

---

---

# A BILL FOR AN ACT

RELATING TO MARRIAGE BETWEEN PERSONS OF THE SAME SEX.

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

1           SECTION 1. The purpose of this Act is to recognize  
2 marriages between persons of the same sex in the State of  
3 Hawaii. It is the intent of the legislature to extend to same-  
4 sex couples the right to marry and to receive all the same  
5 rights, benefits, protections, and responsibilities of marriage  
6 as opposite-sex couples receive under the laws of this State.

7           It is the intent of the legislature that marriages solemnized  
8 in accordance with this Act be equal in all respects under the  
9 laws of this State to the marriages of opposite-sex couples.

10           The legislature intends that there be no legal distinction  
11 between same-sex couples and opposite-sex couples with respect  
12 to marriage under the laws of this State. The legislature  
13 intends that all provisions of law regarding marriage be equally  
14 applied to same-sex couples and opposite-sex couples, regardless  
15 of whether this Act amends any particular provision of law or  
16 does not amend any particular provision of law.



1 SECTION 2. Chapter 572, Hawaii Revised Statutes, is  
2 amended by adding seven new sections to be appropriately  
3 designated and to read as follows:

4 **"§572-A Ability to marry not limited by gender of spouse.**

5 Marriage shall be permitted both for same-sex couples and for  
6 opposite-sex couples, if the two individuals are otherwise  
7 eligible to marry under this chapter.

8 **§572-B Continuity of rights; civil union or reciprocal**

9 **beneficiary relationships.** (a) Notwithstanding any other  
10 provision of law, two individuals who are civil union partners  
11 or reciprocal beneficiaries with each other, and who seek to  
12 marry each other under this chapter, shall be permitted to  
13 obtain a marriage license under section 572-6 without  
14 terminating their civil union or reciprocal beneficiary  
15 relationship. The couple's civil union or reciprocal  
16 beneficiary relationship shall continue uninterrupted until the  
17 solemnization of the marriage consistent with this chapter, and  
18 the solemnization of the couple's marriage shall automatically  
19 terminate the couple's civil union or reciprocal beneficiary  
20 relationship.

21 A couple's seeking a license for, or entering, a marriage  
22 under this chapter shall not diminish any of the rights,



1 benefits, protections, and responsibilities that existed  
2 previously due to their earlier status as civil union partners  
3 or reciprocal beneficiaries.

4 **§572-C Rights held by civil union partners or reciprocal**  
5 **beneficiaries who enter a marriage.** (a) If two civil union  
6 partners enter into a marriage with each other, the rights,  
7 benefits, protections, and responsibilities created by the civil  
8 union shall be continuous through the marriage and deemed to  
9 have accrued as of the first date these rights existed under the  
10 civil union; provided that the civil union was automatically  
11 terminated by the solemnization of a marriage.

12 (b) If two reciprocal beneficiaries enter into a marriage  
13 with each other, the rights, benefits, protections, and  
14 responsibilities created by the reciprocal beneficiary  
15 relationship shall be continuous through the marriage and deemed  
16 to have accrued as of the date these rights existed under the  
17 reciprocal beneficiary relationship; provided that the  
18 reciprocal beneficiary relationship was automatically terminated  
19 by the solemnization of a marriage. Any rights, benefits,  
20 protections, and responsibilities created by the solemnization  
21 of a marriage that were not included within a reciprocal



1 beneficiary relationship shall be recognized as of the date the  
2 marriage was solemnized.

3 (c) Any property held in tenancy by the entirety by  
4 individuals in a civil union or reciprocal beneficiary  
5 relationship who enter into a marriage with each other shall be  
6 subject to section 509-3.

7 **§572-D Interpretation of terminology to be gender**

8 **neutral.** When necessary to implement the rights, benefits,  
9 protections, and responsibilities of spouses under the laws of  
10 this State, all gender-specific terminology, such as "husband",  
11 "wife", "widow", "widower", or similar terms, shall be construed  
12 in a gender-neutral manner. This interpretation shall apply to  
13 all sources of law, including statutes, administrative rules,  
14 court decisions, the common law, or any other source of civil  
15 law, including those that establish parentage presumptions based  
16 on marriage.

17 **§572-E Reliance on federal law.** To the extent that  
18 provisions of the law of this State adopt, refer to, or rely  
19 upon, provisions of federal law in a way that otherwise would  
20 cause same-sex spouses to be treated differently than opposite-  
21 sex spouses, same-sex spouses shall be treated by the law of



1 this State as if federal law treated them in the same manner as  
2 the law of this State.

3 **§572-F Refusal to solemnize a marriage.** (a) Nothing in  
4 this chapter shall be construed to require any person  
5 authorized to perform solemnizations pursuant to this chapter  
6 to solemnize any marriage in violation of their right to free  
7 exercise of religion guaranteed by the Hawaii State  
8 Constitution and the United States Constitution. No such  
9 authorized person who fails or refuses to solemnize any  
10 marriage under this section shall be subject to any fine,  
11 penalty, or other civil action for the failure or refusal.

12 **§572-G Religious organizations and facilities; liability**  
13 **exemption under certain circumstances.** (a) A religious  
14 organization shall not be required to make a religious facility  
15 owned or leased by the religious organization available for  
16 solemnization of a particular marriage; provided that:

- 17 (1) The religious facility is regularly used by the  
18 religious organization for its religious purposes;  
19 (2) For solemnization of marriages pursuant to this  
20 chapter, the religious organization restricts use of  
21 the religious facility to its members; and



1        (3) The religious organization does not operate the  
2                    religious facility as a for profit business.

3        (b) A religious organization that refuses to make a  
4 religious facility available for solemnization of a marriage  
5 under subsection (a) shall not be subject to any fine, penalty,  
6 or civil liability for the refusal.

7        (c) Nothing in this section shall be interpreted to exempt  
8 the owner or operator of any religious facility from the  
9 requirements of chapter 489 if the religious facility is a place  
10 of public accommodation as defined in section 489-2."

11        SECTION 3. Section 231-21.5, Hawaii Revised Statutes, is  
12 amended to read as follows:

13        "~~+~~**§231-21.5**~~+~~ **Effect of civil union~~-~~ or marriage of**  
14 **same-sex couples.** All provisions of the Internal Revenue Code  
15 referred to in this chapter that apply to a husband and wife,  
16 spouses, or person in a legal marital relationship shall be  
17 deemed to apply in this chapter to same-sex couples married  
18 under chapter 572 and to partners in a civil union under chapter  
19 572B with the same force and effect as if they were "husband and  
20 wife", "spouses", or other terms that describe persons in a  
21 legal marital relationship."



1 SECTION 4. Section 235-93.4, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+]§235-93.4[+] **Effect of civil union[-] or marriage of**  
4 **same-sex couples.** All provisions of the Internal Revenue Code  
5 referred to in this chapter that apply to a husband and wife,  
6 spouses, or person in a legal marital relationship shall be  
7 deemed to apply in this chapter to same-sex couples married  
8 under chapter 572 and to partners in a civil union under chapter  
9 572B with the same force and effect as if they were "husband and  
10 wife", "spouses", or other terms that describe persons in a  
11 legal marital relationship."

12 SECTION 5. Section 236E-4, Hawaii Revised Statutes, is  
13 amended by amending subsection (c) to read as follows:

14 "(c) The department shall submit to the legislature, no  
15 later than twenty days prior to the convening of each regular  
16 session, proposed legislation to amend section 236E-3 and any  
17 other sections and subsections of this chapter as may be  
18 necessary to adopt the Internal Revenue Code as it exists on the  
19 December 31 preceding the regular session. In submitting the  
20 proposed legislation, the department may provide that certain  
21 amendments made to the Internal Revenue Code by Congress during  
22 the preceding calendar year shall not be operative in this State



1 or shall be limited in their operation. The department shall  
2 also prepare a digest and explanation of the amended provisions  
3 of the Internal Revenue Code recommended for operation, as well  
4 as those provisions that are recommended to be limited in their  
5 operation, or that are not recommended for operation, and shall  
6 submit with the proposed legislation required by this subsection  
7 the digest, explanation, and a statement of revenue impact of  
8 the adoption of the proposed legislation. In preparing the  
9 proposed legislation, digest, and explanation, the department  
10 may request the assistance of the legislative reference bureau.

11 It is the intent of the legislature to adopt all amendments  
12 made to the Internal Revenue Code during the calendar year  
13 preceding each regular session; provided that the legislature  
14 may choose to adopt none of the amendments to the Internal  
15 Revenue Code or may provide that certain amendments are limited  
16 in their operation.

17 All provisions of the Internal Revenue Code referred to in  
18 this chapter that apply to a husband and wife, spouses, or  
19 persons in a legal marital relationship shall be deemed to apply  
20 in this chapter to same-sex couples married under chapter 572  
21 and to partners in a civil union under chapter 572B with the  
22 same force and effect as if they were "husband and wife",





1 "spouses", or other terms that describe persons in a legal  
2 marital relationship."

3 SECTION 6. Section 572-1, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§572-1 Requisites of valid marriage contract.** In order  
6 to make valid the marriage contract[~~, which shall be only~~  
7 ~~between a man and a woman,~~] it shall be necessary that:

8 (1) The respective parties do not stand in relation to  
9 each other of ancestor and descendant of any degree  
10 whatsoever, [~~brother and sister~~] two siblings of the  
11 half as well as to the whole blood, uncle and niece,  
12 uncle and nephew, aunt and nephew, aunt and niece,  
13 whether the relationship is the result of the issue of  
14 parents married or not married to each other or  
15 parents who are partners in a civil union or not  
16 partners in a civil union;

17 (2) Each of the parties at the time of contracting the  
18 marriage is at least sixteen years of age; provided  
19 that with the written approval of the family court of  
20 the circuit within which the minor resides, it shall  
21 be lawful for a person under the age of sixteen years,



1 but in no event under the age of fifteen years, to  
2 marry, subject to section 572-2;

3 (3) [~~The man does not at the time have any lawful wife or~~  
4 ~~civil union partner living and that the woman does not~~  
5 ~~at the time have any lawful husband or civil union~~  
6 ~~partner living,]~~ Neither of the parties has at the  
7 time any lawful spouse, civil union partner, or  
8 reciprocal beneficiary living, except as provided in  
9 572-B;

10 (4) Consent of neither party to the marriage has been  
11 obtained by force, duress, or fraud;

12 (5) Neither of the parties is a person afflicted with any  
13 loathsome disease concealed from, and unknown to, the  
14 other party;

15 (6) The [~~man and woman~~] parties to be married in the State  
16 shall have duly obtained a license for that purpose  
17 from the agent appointed to grant marriage licenses;  
18 and

19 (7) The marriage ceremony be performed in the State by a  
20 person or society with a valid license to solemnize  
21 marriages and the [~~man and the woman~~] parties to be  
22 married and the person performing the marriage



1 ceremony be all physically present at the same place  
2 and time for the marriage ceremony."

3 SECTION 7. Section 572-3, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§572-3 Contracted without the State.** Marriages [~~between~~  
6 ~~a man and a woman~~] legal [~~in the country~~] where contracted shall  
7 be held legal in the courts of this State."

8 SECTION 8. Section 572-13, Hawaii Revised Statutes, is  
9 amended by amending subsection (a) to read as follows:

10 "(a) Recordkeeping. Every person authorized to solemnize  
11 marriage shall make and preserve a record of every marriage by  
12 the person solemnized, comprising the names of the [~~man and~~  
13 ~~woman~~] parties married, their place of residence, and the date  
14 of their marriage.

15 Every person authorized to solemnize marriage, who neglects  
16 to keep a record of any marriage by the person solemnized shall  
17 be fined \$50."

18 SECTION 9. Section 572C-2, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "~~[+]§572C-2[+] Findings. [The legislature finds that the~~  
21 ~~people of Hawaii choose to preserve the tradition of marriage as~~  
22 ~~a unique social institution based upon the committed union of~~



1 ~~one man and one woman. The legislature further finds that~~  
2 ~~because of its unique status, marriage provides access to a~~  
3 ~~multiplicity of rights and benefits throughout our laws that are~~  
4 ~~contingent upon that status. As such, marriage should be~~  
5 ~~subject to restrictions such as prohibiting respective parties~~  
6 ~~to a valid marriage contract from standing in relation to each~~  
7 ~~other, i.e., brother and sister of the half as well as to the~~  
8 ~~whole blood, uncle and niece, aunt and nephew.~~

9       ~~However, the] The legislature [concurrently] acknowledges~~  
10 that there are many individuals who have significant personal,  
11 emotional, and economic relationships with another individual  
12 yet are prohibited by [~~such~~] legal restrictions from marrying.  
13 For example, two individuals who are related to one another,  
14 such as a widowed mother and her unmarried son[, ~~or two~~  
15 ~~individuals who are of the same gender~~]. Therefore, the  
16 legislature believes that certain rights and benefits presently  
17 available only to married couples should be made available to  
18 couples comprised of two individuals who are legally prohibited  
19 from marrying one another."

20       SECTION 10. Notwithstanding any other provision of law,  
21 nothing in this Act shall invalidate any civil union or  
22 reciprocal beneficiary relationship in existence before the



1 effective date of this Act. Any such civil union or reciprocal  
2 beneficiary relationship shall continue until terminated in  
3 accordance with section 572-B, Hawaii Revised Statutes, or  
4 section 572C-7, Hawaii Revised Statutes, as applicable.

5 SECTION 11. The department of health may, in its  
6 discretion, make any changes to rules, internal procedures, or  
7 forms it deems necessary to effectuate the purposes of this Act.

8 SECTION 12. The department of health may issue marriage  
9 licenses under section 572-6, Hawaii Revised Statutes, beginning  
10 on December 2, 2013, for the solemnization of marriages to take  
11 place consistent with the amendments made by this Act; provided  
12 that marriages permitted by this Act shall not be solemnized  
13 prior to January 1, 2014.

14 SECTION 13. In codifying the new sections added by section  
15 2 of this Act, the revisor of statutes shall substitute  
16 appropriate section numbers for the letters used in designating  
17 the new sections in this Act.

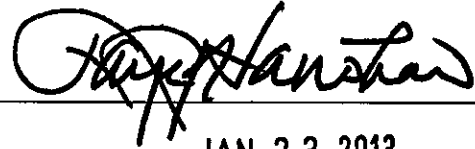
18 SECTION 14. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.



1 SECTION 15. This Act shall take effect upon its approval;  
2 provided that sections 1 through 10 of this Act shall take  
3 effect on January 1, 2014.

4

INTRODUCED BY:



JAN 23 2013



# H.B. NO. 1109

**Report Title:**

Same-Sex Marriage; Civil Unions; Reciprocal Beneficiaries

**Description:**

Extends to same-sex couples the right to marry and to receive all the same rights, benefits, protections, and responsibilities of marriage as opposite-sex couples receive under the laws of the State of Hawaii.

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

