
A BILL FOR AN ACT

RELATING TO DOMESTIC RELATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that in 2011, Act 1,
2 Session Laws of Hawaii 2011 ("Act 1") was enacted into law. Act
3 1 established the status of civil unions in this State, which
4 granted eligible couples "all the same rights, benefits,
5 protections, and responsibilities under law, whether derived
6 from statutes, administrative rules, court decisions, the common
7 law, or any other source of civil law, as are granted to those
8 who contract, obtain a license, and are solemnized pursuant to
9 chapter 572", Hawaii Revised Statutes.

10 The legislature recognizes that the State, over time, has
11 woven into our laws a collection of rights, benefits, and
12 obligations applicable to married couples and families. Through
13 Act 1, the legislature intended that these rights and benefits
14 be applied identically to civil union partners. As correctly
15 stated by the house committee on judiciary in Standing Committee
16 Report No. 156 (2011), "It is the intention of your Committee
17 that this measure be liberally construed to provide equality of
18 rights, benefits, protections, and responsibilities to the



1 partners of a civil union. It is not the intention of your
2 Committee to omit any substantive rights, benefits, protections,
3 or responsibilities with respect to the application of this new
4 chapter to any current law, including any law relating to
5 parent-child relationships."

6 The purpose of this Act is to assure that the original
7 intent of Act 1 is fulfilled by making clarifying amendments to
8 select statutory provisions to:

- 9 (1) Settle potential confusion regarding the scope of Act
10 1's intent; and
11 (2) Clarify statutory language governing procedures and
12 processes to facilitate the implementation of Act 1.

13 In making these amendments, it is the intent of the legislature
14 to reconfirm and clarify the original intent of Act 1. Nothing
15 about this Act should be interpreted to weaken or lessen any of
16 the protections, obligations, rights, and responsibilities
17 governed by Act 1.

18 SECTION 2. Chapter 572B, Hawaii Revised Statutes, is
19 amended by adding a new section to be appropriately designated
20 and to read as follows:

21 "572B- Construction. (a) This chapter shall be
22 liberally construed and applied to promote its underlying



1 purpose, which is to provide partners to a civil union with all
2 the same rights, benefits, protections, and responsibilities
3 under law as are granted to those who contract, obtain a
4 license, and are solemnized pursuant to chapter 572.

5 (b) Selected amendments to statutes, or failure to amend
6 all or portions of statutes, to include references to this
7 chapter, civil unions, or civil union partners, shall not be
8 interpreted as legislative intent to exclude any rights,
9 benefits, protections, or responsibilities from the scope of
10 section 572B-9 or this chapter."

11 SECTION 3. Chapter 584, Hawaii Revised Statutes, is
12 amended by adding a new section to be appropriately designated
13 and to read as follows:

14 "§584- Child of parents in a civil union. (a) A civil
15 union partner is presumed to be the parent of a child if:

16 (1) The partner and the child's biological parent are or
17 have been in a civil union with each other and the
18 child is born during the civil union, or within three
19 hundred days after the civil union is terminated by
20 death, annulment, declaration of invalidity, or
21 divorce, or after a decree of separation is entered by
22 a court;



1 (2) Before the child's birth, the partner and the child's
2 biological parent have attempted to enter into a civil
3 union with each other by a solemnization in apparent
4 compliance with the law, although the attempted civil
5 union is or could be declared invalid; and:

6 (A) If the attempted civil union could be declared
7 invalid only by a court, the child is born during
8 the attempted civil union, or within three
9 hundred days after its termination by death,
10 annulment, declaration of invalidity, or divorce;

11 or

12 (B) If the attempted civil union is invalid without a
13 court order, the child is born within three
14 hundred days after the termination of
15 cohabitation;

16 (3) While the child is under the age of majority, the
17 civil union partner receives the child into the
18 partner's home and openly holds out the child as the
19 partner's own child; or

20 (4) Pursuant to section 584-11, the partner submits to
21 court ordered genetic testing and the result, as
22 stated in a report prepared by the testing laboratory,



1 does not exclude the possibility of the partner's
2 biological relationship to the child; provided that
3 the testing used has a power of exclusion greater than
4 ninety-nine per cent and a minimum combined paternity
5 index of five hundred to one.

6 (b) A presumption under this section may be rebutted in an
7 appropriate action only by clear and convincing evidence. If
8 two or more presumptions arise under this section or under
9 section 584-4 that conflict with each other, the presumption
10 that on the facts is founded on the weightier considerations of
11 policy and logic controls. The presumption is rebutted by a
12 court decree establishing parenthood of the child by another
13 person."

14 SECTION 4. Section 509-2, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§509-2 Creation of joint tenancy, tenancy by the**
17 **entirety, and tenancy in common.** (a) Land, or any interest
18 therein, or any other type of property or property rights or
19 interests or interest therein, may be conveyed by a person to
20 oneself and another or others as joint tenants, or by a person
21 to oneself and one's spouse or reciprocal beneficiary, or by
22 spouses to themselves, or by reciprocal beneficiaries to



1 themselves, as tenants by the entirety, or by joint tenants to
2 themselves and another or others as joint tenants, or tenants in
3 common to themselves or to themselves and another or others as
4 joint tenants, or by tenants by the entirety to themselves or
5 themselves and another or others as joint tenants or as tenants
6 in common, or by one tenant by the entirety to the tenant's
7 spouse or reciprocal beneficiary of all of the tenant's interest
8 or interests, without the necessity of conveying through a third
9 party, and each such instrument shall be construed as validly
10 creating a joint tenancy, tenancy by the entirety, tenancy in
11 common, or single ownership, as the case may be, if the tenor of
12 the instrument manifestly indicates such intention.

13 (b) When two reciprocal beneficiaries who hold property as
14 tenants by the entirety enter into a civil union with each
15 other, the persons shall continue to hold the property as
16 tenants by the entirety.

17 ~~[(b)]~~ (c) For the purposes of this chapter:

18 "Reciprocal beneficiary" means an adult who is a party to a
19 registered reciprocal beneficiary relationship in accordance
20 with chapter 572C, and has a valid certificate of reciprocal
21 beneficiary relationship that has not been terminated."



1 SECTION 5. Section 572B-10, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§572B-10[+] ~~[Civil unions]~~ Unions performed in other
4 jurisdictions. ~~[All unions entered into in other jurisdictions~~
5 ~~between two individuals not recognized under section 572-3 shall~~
6 ~~be recognized as civil unions;]~~ A legal union of two persons
7 that is not a marriage under chapter 572, was validly formed in
8 another jurisdiction, and is substantially equivalent to a civil
9 union under this chapter, shall be recognized as a valid civil
10 union in this State and shall be treated the same as a civil
11 union in this State regardless of whether it bears the name
12 civil union; provided that the relationship meets the
13 eligibility requirements of this chapter, has been entered into
14 in accordance with the laws of that jurisdiction, and can be
15 documented."

16 SECTION 6. Section 572B-11, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "[+]§572B-11[+] **References and inclusions.** A party to a
19 civil union shall be included in any definition or use of the
20 terms "spouse", "family", "immediate family", "dependent", "next
21 of kin", and other terms that denote the spousal relationship,
22 as those terms are used throughout the laws of the State. Where



1 necessary to implement the rights of civil union partners under
2 this chapter, gender-specific terms referring to spouses or
3 previous spouses shall be construed to include civil union
4 partners."

5 SECTION 7. Section 572C-7, Hawaii Revised Statutes, is
6 amended by amending subsection (c) to read as follows:

7 "(c) [~~Any marriage license subsequently issued by the~~
8 ~~department to any individual registered as a reciprocal~~
9 ~~beneficiary shall automatically terminate the individual's~~
10 ~~existing reciprocal beneficiary relationship.] Any reciprocal
11 beneficiary relationship shall automatically terminate upon
12 either of the reciprocal beneficiaries entering into a marriage
13 or a civil union solemnized by a person licensed by the
14 department to solemnize marriages or civil unions or entering
15 into a legal union in another jurisdiction that is recognized as
16 a marriage or civil union in this State."~~

17 SECTION 8. Section 578-1, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§578-1 Who may adopt; jurisdiction; venue.** Any proper
20 adult person, not married, or any person married to or in a
21 civil union with the legal father or mother of a minor child, or
22 a husband and wife jointly, or partners in a civil union jointly



1 may petition the family court of the circuit in which the person
2 or persons reside or are in military service or the family court
3 of the circuit in which the individual to be adopted resides or
4 was born or in which a child placing organization approved by
5 the department of human services under the provisions of section
6 346-17 having legal custody (as defined in section 571-2) of the
7 child is located, for leave to adopt an individual toward whom
8 the person or persons do not sustain the legal relationship of
9 parent and child and for a change of the name of the individual.
10 When adoption is the goal of a permanent plan recommended by the
11 department of human services and ordered pursuant to section
12 587A-31, the department may petition for adoption on behalf of
13 the proposed adoptive parents. The petition shall be in such
14 form and shall include such information and exhibits as may be
15 prescribed by the family court."

16 SECTION 9. Section 578-2, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§578-2 **Consent to adoption.** (a) Persons required to
19 consent to adoption. Unless consent is not required or is
20 dispensed with under subsection (c) hereof, a petition to adopt
21 a child may be granted only if written consent to the proposed
22 adoption has been executed by:



- 1 (1) The mother of the child;
- 2 (2) A legal father as to whom the child is a legitimate
- 3 child;
- 4 (3) An adjudicated father whose relationship to the child
- 5 has been determined by a court;
- 6 (4) A presumed father under section 578-2(d);
- 7 (5) A presumed parent under section 578-2(e);
- 8 [~~5~~] (6) A concerned natural father who is not the legal,
- 9 adjudicated, or presumed father but who has
- 10 demonstrated a reasonable degree of interest, concern
- 11 or responsibility as to the welfare of a child,
- 12 either:
- 13 (A) During the first thirty days after such child's
- 14 birth; or
- 15 (B) Prior to the execution of a valid consent by the
- 16 mother of the child; or
- 17 (C) Prior to the placement of the child with adoptive
- 18 parents;
- 19 whichever period of time is greater;
- 20 [~~6~~] (7) Any person or agency having legal custody of the
- 21 child or legally empowered to consent;



1 [~~7~~] (8) The court having jurisdiction of the custody of
2 the child, if the legal guardian or legal custodian of
3 the person of the child is not empowered to consent to
4 adoption; or

5 [~~8~~] (9) The child to be adopted if more than ten years of
6 age, unless the court in the best interest of the
7 child dispenses with the child's consent.

8 (b) A petition to adopt an adult may be granted only if
9 written consent to adoption has been executed by the adult and
10 the adult's spouse, if the adult is married~~[-]~~, or the adult's
11 partner in a civil union, if the adult is a partner in a civil
12 union.

13 (c) Persons as to whom consent not required or whose
14 consent may be dispensed with by order of the court.

15 (1) Persons as to whom consent not required:

16 (A) A parent who has deserted a child without
17 affording means of identification for a period of
18 ninety days;

19 (B) A parent who has voluntarily surrendered the care
20 and custody of the child to another for a period
21 of two years;



- 1 (C) A parent of the child in the custody of another,
2 if the parent for a period of at least one year
3 has failed to communicate with the child when
4 able to do so;
- 5 (D) A parent of a child in the custody of another, if
6 the parent for a period of at least one year has
7 failed to provide for the care and support of the
8 child when able to do so;
- 9 (E) A natural father who was not married to the
10 child's mother at the time of the child's
11 conception or birth and who does not fall within
12 the provisions of subsection (a)(3), (4), [~~e~~]
13 (5) [~~r~~], or (6);
- 14 (F) A parent whose parental rights have been
15 judicially terminated under the provisions of
16 sections 571-61 to 571-63, or under the
17 provisions of any other state or other law by a
18 court or other agency having jurisdiction to take
19 the action;
- 20 (G) A parent judicially declared mentally ill or
21 intellectually disabled and who is found by the



1 court to be incapacitated from giving consent to
2 the adoption of the child;

3 (H) Any legal guardian or legal custodian of the
4 child sought to be adopted, other than a parent,
5 who has failed to respond in writing to a request
6 for consent for a period of sixty days or who,
7 after examination of the person's written reasons
8 for withholding consent, is found by the court to
9 be withholding the person's consent unreasonably;

10 (I) A parent of a child who has been in the custody
11 of a petitioner under this chapter for a period
12 of at least one year and who entered the United
13 States of America as a consequence of
14 extraordinary circumstances in the child's
15 country of origin, by reason of which
16 extraordinary circumstances the existence,
17 identity, or whereabouts of the child's parents
18 is not reasonably ascertainable or there is no
19 reasonable means of obtaining suitable evidence
20 of the child's identity or availability for
21 adoption;



1 (J) Any parent of the individual to be adopted, if
2 the individual is an adult eligible for adoption
3 under subsection (b); and

4 (K) A parent whose parental and custodial duties and
5 rights have been divested by an award of
6 permanent custody pursuant to section 587A-33;

7 (2) Persons whose consent may be dispensed with by order
8 of the court. The court may dispense with the consent
9 of a parent who comes within subsection (a) (3), (4),
10 [~~or~~] (5), or (6) herein, upon finding that:

11 (A) The petitioner is the stepfather of the child and
12 the child has lived with the child's legal mother
13 and the petitioning stepfather for a period of at
14 least one year;

15 (B) The father is a concerned father as provided by
16 subsection [~~(a)(5)~~], (a)(6), herein, and has not
17 filed a petition to adopt the child, or the
18 petition to adopt the child filed by the father
19 has been denied; or

20 (C) The father is an adjudicated, presumed, or
21 concerned father or parent as provided by
22 subsections (a) (3), (4), [~~or~~] (5), or (6),



1 herein, and is not a fit and proper person or is
2 not financially or otherwise able to give the
3 child a proper home and education.

4 (d) Presumption of paternity. A man is presumed to be the
5 natural father of a child if:

6 (1) He and the child's natural mother are or have been
7 married to each other and the child is born during the
8 marriage, or within three hundred days after the
9 marriage is terminated by death, annulment,
10 declaration of invalidity, or divorce, or after a
11 decree of separation is entered by a court;

12 (2) Before the child's birth, he and the child's natural
13 mother have attempted to marry each other by a
14 marriage solemnized in apparent compliance with law,
15 although the attempted marriage is or could be
16 declared invalid, and:

17 (A) If the attempted marriage could be declared
18 invalid only by a court, the child is born during
19 the attempted marriage, or within three hundred
20 days after its termination by death, annulment,
21 declaration of invalidity, or divorce; or



1 (B) If the attempted marriage is invalid without a
2 court order, the child is born within three
3 hundred days after the termination of
4 cohabitation;

5 (3) After the child's birth, he and the child's natural
6 mother have married, or attempted to marry, each other
7 by a marriage solemnized in apparent compliance with
8 law, although the attempted marriage is or could be
9 declared invalid; and

10 (A) He has acknowledged his paternity of the child in
11 writing filed with the department of health;

12 (B) With his consent he is named as the child's
13 father on the child's birth certificate; or

14 (C) He is obligated to support the child under a
15 written voluntary promise or by court order;

16 (4) While the child is under the age of majority, he
17 receives the child into his home and openly holds out
18 the child as his natural child; or

19 (5) He acknowledges his paternity of the child in writing
20 filed with the department of health, which shall
21 promptly inform the mother of the filing of the
22 acknowledgment, and she does not dispute the



1 acknowledgment within a reasonable time after being
2 informed thereof, in a writing filed with the
3 department of health. If another man is presumed
4 under this section to be the child's father,
5 acknowledgment may be effected only with the written
6 consent of the presumed father or after the
7 presumption has been rebutted. If the acknowledgment
8 is filed and not disputed by the mother and if another
9 man is not presumed under this section to be the
10 child's father, the department of health shall prepare
11 a new certificate of birth in accordance with chapter
12 338.

13 (e) Child of parents in a civil union. A civil union
14 partner is presumed to be the parent of a child if:

15 (1) The partner and the child's biological parent are or
16 have been in a civil union with each other and the
17 child is born during the civil union, or within three
18 hundred days after the civil union is terminated by
19 death, annulment, declaration of invalidity, or
20 divorce, or after a decree of separation is entered by
21 a court;



1 (2) Before the child's birth, the partner and the child's
2 biological parent have attempted to enter into a civil
3 union with each other by solemnization in apparent
4 compliance with law, although the attempted civil
5 union is or could be declared invalid; and:

6 (A) If the attempted civil union could be declared
7 invalid only by a court, the child is born during
8 the attempted civil union, or within three
9 hundred days after its termination by death,
10 annulment, declaration of invalidity, or divorce;

11 or

12 (B) If the attempted civil union is invalid without a
13 court order, the child is born within three
14 hundred days after the termination of
15 cohabitation; or

16 (3) While the child is under the age of majority, the
17 civil union partner receives the child into the
18 partner's home and openly holds out the child as the
19 partner's own child.

20 [+e)] (f) Notice of hearing; minor parent; consent
21 authorizing selection of adoptive parents. No hearing of a
22 petition for adoption shall be had unless each of the living



1 parents of the child who falls within the provisions of
2 subsection (a) and who has not consented to the proposed
3 adoption, but who is alleged to come within the provisions of
4 subsection (c)(1)(A), (B), (C) and (D) or (c)(2) of this
5 section, and any man whose name appears as father on the child's
6 birth certificate, shall have had due notice, actual or
7 constructive, of the allegations of the petition and of the time
8 and place of the hearing thereof. Such notice need not be given
9 to any parent whose parental rights have been legally terminated
10 as hereinabove provided or whose consent has been filed with the
11 court.

12 The minority of a child's parent shall not be a bar to the
13 right of such parent to execute a valid and binding consent to
14 the adoption of such child.

15 Any parental consent required hereunder shall be valid and
16 binding even though it does not designate any specific adoptive
17 parent or parents, if it clearly authorizes the department of
18 human services, or a child placing organization approved by the
19 department under the provisions of section 346-17 or some proper
20 person not forbidden by law to place a child for adoption, to
21 select and approve an adoptive parent or parents for the child.



1 ~~(f)~~ (g) Withdrawal of consent. A consent to adoption
2 which has been filed or received in evidence in an adoption
3 proceeding or which has been given to the department of human
4 services or to a child placing organization approved by the
5 department under section 346-17, or to any other proper person
6 not forbidden by law to place or receive an individual for
7 adoption, may not be withdrawn or repudiated after the
8 individual has been placed for adoption, without the express
9 approval of the court based upon a written finding that such
10 action will be for the best interests of the individual to be
11 adopted.

12 ~~(g)~~ (h) Maintenance of action based on medical or
13 surgical treatment of child barred when. A person who consents
14 to adoption, or on whose behalf a consent to adoption is signed,
15 and a nonconsenting parent whose consent is not required or is
16 dispensed with hereunder shall be barred from maintaining any
17 action based upon medical or surgical care or treatment given to
18 the child with the permission of the petitioner or petitioners
19 or the person or agency authorized by the parental consent to
20 select and approve an adoptive parent or parents; provided that
21 nothing herein contained shall be construed to alienate or
22 impair any cause of action accruing to the child for personal



1 injury which may be sustained as a result of such medical or
2 surgical care or treatment."

3 SECTION 10. Section 578-8, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) No decree of adoption shall be entered unless a
6 hearing has been held at which the petitioner or petitioners,
7 and any legal parent married to a petitioner, any partner in a
8 civil union with a petitioner, and any subject of the adoption
9 whose consent is required, have personally appeared before the
10 court, unless expressly excused by the court. After considering
11 the petition and such evidence as the petitioners and any other
12 properly interested person may wish to present, the court may
13 enter a decree of adoption if it is satisfied (1) that the
14 individual is adoptable under sections 578-1 and 578-2, (2) that
15 the individual is physically, mentally, and otherwise suitable
16 for adoption by the petitioners, (3) that the petitioners are
17 fit and proper persons and financially able to give the
18 individual a proper home and education, if the individual is a
19 child, and (4) that the adoption will be for the best interests
20 of the individual, which decree shall take effect upon such date
21 as may be fixed therein by the court, such date to be not
22 earlier than the date of the filing of the petition and not



1 later than six months after the date of the entry of the
2 decree."

3 SECTION 11. Section 578-16, Hawaii Revised Statutes, is
4 amended by amending subsection (d) to read as follows:

5 "(d) Except as provided in subsection (e), all legal
6 duties and rights between the individual and the individual's
7 former legal parent or parents shall cease from the time of the
8 adoption; provided that if the individual is adopted by a person
9 married to a legal parent of the individual [7] or by any partner
10 in a civil union with a legal parent of the individual, the full
11 reciprocal rights and duties which theretofore existed between
12 the legal parent and the individual, and the rights of
13 inheritance as between the individual and the legal parent and
14 the legal relatives of the parent, as provided in chapter 560,
15 shall continue, notwithstanding the adoption, subject only to
16 the rights acquired by and the duties imposed upon the adoptive
17 parents by reason of the adoption."

18 SECTION 12. Section 584-1, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "[+]§584-1[+] **Parent and child relationship defined.** As
21 used in this chapter, "parent and child relationship" includes
22 the legal relationship existing between a child and the child's



1 natural mother, between a child and father or mother whose
2 relationship as parent and child is established under this
3 chapter, or between a child and the child's adoptive parents,
4 incident to which the law confers or imposes rights, privileges,
5 duties, and obligations."

6 SECTION 13. Section 584-4, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

8 "(b) A presumption under this section may be rebutted in
9 an appropriate action only by clear and convincing evidence. If
10 two or more presumptions arise under this section or under
11 section 584- which conflict with each other, the presumption
12 which on the facts is founded on the weightier considerations of
13 policy and logic controls. The presumption is rebutted by a
14 court decree establishing paternity of the child by another
15 man."

16 SECTION 14. Section 587A-4, Hawaii Revised Statutes, is
17 amended by amending the definition of "parent" to read as
18 follows:

19 "'Parent" means any legal parent of a child; the birth
20 mother, unless the child has been legally adopted; the
21 adjudicated, presumed, or concerned birth father of the child as
22 provided in section [~~578-2(a)(5)~~], 578-2(a)(6), unless the child



1 has been legally adopted; the presumed parent as provided in
2 section 578-2(e), unless the child has been legally adopted; or
3 the legal guardians or any other legal custodians of the child."

4 SECTION 15. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 16. This Act, upon its approval, shall take effect
7 retroactive to January 1, 2012.



Report Title:

Domestic Relations; Civil Unions

Description:

Amends various statutory provisions to reconfirm and clarify the original intent of Act 1 (2011) that civil union partners shall have all the same rights, benefits, protections, and responsibilities under law as are granted to those who contract, obtain a license, and are solemnized pursuant to chapter 572. Makes various housekeeping amendments to statutes to assist with the implementation and interpretation of Act 1, including with respect to property held as tenants by the entirety, establishment of parent-child relationships, and adoption.
(Proposed SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

