

JAN 24 2013

S.B. NO. 1369

A BILL FOR AN ACT

RELATING TO MARRIAGE BETWEEN INDIVIDUALS 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 individuals 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 receive all the same rights,
5 benefits, protections, and responsibilities of marriage as
6 opposite-sex couples receive under the laws of this State. It
7 is the intent of the legislature that marriages solemnized in
8 accordance with this Act be equal in all respects to the
9 marriages of opposite-sex couples under the laws of this State.

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. Notwithstanding any other provision
10 of law, two individuals who are civil union partners or
11 reciprocal beneficiaries with each other, and who seek to marry
12 each other under this chapter, shall be permitted to obtain a
13 marriage license under section 572-6 without terminating their
14 civil union or reciprocal beneficiary relationship. The
15 couple's civil union or reciprocal beneficiary relationship
16 shall continue uninterrupted until the solemnization of the
17 marriage consistent with this chapter, and the solemnization of
18 the couple's marriage shall automatically terminate the couple's
19 civil union or reciprocal beneficiary relationship. A couple
20 seeking a license for, or entering, a marriage under this
21 chapter shall not diminish any of the rights, benefits,
22 protections, and responsibilities that existed previously due to



1 the couple's earlier status as civil union partners or
2 reciprocal beneficiaries.

3 §572-C Rights held by civil union partners or reciprocal
4 beneficiaries who enter a marriage. (a) If two civil union
5 partners enter into a marriage with each other, the rights,
6 benefits, protections, and responsibilities created by the civil
7 union shall be continuous through the marriage and deemed to
8 have accrued as of the first date these rights existed under the
9 civil union; provided that the civil union was automatically
10 terminated by the solemnization of a marriage.

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



1 (c) Property held in tenancy by the entirety shall be
2 subject to section 509-3.

3 **§572-D Interpretation of terminology to be gender neutral.**

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

13 **§572-E Reliance on federal law.** To the extent that

14 provisions of the law of this State adopt, refer to, or rely
15 upon, provisions of federal law in a way that otherwise would
16 cause same-sex spouses to be treated differently than opposite-
17 sex spouses, same-sex spouses shall be treated by the law of
18 this State as if federal law treated them in the same manner as
19 the law of this State.

20 **§572-F Refusal to solemnize a marriage.** Nothing in this

21 chapter shall be construed to require any person authorized to
22 perform solemnizations pursuant to this chapter to solemnize any



1 marriage in violation of the person's right to free exercise of
2 religion guaranteed by the Constitution of the State of Hawaii
3 and the United States Constitution. No authorized person who
4 fails or refuses to solemnize any marriage under this section
5 shall be subject to any fine, penalty, or other civil action for
6 the failure or refusal.

7 **§572-G Religious organizations and facilities; liability**
8 **exemption under certain circumstances.** (a) A religious
9 organization shall not be required to make a religious facility
10 owned or leased by the religious organization available for
11 solemnization of a particular marriage; provided that:

12 (1) The religious facility is regularly used by the
13 religious organization for its religious purposes;
14 (2) For solemnization of marriages pursuant to this
15 chapter, the religious organization restricts use of
16 the religious facility to its members; and
17 (3) The religious organization does not operate the
18 religious facility as a for profit business.

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



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

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

7 "[+]§231-21.5[+] **Effect of marriage of same-sex couples or**
8 **civil union.** All provisions of the Internal Revenue Code
9 referred to in this chapter that apply to a husband and wife,
10 spouses, or person in a legal marital relationship shall be
11 deemed to apply in this chapter to same-sex couples married
12 under chapter 572 and to partners in a civil union under chapter
13 572B with the same force and effect as if they were "husband and
14 wife", "spouses", or other terms that describe persons in a
15 legal marital relationship."

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

18 "[+]§235-93.4[+] **Effect of marriage of same-sex couples or**
19 **civil union.** All provisions of the Internal Revenue Code
20 referred to in this chapter that apply to a husband and wife,
21 spouses, or person in a legal marital relationship shall be
22 deemed to apply in this chapter to same-sex couples married



1 under chapter 572 and partners in a civil union under chapter
2 572B with the same force and effect as if they were "husband and
3 wife", "spouses", or other terms that describe persons in a
4 legal marital relationship."

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

7 "(c) The department shall submit to the legislature, no
8 later than twenty days prior to the convening of each regular
9 session, proposed legislation to amend section 236E-3 and any
10 other sections and subsections of this chapter as may be
11 necessary to adopt the Internal Revenue Code as it exists on the
12 December 31 preceding the regular session. In submitting the
13 proposed legislation, the department may provide that certain
14 amendments made to the Internal Revenue Code by Congress during
15 the preceding calendar year shall not be operative in this State
16 or shall be limited in their operation. The department shall
17 also prepare a digest and explanation of the amended provisions
18 of the Internal Revenue Code recommended for operation, as well
19 as those provisions that are recommended to be limited in their
20 operation, or that are not recommended for operation, and shall
21 submit with the proposed legislation required by this subsection
22 the digest, explanation, and a statement of revenue impact of



1 the adoption of the proposed legislation. In preparing the
2 proposed legislation, digest, and explanation, the department
3 may request the assistance of the legislative reference bureau.

4 It is the intent of the legislature to adopt all amendments
5 made to the Internal Revenue Code during the calendar year
6 preceding each regular session; provided that the legislature
7 may choose to adopt none of the amendments to the Internal
8 Revenue Code or may provide that certain amendments are limited
9 in their operation.

10 All provisions of the Internal Revenue Code referred to in
11 this chapter that apply to a husband and wife, spouses, or
12 persons in a legal marital relationship shall be deemed to apply
13 in this chapter to same-sex couples married under chapter 572
14 and to partners in a civil union under chapter 572B with the
15 same force and effect as if they were "husband and wife",
16 "spouses", or other terms that describe persons in a legal
17 marital relationship."

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

20 "**§572-1 Requisites of valid marriage contract.** In order
21 to make valid the marriage contract, [~~which shall be only~~
22 ~~between a man and a woman,~~] it shall be necessary that:



- 1 (1) The respective parties do not stand in relation to
2 each other of ancestor and descendant of any degree
3 whatsoever, [~~brother and sister~~] two siblings of the
4 half as well as to the whole blood, uncle and niece,
5 uncle and nephew, aunt and nephew, aunt and niece,
6 whether the relationship is the result of the issue of
7 parents married or not married to each other or
8 parents who are partners in a civil union or not
9 partners in a civil union;
- 10 (2) Each of the parties at the time of contracting the
11 marriage is at least sixteen years of age; provided
12 that with the written approval of the family court of
13 the circuit within which the minor resides, it shall
14 be lawful for a person under the age of sixteen years,
15 but in no event under the age of fifteen years, to
16 marry, subject to section 572-2;
- 17 (3) [~~The man does not at the time have any lawful wife or
18 civil union partner living and that the woman does not
19 at the time have any lawful husband or civil union
20 partner living;~~] Neither party has at the time any
21 lawful wife, husband, spouse, civil union partner, or



1 reciprocal beneficiary living, except as provided in
2 section 572-B;

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

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

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

12 (7) The marriage ceremony be performed in the State by a
13 person or society with a valid license to solemnize
14 marriages and the [~~man and the woman~~] parties to be
15 married and the person performing the marriage
16 ceremony be all physically present at the same place
17 and time for the marriage ceremony."

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

20 "**§572-3 Contracted without the State.** Marriages [~~between~~
21 ~~a man and a woman~~] legal [~~in the country~~] where contracted shall
22 be held legal in the courts of this State."



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

3 "(a) Recordkeeping. Every person authorized to solemnize
4 marriage shall make and preserve a record of every marriage by
5 the person solemnized, comprising the names of the [~~man and~~
6 ~~woman~~] parties married, their place of residence, and the date
7 of their marriage.

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

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

13 "[+]§572C-2[+] **Findings.** The [~~legislature finds that the~~
14 ~~people of Hawaii choose to preserve the tradition of marriage as~~
15 ~~a unique social institution based upon the committed union of~~
16 ~~one man and one woman. The legislature further finds that~~
17 ~~because of its unique status, marriage provides access to a~~
18 ~~multiplicity of rights and benefits throughout our laws that are~~
19 ~~contingent upon that status. As such, marriage should be~~
20 ~~subject to restrictions such as prohibiting respective parties~~
21 ~~to a valid marriage contract from standing in relation to each~~



1 ~~other, i.e., brother and sister of the half as well as to the~~
2 ~~whole blood, uncle and niece, aunt and nephew.~~

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

14 SECTION 10. Notwithstanding any other provision of law,
15 nothing in this Act invalidates any reciprocal beneficiary
16 relationship in existence before the effective date of this Act.
17 Any such reciprocal beneficiary relationship shall continue
18 until terminated in accordance with section 572-B, Hawaii
19 Revised Statutes, or section 572C-7, Hawaii Revised Statutes.

20 SECTION 11. The department of health, in its discretion,
21 may make any changes that it deems necessary to rules, internal



1 procedures, or forms, in advance of this Act's effective date,
2 to aid in the implementation of this Act.

3 SECTION 12. The department of health may issue marriage
4 licenses under section 572-6, Hawaii Revised Statutes, beginning
5 on December 2, 2013, for the solemnization of marriages to take
6 place consistent with the amendments made by this Act; provided
7 that marriages permitted by this Act shall be solemnized no
8 earlier than January 1, 2014.

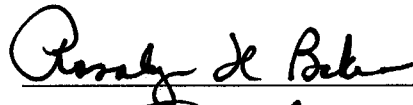

9 SECTION 13. In codifying the new sections added by section
10 2 of this Act, the revisor of statutes shall substitute
11 appropriate section numbers for the letters used in designating
12 the new sections in this Act.

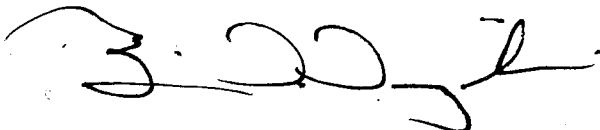
13 SECTION 14. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 15. This Act, upon its approval, shall take effect
16 on January 1, 2014; provided that sections 11 and 12 shall take
17 effect upon approval.

18

INTRODUCED BY:





S.B. NO. 1369

Report Title:

Marriage; Marriage Equality

Description:

Recognizes marriages between individuals of the same sex. Extends to same-sex couples the same rights, benefits, protections, and responsibilities of marriage that opposite-sex couples receive. Permits marriage licenses to be issued beginning 12/2/2013 but prohibits solemnizations until 1/1/2014.

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

