage in violation of their right to free exercise of religion protected by the First Amendment to the United States Constitution or by part I, article 5 of the New Hampshire constitution.

II. No religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, shall be required to participate in a ceremony solemnizing marriage in violation of the religious beliefs of such organization, association, or society.

III. Notwithstanding any other provision of law, a religious organization, association, or society, or any individual who is managed, directed, or supervised by or in conjunction with a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, shall not be required to provide services, accommodations, advantages, facilities, goods, or privileges to an individual if such request for such services, accommodations, advantages, facilities, goods, or privileges is related to the solemnization of a marriage, the celebration of a marriage, or the promotion of marriage through religious counseling, programs, courses, retreats, or housing designated for married individuals, and such solemnization, celebration, or promotion of marriage is in violation of his or her religious beliefs and faith. Any refusal to provide services, accommodations, advantages, facilities, goods, or privileges in accordance with this section shall not create any civil claim or cause of action or result in any state action to penalize or withhold benefits from such religious organization, association, or society, or any individual who is managed, directed, or supervised by or in conjunction with a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society.

IV. The marriage laws of this state shall not be construed to affect the ability of a fraternal benefit society to determine the admission of members pursuant to RSA 418:5, and shall not require a fraternal benefit society that has been established and is operating for charitable or educational purposes and which is operated, supervised, or controlled by or in connection with a religious organization to provide insurance benefits to any person if to do so would violate the fraternal benefit society's free exercise of religious as guaranteed by the First Amendment of the United States Constitution and part I, article 5 of the New Hampshire constitution.

V. Nothing in this chapter shall be deemed or construed to limit the protections and exemptions provided to religious organizations under RSA 354-A:18.

457:38 Certified Copy of Record. A copy of the record of a marriage, certified by a city or town clerk or by the registrar of vital records, shall be received in all courts and places as evidence of the fact of the marriage.

457:39 Cohabitation, etc. Persons cohabiting and acknowledging each other as husband and wife, and generally reputed to be such, for the period of 3 years, and until the decease of one of them, shall thereafter be deemed to have been legally married.

457:40 In Civil Actions. In all civil actions, except actions for criminal conversation, evidence of acknowledgment, cohabitation, and reputation is competent proof of marriage.

457:41 In Criminal Cases. In actions for criminal conversation, and in indictments for adultery, bigamy, and the like, there must be proof of a marriage in fact.

457:42 Marriage of Parents. Where the parents of children born before marriage afterwards intermarry, and recognize such children as their own, such children shall be legitimate and shall inherit equally with their other children under the statute of distribution.

457:43 Residents. If any person residing and intending to continue to reside in this state is prohibited from contracting marriage under the laws of this state and goes into another jurisdiction and there contracts a marriage prohibited and declared void by the laws of this state, such marriage shall be null and void for all purposes in this state, with the same effect as though such prohibited marriage had been entered into in this state.

457:44 Nonresidents. No marriage shall be contracted in this state by a party residing and intending to continue to reside in another jurisdiction if such marriage would be void if contracted in such other jurisdiction, and every marriage contracted in this state in violation hereof shall be null and void.

457:45 Civil Union Recognition. A civil union legally contracted outside of New Hampshire shall be recognized as a marriage in this state, provided that the relationship does not violate the prohibitions of this chapter.

457:46 Obtaining Legal State of Marriage. I. Notwithstanding the provisions of RSA 457-A, no new civil unions shall be established on or after January 1, 2010. Two consenting persons who are parties to a valid civil union entered into prior to January 1, 2010 pursuant to this chapter may apply and receive a marriage license and have such marriage solemnized pursuant to RSA 457, provided that the parties are otherwise eligible to marry under RSA 457 and the parties to the marriage are the same as the parties to the civil union. Such parties may also apply by January 1, 2011 to the clerk of the town or city in which their civil union is recorded to have their civil union legally designated and recorded as a marriage, without any additional requirements of payment of marriage licensing fees or solemnization contained in RSA 457, provided that such parties' civil union was not previously dissolved or annulled. Upon application, the parties shall be issued a marriage certificate, and such marriage certificate shall be recorded with the division of vital records administration. Any civil union shall be dissolved by operation of law by any marriage of the same parties to each other, as of the date of the marriage stated in the certificate.

II. Two persons who are parties to a civil union established pursuant to RSA 457-A that has not been dissolved or annulled by the parties or merged into a marriage in accordance with paragraph I by January 1, 2011 shall be deemed to be married under this chapter on January 1, 2011 and such civil union shall be merged into such marriage by operation of law on January 1, 2011.