

1 (5) The United States Supreme Court in a recent decision
2 virtually eliminated the requirement that the
3 government justify burdens on religious exercise
4 imposed by laws neutral toward religion; and

5 (6) The compelling interest test in the free exercise of
6 religion established by the United States Supreme
7 Court is a workable test for striking sensible
8 balances between religious liberty and competing
9 government interests.

10 (b) The legislature declares its intent that:

11 (1) It shall be the policy of the State that the
12 compelling interest test in the free exercise of
13 religion, as established by the United States Supreme
14 Court under *Shubert v. Verner*, 374 U.S. 398 (1963),
15 shall be the standard applicable by the courts of this
16 State in all cases where religious exercise is
17 substantially burdened; and

18 (2) This chapter shall provide a claim or defense to
19 persons whose religious exercise is substantially
20 burdened by government.

21 § -2 **Free exercise of religion protected.** (a) The
22 State and its political subdivisions shall not substantially



1 burden a person's exercise of religion even if the burden
2 results from a rule of general applicability, except as provided
3 in subsection (b).

4 (b) Neither the State nor its political subdivisions shall
5 burden a person's exercise of religion unless it demonstrates
6 that imposition of the burden on the person both:

7 (1) Furthers a compelling government interest; and

8 (2) Is the least restrictive means of furthering that
9 compelling interest.

10 (c) Notwithstanding any law to the contrary, a person
11 whose religious exercise has been substantially burdened in
12 violation of this section may assert that violation as a claim
13 or defense in a judicial proceeding and obtain appropriate
14 relief against the State or its political subdivisions.

15 (d) Nothing in this chapter shall be construed to
16 authorize the State or its political subdivisions to
17 substantially burden any religious belief.

18 (e) Nothing in this chapter shall be construed to affect,
19 interpret, or in any way address that portion of article I,
20 section 4 of the Constitution of the State of Hawaii,
21 prohibiting laws respecting the establishment of religion.
22 Granting government funding, benefits, or exemptions, to the



1 extent permissible under article I, section 4 of the
2 Constitution of the State of Hawaii, shall not constitute a
3 violation of this chapter."

4 SECTION 2. Chapter 489, Hawaii Revised Statutes, is
5 amended by adding a new part to be appropriately designated and
6 to read as follows:

7 "PART . RELIGIOUS FREEDOM IN PUBLIC ACCOMMODATIONS

8 §489- Religious freedom in marriage guaranteed.

9 Absolute freedom of conscience in all matters of religious
10 sentiment, belief, and worship pertaining to marriage shall be
11 guaranteed to every individual, and no one shall be molested or
12 disturbed in person or property on account of religion; provided
13 that the liberty of conscience secured shall not be so construed
14 as to excuse acts of licentiousness or justify practices
15 inconsistent with the peace and safety of the State.

16 §489- Religious organizations protected. No religious
17 educational, healthcare, or denominational organization; no
18 organization operated for charitable or educational purposes and
19 that is supervised, operated, controlled by, connected with, or
20 publicly identified with a religious organization or group,
21 regardless of whether its activities are deemed wholly or partly
22 religious; and no individual employed or supervised by any of



1 the foregoing organizations, while acting in the scope of that
2 employment or supervision, shall be required to take any of the
3 following actions if doing so would cause the organization or
4 individual to violate their sincerely held religious beliefs:

5 (1) Provide services, accommodations, advantages,
6 facilities, goods, benefits, or privileges for a
7 purpose related to the solemnization or celebration of
8 any marriage;

9 (2) Solemnize or celebrate any marriage; or

10 (3) Treat as valid any marriage;

11 provided that a religious organization engaged in the provision
12 of health care, or its individual employees, shall treat a
13 state-recognized marriage as valid for purposes of a spouse's
14 rights to visitation or to surrogate health care decision
15 making.

16 **§489- Individuals and small businesses protected. (a)**

17 No individual, sole proprietor, or small business shall be
18 required to take any of the following actions if doing so would
19 cause the individual, sole proprietor, or small business to
20 violate their sincerely held religious belief:

21 (1) Provide any facility, good, or service that assists or
22 promotes the solemnization or celebration of any



1 marriage, or provide counseling or other services that
2 facilitate the formation or perpetuation of any
3 marriage;

4 (2) Provide benefits to any spouse of an employee; or

5 (3) Provide housing, lodging, or similar accommodation to
6 any couple.

7 (b) This section shall not apply if either:

8 (1) A party to the marriage is unable to obtain any
9 similar good or service, employment benefits, or
10 housing elsewhere without substantial hardship; or

11 (2) In the case of an individual who is a government
12 employee or official, another government employee or
13 official is not promptly available and willing to
14 provide the requested government service without
15 inconvenience or delay; provided that no judicial
16 officer authorized to solemnize marriages shall be
17 required to solemnize any marriage if to do so would
18 violate the judicial officer's sincerely held
19 religious beliefs.

20 (c) For purposes of this section:

21 "Religious organization" means a privately held corporation
22 or other legal entity that both:



1 (1) Holds itself out publicly as adhering to specific
2 religious beliefs; and

3 (2) Is operated consistently with those beliefs.

4 "Small business" means a partnership or legal entity other
5 than a natural person that either:

6 (1) Provides services that are primarily performed by an
7 owner of the business;

8 (2) Has five or fewer employees; or

9 (3) Owns five or fewer units of housing in the case of a
10 legal entity that offers housing for rent.

11 **§489- Immunity from civil cause of action and other**
12 **penalties.** Notwithstanding any other law to the contrary, no
13 refusal to provide services, accommodations, facilities, goods,
14 or benefits protected by this part shall result in any of the
15 following:

16 (1) A civil claim or cause of action challenging the
17 refusal under law; or

18 (2) Any action by any state or county agency to penalize
19 or withhold benefits from any protected entity or
20 individual under any laws of this State or its
21 political subdivisions, including but not limited to
22 laws regarding employment discrimination, housing,



1 public accommodations, educational institutions,
2 licensing, government contracts or grants, or tax-
3 exempt status.

4 §489- Construction. This part shall be construed in
5 favor of a broad protection of religious exercise, to the
6 maximum extent permitted by the Constitution of the State of
7 Hawaii and the United States Constitution."

8 SECTION 3. Chapter 572, Hawaii Revised Statutes, is
9 amended by adding a new part to be appropriately designated and
10 to read as follows:

11 "PART . RELIGIOUS FREEDOM IN MARRIAGE

12 §572- Religious freedom in marriage guaranteed.
13 Absolute freedom of conscience in all matters of religious
14 sentiment, belief, and worship pertaining to this chapter shall
15 be guaranteed to every individual, and no one shall be molested
16 or disturbed in person or property on account of religion;
17 provided that the liberty of conscience secured shall not be so
18 construed as to excuse acts of licentiousness or justify
19 practices inconsistent with the peace and safety of the State.

20 §572- Religious organizations protected. No religious
21 educational, healthcare, or denominational organization; no
22 organization operated for charitable or educational purposes and



1 that is supervised, operated, controlled by, connected with, or
2 publicly identified with a religious organization or group,
3 regardless of whether its activities are deemed wholly or partly
4 religious; and no individual employed or supervised by any of
5 the foregoing organizations, while acting in the scope of that
6 employment or supervision, shall be required to take any of the
7 following actions if doing so would cause the organization or
8 individual to violate their sincerely held religious beliefs:

- 9 (1) Provide services, accommodations, advantages,
10 facilities, goods, benefits, or privileges for a
11 purpose related to the solemnization or celebration of
12 any marriage;
- 13 (2) Solemnize or celebrate any marriage; or
- 14 (3) Treat as valid any marriage;

15 provided that a religious organization engaged in the provision
16 of health care, or its individual employees, shall treat a
17 state-recognized marriage as valid for purposes of a spouse's
18 rights to visitation or to surrogate health care decision
19 making.

20 §572- Individuals and small businesses protected. (a)
21 No individual, sole proprietor, or small business shall be
22 required to take any of the following actions if doing so would



1 cause the individual, sole proprietor, or small business to
2 violate their sincerely held religious belief:

3 (1) Provide any facility, good, or service that assists or
4 promotes the solemnization or celebration of any
5 marriage, or provide counseling or other services that
6 facilitate the formation or perpetuation of any
7 marriage;

8 (2) Provide benefits to any spouse of an employee; or

9 (3) Provide housing, lodging, or similar accommodation to
10 any couple.

11 (b) This section shall not apply if either:

12 (1) A party to the marriage is unable to obtain any
13 similar good or service, employment benefits, or
14 housing elsewhere without substantial hardship; or

15 (2) In the case of an individual who is a government
16 employee or official, another government employee or
17 official is not promptly available and willing to
18 provide the requested government service without
19 inconvenience or delay; provided that no judicial
20 officer authorized to solemnize marriages shall be
21 required to solemnize any marriage if to do so would



1 violate the judicial officer's sincerely held
2 religious beliefs.

3 (c) For purposes of this section:

4 "Religious organization" means a privately held corporation
5 or other legal entity that both:

6 (1) Holds itself out publicly as adhering to specific
7 religious beliefs; and

8 (2) Is operated consistently with those beliefs.

9 "Small business" means a partnership or legal entity other
10 than a natural person that either:

11 (1) Provides services that are primarily performed by an
12 owner of the business;

13 (2) Has five or fewer employees; or

14 (3) Owns five or fewer units of housing in the case of a
15 legal entity that offers housing for rent.

16 §572- **Immunity from civil cause of action and other**
17 **penalties.** Notwithstanding any other law to the contrary, no
18 refusal to provide services, accommodations, facilities, goods,
19 or benefits protected by this part shall result in any of the
20 following:

21 (1) A civil claim or cause of action challenging the
22 refusal under law; or



1 (2) Any action by any state or county agency to penalize
2 or withhold benefits from any protected entity or
3 individual under any laws of this State or its
4 political subdivisions, including laws regarding
5 employment discrimination, housing, public
6 accommodations, educational institutions, licensing,
7 government contracts or grants, or tax-exempt status.

8 §572- **Construction.** This part shall be construed in
9 favor of a broad protection of religious exercise, to the
10 maximum extent permitted by the Constitution of the State of
11 Hawaii and the United States Constitution."

12 SECTION 4. Section 321-11.1, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "~~§~~321-11.1~~§~~ **Medically accurate sexuality health**
15 **education.** (a) Sexuality health education programs funded by
16 the State shall provide medically accurate and factual
17 information that is age appropriate and includes education on
18 abstinence, contraception, and methods of disease prevention to
19 prevent unintended pregnancy and sexually transmitted disease,
20 including human immunodeficiency virus.

21 (b) For the purposes of this section:



1 "Age appropriate" means suitable to a particular age or age
2 group based on developing cognitive, emotional, and behavioral
3 capacity typical for that age or age group.

4 "Factual information" means medical, psychiatric,
5 psychological, empirical, or statistical information that is
6 verified or supported by research conducted by recognized
7 medical, psychiatric, psychological, and public health
8 professionals or organizations.

9 "Medically accurate" means verified or supported by
10 research conducted in compliance with accepted scientific
11 methods and recognized as accurate and objective by professional
12 organizations and agencies with expertise in the relevant field,
13 such as the federal Centers for Disease Control and Prevention,
14 the American Public Health Association, the American Academy of
15 Pediatrics, and the American College of Obstetricians and
16 Gynecologists.

17 "Sexuality health education" means education in any medium
18 regarding human development and sexuality, including education
19 on pregnancy, family planning, and sexually transmitted
20 diseases.

21 (c) A teacher shall not be required to teach sexuality
22 health education material that promotes or otherwise addresses



1 homosexuality or homosexual relationships, if doing so would
2 violate the teacher's sincerely held religious beliefs. No
3 teacher who fails or refuses to teach such material under this
4 section shall be subject to any fine, penalty, injunction,
5 administrative proceeding, or other civil or criminal liability
6 for the failure or refusal. The school, in its discretion, may
7 arrange for another teacher to teach the material in question.

8 (d) A parent or legal guardian shall not be required to
9 ensure the attendance of the parent's or legal guardian's child
10 at sexuality health education classes if the material
11 promotes or otherwise addresses homosexuality or homosexual
12 relationships and if doing so would violate the parent's or
13 legal guardian's sincerely held religious beliefs. No parent or
14 legal guardian who fails or refuses to ensure the attendance of
15 the parent's or legal guardian's child under this section shall
16 be subject to any fine, penalty, injunction, administrative
17 proceeding, or other civil or criminal liability for the failure
18 or refusal.

19 (e) A student shall be excused from sexuality health
20 education classes or any portion thereof pursuant to this
21 section, only upon the written request of the student's parent
22 or legal guardian. A student shall not be subject to any



1 disciplinary action, academic penalty, or other sanction if the
2 student's parent or legal guardian requests that the student not
3 receive instruction under this section."

4 SECTION 5. Section 489-2, Hawaii Revised Statutes, is
5 amended as by amending the definition of "place of public
6 accommodation" to read as follows:

7 "Place of public accommodation" means a business,
8 accommodation, refreshment, entertainment, recreation, or
9 transportation facility of any kind whose goods, services,
10 facilities, privileges, advantages, or accommodations are
11 extended, offered, sold, or otherwise made available to the
12 general public as customers, clients, or visitors. By way of
13 example, but not of limitation, place of public accommodation
14 includes facilities of the following types:

- 15 (1) A facility providing services relating to travel or
16 transportation;
- 17 (2) An inn, hotel, motel, or other establishment that
18 provides lodging to transient guests;
- 19 (3) A restaurant, cafeteria, lunchroom, lunch counter,
20 soda fountain, or other facility principally engaged
21 in selling food for consumption on the premises of a
22 retail establishment;



- 1 (4) A shopping center or any establishment that sells
2 goods or services at retail;
- 3 (5) An establishment licensed under chapter 281 doing
4 business under a class 4, 5, 7, 8, 9, 10, 11, or 12
5 license, as defined in section 281-31;
- 6 (6) A motion picture theater, other theater, auditorium,
7 convention center, lecture hall, concert hall, sports
8 arena, stadium, or other place of exhibition or
9 entertainment;
- 10 (7) A barber shop, beauty shop, bathhouse, swimming pool,
11 gymnasium, reducing or massage salon, or other
12 establishment conducted to serve the health,
13 appearance, or physical condition of persons;
- 14 (8) A park, a campsite, or trailer facility, or other
15 recreation facility;
- 16 (9) A comfort station; or a dispensary, clinic, hospital,
17 convalescent home, or other institution for the
18 infirm;
- 19 (10) A professional office of a health care provider, as
20 defined in section 323D-2, or other similar service
21 establishment;
- 22 (11) A mortuary or undertaking establishment; and



1 (12) An establishment that is physically located within the
2 premises of an establishment otherwise covered by this
3 definition, or within the premises of which is
4 physically located a covered establishment, and which
5 holds itself out as serving patrons of the covered
6 establishment.

7 "Place of public accommodation" does not include the real
8 property, buildings, or other areas owned or leased by a
9 religious organization and regularly used for religious
10 purposes, notwithstanding whether the religious organization
11 permits the community to also use some or all of the real
12 property, buildings, or other areas owned or leased by the
13 religious organization.

14 No place of public accommodation defined in this section
15 shall be requested to reconstruct any facility or part thereof
16 to comply with this chapter."

17 SECTION 6. Section 489-3, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§489-3 Discriminatory practices prohibition. (a) Unfair**
20 **discriminatory practices that deny, or attempt to deny, a person**
21 **the full and equal enjoyment of the goods, services, facilities,**
22 **privileges, advantages, and accommodations of a place of public**



1 accommodation on the basis of race, sex, including gender
2 identity or expression, sexual orientation, color, religion,
3 ancestry, or disability are prohibited.

4 (b) Notwithstanding any other law to the contrary, and
5 except as provided in subsection (c), no individual, sole
6 proprietor, or small business shall be required to:

7 (1) Provide goods or services that assist or promote the
8 solemnization or celebration of any marriage or civil
9 union, or provide counseling or other services that
10 directly facilitate the perpetuation of any marriage
11 or civil union; or

12 (2) Provide housing or lodging to any couple,
13 if providing such goods, services, housing, or lodging would
14 cause such individuals, sole proprietors, or owners of such
15 small businesses to violate their sincerely held religious
16 beliefs.

17 For the purpose of this subsection, "small business" means
18 a legal entity other than a natural person that provides
19 services that are primarily performed by an owner of the
20 business; or a legal entity that has five or fewer employees;
21 or in the case of a legal entity that offers housing or lodging
22 for rent, that owns five or fewer units of housing or lodging.



1 (c) Subsection (b) shall not apply if a party to the
2 marriage or civil union is unable to obtain any similar goods or
3 services, or housing or lodging elsewhere, without substantial
4 hardship.

5 (d) Notwithstanding any other provision in this chapter, no
6 refusal to provide goods, services, facilities, privileges,
7 advantages, or accommodations pursuant to subsection (b) shall
8 constitute an unfair discriminatory practice and shall not
9 result in any civil or criminal claim or cause of action
10 challenging such refusal, nor result in any action by the State
11 or any of its political subdivisions to penalize or withhold
12 benefits or privileges, including but not limited to tax
13 exemptions or governmental contracts, grants, or licenses, from
14 any protected entity or individual."

15 SECTION 7. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 8. This Act shall take effect upon its approval.

18

INTRODUCED BY: RL Mc...lt

JAN 21 2014



H.B. NO. 2398

Report Title:

Religious Freedom; Public Accommodations; Marriage; Sexuality
Health Education

Description:

Establishes protections for religious freedom, including in the laws concerning public accommodations, marriage, and sexuality health education programs funded by the State.

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