



TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012

ON THE FOLLOWING MEASURE:
S.B. NO. 2217, RELATING TO THE UNIFORM PROBATE CODE.

BEFORE THE:
SENATE COMMITTEE ON
JUDICIARY AND LABOR

DATE: Friday, January 27, 2012 TIME: 9:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): **David M. Louie, Attorney General, or**
Nathan S.C. Chee, Deputy Attorney General

Chair Hee and Members of the Committee:

The Department of the Attorney General offers the following **comments on this bill.**

This bill amends section 560:1-201, Hawaii Revised Statutes (HRS), to add a definition of "spouse" that "includes a party to civil union in accordance with chapter 572B".

Act 1, Session Laws of Hawaii 2011, the civil unions act, already provides that the statutory term "spouse" includes a party to a civil union. This is now codified at section 572B-11, HRS, where it provides:

A party to a civil union shall be included in any definition or use of the terms "spouse", "family", "immediate family", "dependent", "next of kin", and other terms that denote the spousal relationship, as those terms are used throughout the laws of the State.

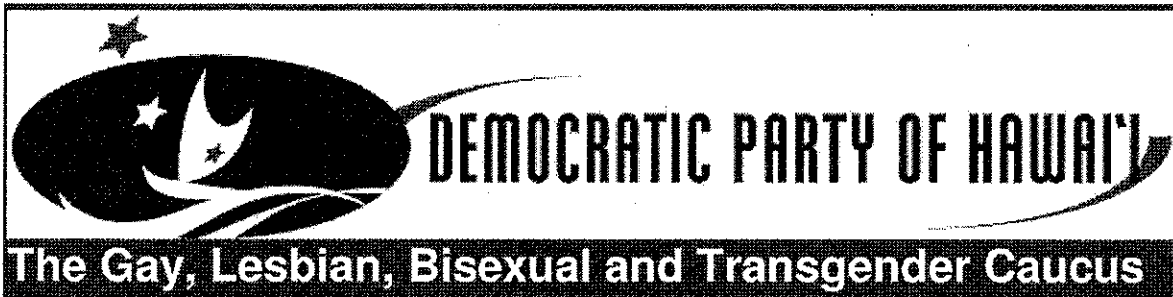
If the only reason for this amendment is to insure that, for purposes of the Uniform Probate Code, partners to a civil union receive equal treatment to spouses, this measure need not be adopted for that reason. Moreover, the passage of this bill may lead to challenges in other areas of the HRS where the term "spouse" is used. Without adding a similar definition in every instance the term "spouse" is used throughout the HRS, the enactment of this bill may lead a court to the conclusion that the omission of a similar bill for other definitions of "spouse" in the HRS was deliberate due to a doctrine of statutory interpretation known as "expressio unius est exclusio alterius." Translated, this means that "the inclusion of one is the exclusion of another." Other uses of the term "spouse" in the HRS that lack the definition in this bill could be read not to include civil union partners even though section 572B-11 expressly states otherwise.

If this Committee wishes to pass this bill, the Department recommends that language be added to clarify that the intention is to clarify the implementation of the civil unions bill. If the Legislature outright states its intention is only to clarify, etc., then the rule of statutory interpretation does not apply. "It is well settled that a court's primary obligation in interpreting a statute is to give effect to the intent of the legislature. The maxim, *expressio unius est exclusio alterius*, exists only as an aid to statutory interpretation and its application should be limited to ascertaining legislative intent which is not otherwise apparent." Int'l Sav. & Loan Ass'n, Ltd. v. Wiig, 82 Hawaii 197, 201, 921 P.2d 117, 121 (1996) (citation omitted).

To accomplish this, the Department recommends the following language be added into a purpose section in the bill and into the legislative history:

Act 1, Session Laws of Hawaii 2011, specifically the language codified in section 572B-9, HRS, gave civil union partners all the same rights, benefits, protections, and responsibilities under law as given to those who contract, obtain a license, and are solemnized pursuant to chapter 572. During the months of preparation to implement Act 1 and in the time since Act 1 became effective on January 1, 2012, however, it has come to the Legislature's attention that certain provisions of Hawaii's statutes would benefit from additional clarification to aid in the proper implementation of Act 1 and minimize confusion as we move forward. Therefore, in making these amendments with this measure, it is the intent of the Legislature to reconfirm and clarify the provisions of HRS chapter 572B, as enacted by Act 1, Session Laws of Hawaii 2011. Nothing in this measure shall be interpreted to weaken or lessen any of the protections, obligations, rights and responsibilities governed by any provision of Act 1.

This language tracks Act 1 itself and should be sufficient to counter the "*expressio unius*" rule of statutory interpretation.



January 26, 2012

TO: COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

IN OPPOSITIN TO SB2217

The purpose of this bill is to the definition of "spouse". We opposed this bill, because it is unnecessary. The civil unions bill was intentionally crafted to incorporate all references to marital rights.

§ -9 Benefits, protections, and responsibilities. Partners to a civil union lawfully entered into pursuant to this chapter shall have all the same rights, benefits, protections, and responsibilities under law, whether derived from statutes, administrative rules, court decisions, the common law, or any other source of civil law, as are granted to those who contract, obtain a license, and are solemnized pursuant to chapter 572.

§ -10 Civil unions performed in other jurisdictions. All unions entered into in other jurisdictions between two individuals not recognized under section 572-3 shall be recognized as civil unions; provided that the relationship meets the eligibility requirements of this chapter, has been entered into in accordance with the laws of that jurisdiction, and can be documented.

§ -11 References and inclusions. A party to a civil union shall be included in any definition or use of the terms "spouse", "family", "immediate family", "dependent", "next of kin", and other terms that denote the spousal relationship, as those terms are used throughout the laws of the State."

[Emphasis added.]

The language in section 572B-11 is clear that "spouse" includes "a party to a civil union". Therefore, this bill is unnecessary. If selected sections of the HRS are amended to include references to the civil unions chapter, it may have in inadvertent effect of narrowing the scope of the act. We want to assure that the broadest scope of the act is maintained.

Thank you for this opportunity to testify.

Very truly yours,

Jo-Ann M. Adams, Chair
Gay Lesbian Bisexual and Transgender Caucus

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 24, 2012 2:32 PM
To: JDLTestimony
Cc: frank@kanemitsu.us
Subject: Testimony for SB2217 on 1/27/2012 9:30:00 AM

Testimony for JDL 1/27/2012 9:30:00 AM SB2217

Conference room: 016
Testifier position: Support
Testifier will be present: No
Submitted by: Frank Kanemitsu
Organization: Individual
E-mail: frank@kanemitsu.us
Submitted on: 1/24/2012

Comments: