

CHAPTER 572
MARRIAGE

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Note

Civil union or reciprocal beneficiary relationship in existence before December 2, 2013 not invalidated by L Sp 2013 2d, c 1. L Sp 2013 2d, c 1, §11.

Cross References

International matchmaking organizations, see chapter 489N.

Law Journals and Reviews

For Better or for Worse, in Sickness and in Health, Until Death Do Us Part: A Look at Same Sex Marriage in Hawaii. 16 UH L. Rev. 447.

"PART I. REQUISITES, PROCEDURES

Note

Part heading added by L 1984, c 79, §1.

Attorney General Opinions

Enacting legislation to allow same-sex couples to marry is not inconsistent with the state constitution or the U.S. Constitution. Att. Gen. Op. 13-1.

§572-1 Requisites of valid marriage contract. In order to make valid the marriage contract, which shall be permitted between two individuals without regard to gender, it shall be necessary that:

- (1) The respective parties do not stand in relation to each other of ancestor and descendant of any degree whatsoever, two siblings of the half as well as to the whole blood, uncle and niece, uncle and nephew, aunt and nephew, or aunt and niece, whether the relationship is the result of the issue of parents married or not married to each other or parents who are partners in a civil union or not partners in a civil union;
- (2) Each of the parties at the time of contracting the marriage is at least sixteen years of age; provided that with the written approval of the family court of the circuit within which the minor resides, it shall be lawful for a person under the age of sixteen years,

- but in no event under the age of fifteen years, to marry, subject to section 572-2;
- (3) Neither party has at the time any lawful wife, husband, or civil union partner living, except as provided in section 572-1.7;
 - (4) Consent of neither party to the marriage has been obtained by force, duress, or fraud;
 - (5) Neither of the parties is a person afflicted with any loathsome disease concealed from, and unknown to, the other party;
 - (6) The parties to be married in the State shall have duly obtained a license for that purpose from the agent appointed to grant marriage licenses; and
 - (7) The marriage ceremony be performed in the State by a person or society with a valid license to solemnize marriages and the parties to be married and the person performing the marriage ceremony be all physically present at the same place and time for the marriage ceremony. [L 1872, c 23, §1; am L 1903, c 28, §1; am L 1907, c 42, §1; am L 1913, c 8, §1; RL 1925, §2943; RL 1935, §4630; am L 1935, c 185, §1; am L 1937, c 59, §1; am L 1939, c 122, §1; RL 1945, §12351; am L 1949, c 53, §29; am L 1953, c 79, §1; RL 1955, §323-1; am L 1965, c 232, §1; HRS §572-1; am L 1969, c 152, §1; am L 1970, c 9, §1; am L 1972, c 182, §1 and c 192, pt of §1; am L 1978, c 74, §1; am L 1981, c 202, §1; am L 1984, c 119, §1; am L 1994, c 217, §3; am L 1997, c 52, §5; am L 2012, c 267, §4; am L Sp 2013 2d, c 1, §3]

Attorney General Opinions

Effect of adoption. Parties who by adoption become uncle and niece not disqualified to intermarry. Att. Gen. Op. 62-49.

Common-law marriages invalid. Att. Gen. Op. 73-5.

If requirements of valid marriage met, validity not affected by absence of filed marriage certificate. Att. Gen. Op. 84-10.

Enacting legislation to allow same-sex couples to marry is not inconsistent with the state constitution or the U.S. Constitution. Att. Gen. Op. 13-1.

Law Journals and Reviews

For Better or for Worse, in Sickness and in Health, Until Death Do Us Part: A Look at Same Sex Marriage in Hawaii. 16 UH L. Rev. 447.

Justice Ruth Bader Ginsburg And Gender Discrimination. 20 UH L. Rev. 699.

The Hawai'i Marriage Amendment: Its Origins, Meaning and Fate. 22 UH L. Rev. 19.

The Fine Line Between Love and the Law: Hawai'i's Attempt to Resolve the Same-Sex Marriage Issue. 22 UH L. Rev. 149.

Love and Let Love: Same-Sex Marriage, Past, Present, and Future, and the Constitutionality of DOMA. 22 UH L. Rev. 185.

The Defense of Marriage Act: Sex and the Citizen. 24 UH L. Rev. 279.

The Recognition of Same-Sex Relationships: Comparative Institutional Analysis, Contested Social Goals, and Strategic Institutional Choice. 28 UH L. Rev. 23 (2005).

Free Exercise and Hybrid Rights: An Alternative Perspective on the Constitutionality of Same-Sex Marriage Bans. 29 UH L. Rev. 23 (2006).

Judicial Review and Sexual Freedom. 30 UH L. Rev. 1 (2007).

The State Marriage Cases: Implications for Hawai'i's Marriage Equality Debate in the Post-Lawrence and Romer Era. 31 UH L. Rev. 653 (2009).

Tax Justice and Same-Sex Domestic Partner Health Benefits: An Analysis of the Tax Equity For Health Plan Beneficiaries Act. 32 UH L. Rev. 73 (2009).

Baehr v. Lewin and the Long Road to Marriage Equality. 33 UH L. Rev. 705 (2011).

Case Notes

Common-law marriages invalid. 638 F. Supp. 1251.

Hawaii's marriage laws (this section and article I, §23 of the state constitution), which define marriage as a union between a man and a woman, are rationally related to legitimate government interests and do not violate the equal protection clause or the due process clause of the U.S. Constitution. 884 F. Supp. 2d 1065 (2012).

This section does not treat males and females differently as a class; it is gender-neutral on its face; it prohibits men and women equally from marrying a member of the same sex. 884 F. Supp. 2d 1065 (2012).

Proof of marriage without record in civil cases. 1 H. 83; 1 H. 139; 4 H. 548; 26 H. 81. Presumption of validity. 29 H. 716. When destroyed. 34 H. 161; 35 H. 756.

Statute as to Chinese being already married held void. 3 H. 631.

Breach of contract to marry. 5 H. 540. Marriage by girl under fourteen only voidable. 6 H. 289.

No marriage without mutual consent. 8 H. 77; 12 H. 329; 28 H. 581. Corroboration. 25 H. 392, 394. License is prerequisite to a valid marriage. 25 H. 397; 295 F. 636. License presumed from fact of marriage. 16 H. 377; 16 H. 502.

If record of marriage introduced, not necessary to prove that license had been granted or that agent had authority to grant same. 10 H. 440. Or that celebrant had authority to solemnize. 10 H. 442.

This section's age requirement must be read with the requirements of §572-2. 26 H. 89. A property accumulated, putative marriage. 29 H. 770, rev'd, 27 F.2d 582.

Statute is presumed to be unconstitutional unless defendant, as agent of State, can show that statute's sex-based classification is justified by compelling state interests and statute is narrowly drawn to avoid unnecessary abridgments of applicant couples' constitutional rights. 74 H. 530, 852 P.2d 44.

Trial court erred in deciding that wife was entitled to prevail on her divorce claim and second husband was not entitled to prevail on his annulment claim where certified copy of judgment of divorce presented undisputed evidence that when wife married second husband, wife had prior lawful living husband and thus did not satisfy the requirement of paragraph (3). 108 H. 459 (App.), 121 P.3d 924.

Sections 580-1, 580-21, and this section must be read together; only the family court can declare void a marriage obtained by force, duress, or fraud, and it cannot do so where there has been subsequent cohabitation. 112 H. 131 (App.), 144 P.3d 579 (2006).

Cited: 8 H. 77, 78; 44 H. 271, 273, 353 P.2d 631.

" **[§572-1.5] Definition of marriage.** Whenever used in the statutes or other laws of Hawaii, "marriage" means the union licensed under section 572-1. [L 1994, c 217, §2]

" **§572-1.6 REPEALED.** L 2011, c 1, §7.

" **[§572-1.7] Continuity of rights; civil union and reciprocal beneficiary relationships.** (a) Two individuals who are civil union partners or reciprocal beneficiaries with each other and who seek to marry each other shall be permitted to apply for a marriage license under section 572-6 and to marry each other under this chapter without first terminating their civil union or reciprocal beneficiary relationship; provided that the two individuals are otherwise eligible to marry under this chapter.

(b) The couple's civil union or reciprocal beneficiary relationship shall continue uninterrupted until the solemnization of the marriage consistent with this chapter, and the solemnization of the couple's marriage shall automatically terminate the couple's civil union or reciprocal beneficiary relationship.

(c) The act of seeking a license for or entering into a marriage under this chapter shall not diminish any of the rights, benefits, protections, and responsibilities that existed previously due to the couple's earlier status as civil union partners or reciprocal beneficiaries.

(d) The rights, benefits, protections, and responsibilities created by the civil union or reciprocal beneficiary relationship shall be continuous through the marriage and deemed to have accrued as of the first date these rights existed under the civil union or reciprocal beneficiary relationship; provided that the civil union or reciprocal beneficiary relationship was in effect at the time of the solemnization of the couple's marriage to each other.

(e) Any rights, benefits, protections, and responsibilities created by the solemnization of a marriage that were not included within the reciprocal beneficiary relationship shall be recognized as of the date the marriage was solemnized.

(f) Property held by the couple in tenancy by the entirety shall be subject to section 509-3. [L Sp 2013 2d, c 1, pt of §2]

" **[§572-1.8] Interpretation of terminology to be gender-neutral.** When necessary to implement the rights, benefits, protections, and responsibilities of spouses under the laws of this State, all gender-specific terminology, such as "husband", "wife", "widow", "widower", or similar terms, shall be construed in a gender-neutral manner. This interpretation shall apply to all sources of law, including statutes, administrative rules, court decisions, common law, or any other source of law. [L Sp 2013 2d, c 1, pt of §2]

" **[§572-1.9] Reliance on federal law.** Any law of this State that refers to, adopts, or relies upon federal law shall apply to all marriages recognized under the laws of this State as if federal law recognized such marriages in the same manner as the laws of this State so that all marriages receive equal treatment. [L Sp 2013 2d, c 1, pt of §2]

" **§572-2 Consent of parent or guardian.** Whenever any person who is under the age of eighteen is to be married, the written consent of his or her parents, or guardian or other person in whose care and custody he or she may be, shall accompany the

application for a license to marry. No license shall be issued to any minor who is under the jurisdiction of the family court without the written consent of a judge of such court. [CC 1859, §1291; RL 1925, §2944; am L 1929, c 104, §1; RL 1935, §4631; RL 1945, §12352; am L 1947, c 43, §1; RL 1955, §323-2; am L 1965, c 232, §1; HRS §572-2; am L 1969, c 45, §1; am L 1972, c 2, pt of §34 and c 192, pt of §1]

Case Notes

Marriage by female over fifteen but under eighteen years of age without consent of parent voidable; the words, "having the care and government of such party" modify the words "other person". 26 H. 89.

Consent of parties, necessity of. 28 H. 581.

" **§572-3 Contracted without the State.** Marriages between two individuals regardless of gender and legal where contracted shall be held legal in the courts of this State. [CC 1859, §1290; RL 1925, §2945; RL 1935, §4632; RL 1945, §12353; RL 1955, §323-3; HRS §572-3; am L 1994, c 217, §4; am L Sp 2013 2d, c 1, §4]

Rules of Court

Determination of foreign law, see HFCR rule 44.1.

Proof of official record, see HFCR rule 44.

Case Notes

If legal where entered into, legal everywhere unless odious by common consent of civilized nations. 3 H. 489; 12 H. 329.

Presumption of validity. 29 H. 716.

Mexican proxy marriage. 47 H. 345, 388 P.2d 846.

" **§572-4 Right of domicile, sex or marital status.** The right of an individual to be or to become a resident domiciled in this State shall not be denied or abridged because of the sex or marital status of the individual. The residence of one spouse does not establish the residence of the other spouse, which shall be determined by the same factors that apply in determining the residence of any other individual capable of having an independent residence. [L 1931, c 51, §1; RL 1935, §4633; RL 1945, §12354; RL 1955, §323-4; HRS §572-4; am L 1981, c 6, §1]

" **§572-5 Marriage license; agent to grant; fee.** (a) The department of health shall appoint, and at its pleasure remove, one or more suitable persons as agents authorized to grant marriage licenses under this chapter in each judicial circuit. The agents may issue licenses from any state facility when deemed necessary by the director. Any agent appointed under this subsection and receiving an application for a marriage license shall collect from the applicant for the license \$60, of which the agent, except those provided for in subsection (b), shall retain \$9 for the agent's benefit and compensation and shall remit \$51 to the director of health. Upon the receipt of remittances under this subsection, the director of health shall deposit:

- (1) \$32 for each license issued to the credit of the general fund of the State;
- (2) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 346-7.5;
- (3) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 601-3.6; and
- (4) \$10 for each license issued to the credit of the birth defects special fund established under section 321-426.

(b) The department may appoint, as regular employees under the civil service and classification laws, the number of suitable persons as agents authorized to grant marriage licenses for whom provision has been made in the general appropriation act. In the case of these agents, the full amount collected from applicants shall be remitted to the director of health. Upon the receipt of remittances under this subsection, the director of health shall deposit:

- (1) \$41 for each license issued to the credit of the general fund of the State;
- (2) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 346-7.5;
- (3) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 601-3.6; and
- (4) \$10 for each license issued to the credit of the birth defects special fund established under section 321-426.

(c) Every agent appointed under this section may administer the oaths required by this chapter to be taken.

(d) The department or its authorized agents shall furnish to each applicant for a marriage license a brochure explaining

rubella, the risks of infection with rubella during pregnancy, and how to seek testing and immunization. The department or its authorized agents shall also furnish to each applicant for a marriage license information, to be provided by the department, relating to population stabilization, family planning, birth control, fetal alcohol and drug syndromes, and acquired immune deficiency syndrome (AIDS), including the availability of anonymous testing for human immunodeficiency virus (HIV) infection at alternate test sites; provided that such information is available.

(e) In addition to the fee prescribed under subsection (a), the agent, except those provided for in subsection (b), shall collect from the applicant for the license a surcharge of \$5, of which the agent shall retain the full amount for the agent's additional benefit and compensation. [PC 1869, c 55, §14; am L 1905, c 11, §1; am L 1917, c 189, §1; am L 1921, c 121, §1; RL 1925, §2946; am L 1929, c 104, §2; am L 1932 2d, c 34, §1; RL 1935, §4634; am L 1937, c 122, §7; RL 1945, §12355; am L 1947, c 21, §1; am L 1953, c 87, §1; am L 1955, c 149, §1; RL 1955, §323-5; am L Sp 1959 2d, c 1, §§14, 19; am L 1963, c 114, §1; HRS §572-5; am L 1969, c 33, §1; am L 1971, c 89, §1; am L 1976, c 138, §1; am L 1977, c 24, §1; gen ch 1985; am L 1987, c 98, §1; am L 1989, c 364, §1; am L 1994, c 232, §6; am L 1995, c 153, §2; am L 1998, c 311, §8; am L 2002, c 252, §3; am L 2005, c 223, §4]

Cross References

Modification of fees, see §92-28.

Case Notes

Cited: 74 H. 530, 852 P.2d 44.

" **§572-6 Application; license; limitations.** To secure a license to marry, the persons applying for the license shall appear personally before an agent authorized to grant marriage licenses and shall file with the agent an application in writing. The application shall be accompanied by a statement signed and sworn to by each of the persons, setting forth: the person's full name, date of birth, social security number, residence; their relationship, if any; the full names of parents; and that all prior marriages or civil unions, if any, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution. If all prior marriages or civil unions, other than an existing civil union between the persons applying for the

marriage license, have been dissolved by death or dissolution, the statement shall also set forth the date of death of the last prior spouse or the date and jurisdiction in which the last decree of dissolution was entered. Any other information consistent with the standard marriage certificate as recommended by the Public Health Service, National Center for Health Statistics, may be requested for statistical or other purposes, subject to approval of and modification by the department of health; provided that the information shall be provided at the option of the applicant and no applicant shall be denied a license for failure to provide the information. The agent shall indorse on the application, over the agent's signature, the date of the filing thereof and shall issue a license which shall bear on its face the date of issuance. Every license shall be of full force and effect for thirty days commencing from and including the date of issuance. After the thirty-day period, the license shall become void and no marriage ceremony shall be performed thereon.

It shall be the duty of every person, legally authorized to grant licenses to marry, to immediately report the issuance of every marriage license to the agent of the department of health in the district in which the license is issued, setting forth all facts required to be stated in such manner and on such form as the department may prescribe. [L 1929, c 104, §3; RL 1935, §4635; RL 1945, §12356; RL 1955, §323-6; am L Sp 1959 2d, c 1, §19; HRS §572-6; am L 1969, c 191, §1; am L 1974, c 31, §1; gen ch 1985; am L 1989, c 35, §1; am L 1997, c 293, §25; am L Sp 2013 2d, c 1, §5]

Attorney General Opinions

Power to waive three-day waiting period is vested in district magistrates only, not in circuit court judges. Att. Gen. Op. 64-56.

Case Notes

Cited: 74 H. 530, 852 P.2d 44.

" **§572-7 REPEALED.** L 1995, c 153, §3.

Cross References

For present provision, see §325-19.

" **§572-8 REPEALED.** L 1968, c 35, §2.

" **§572-9 Persons under age.** Whenever any person who is under the age of eighteen, whose parents are dead, or who is a ward of a family court, applies for a license to marry, he or she shall set forth in the statement accompanying the application, the name of his or her guardian or of any other person in whose care and custody he or she may be. [L 1917, c 189, §2; RL 1925, §2948; am L 1929, c 104, §4; RL 1935, §4637; RL 1945, §12358; am L 1947, c 43, §2; RL 1955, §323-9; am L 1965, c 232, §1; HRS §572-9; am L 1972, c 2, pt of §34]

" **§572-10 Applicant apparently under age.** If any applicant for a license to marry appears to any agent to be under the age of eighteen years, the agent shall, before granting a license to marry, require the production of a certificate of birth or other satisfactory proof showing the age of the applicant. [L 1931, c 65, §3; RL 1935, §4638; RL 1945, §12359; RL 1955, §323-10; HRS §572-10; am L 1979, c 105, §56]

" **§572-11 Marriage ceremony; license to solemnize.** It shall not be lawful for any person to perform the marriage ceremony within the State without first obtaining from the department of health a license to solemnize marriages. [CC 1859, §1283; RL 1925, §2949; am L 1929, c 104, §5; RL 1935, §4639; RL 1945, §12360; RL 1955, §323-11; am L Sp 1959 2d, c 1, §19; HRS §572-11; am L 1969, c 19, §1]

Case Notes

License is necessary, but marriage may be presumed although no proof of license. Presumption is rebuttable. 34 H. 161.

Cited: 16 H. 377, 379; 74 H. 530, 852 P.2d 44.

" **§572-12 By whom solemnized.** A license to solemnize marriages may be issued to, and the marriage rite may be performed and solemnized by any minister, priest, or officer of any religious denomination or society who has been ordained or is authorized to solemnize marriages according to the usages of such denomination or society, or any religious society not having clergy but providing solemnization in accordance with the rules and customs of that society, or any justice or judge or magistrate, active or retired, of a state or federal court in the State, upon presentation to such person or society of a license to marry, as prescribed by this chapter. Such person or society may receive the price stipulated by the parties or the gratification tendered. [CC 1859, §1285; RL 1925, §2950; am L 1929, c 104, §6; RL 1935, §4640; RL 1945, §12361; RL 1955, §323-12; HRS §572-12; am L 1969, c 19, §2; am L 1974, c 15, §1]

Case Notes

In adultery, testimony of clergy who was authorized to solemnize and perform marriage is admissible. 10 H. 440.

If record introduced, not necessary to prove that celebrant had authority to solemnize. 10 H. 442.

No ceremony necessary, but license is. 25 H. 397, rev'g 16 H. 377.

Cited: 74 H. 530, 852 P.2d 44.

" **[\$572-12.1] Refusal to solemnize a marriage.** (a) Notwithstanding any other law to the contrary, a clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations pursuant to this chapter shall not be required to solemnize any marriage that is in violation of their religious beliefs or faith.

(b) A clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that, pursuant to this section, fails or refuses to perform the solemnization of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal. [L Sp 2013 2d, c 1, pt of §2]

Cross References

Refusal to join persons in a civil union, see §572B-4.

" **[\$572-12.2] Religious organizations; exemption under certain circumstances.** (a) Notwithstanding any other law to the contrary, a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage that is in violation of its religious beliefs or faith.

(b) A religious organization or nonprofit organization operated, supervised, or controlled by a religious organization that, pursuant to this section, fails or refuses to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any

other legal or administrative liability for the failure or refusal. [L Sp 2013 2d, c 1, pt of §2]

Cross References

Civil unions, exemption for religious organizations, see §572B-9.5.

" **§572-13 Record of solemnization; marriages, reported by whom; certified copies.** (a) Recordkeeping. Every person authorized to solemnize marriage shall make and preserve a record of every marriage by the person solemnized, comprising the names of the parties married, their place of residence, and the date of their marriage.

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

(b) Marriages, reported by whom. It shall be the duty of every person, legally authorized to perform the marriage ceremony, to report within three business days every marriage ceremony, performed by the person, to the agent of the department of health in the district in which the marriage takes place setting forth all facts required to be stated in a standard certificate of marriage, the form and contents of which shall be prescribed by the department of health; provided that if any person who has solemnized a marriage fails to report it to the agent of the department of health, the parties married may provide the department of health with a notarized affidavit attesting to the fact that they were married and stating the date and place of the solemnization of the marriage. Upon the receipt of that affidavit by the department of health, the marriage shall be deemed to be valid as of the date of the solemnization of the marriage stated in the affidavit; provided that the requirements of section 572-1 are met.

(c) Certified copies of certificate of marriage. The department of health shall deliver one certified copy of the certificate of marriage or the contents or any part thereof as provided in section 338-13 to the persons married. The certificate shall be prima facie evidence of the fact of marriage in any proceeding in any court.

The department of health shall upon request, furnish to any applicant additional certified copies of the certificate of marriage or any part thereof.

Copies of the contents of any certificate on file in the department, certified by the department shall be considered for all purposes the same as the original.

The department may prescribe reasonable fees, if any, to be paid for certified copies of certificates. [L 1864, p 21; am L 1903, c 8, §2; am L 1911, c 23, §1; RL 1925, §2951; RL 1935, §4641; RL 1945, §12362; RL 1955, §323-13; HRS §572-13; am L 1974, c 31, §2; am L 1978, c 49, §2; am L 1981, c 202, §2; gen ch 1985; am L Sp 2013 2d, c 1, §6]

Case Notes

Record competent evidence to prove marriage. 10 H. 442.
Record as evidence, introduction. 25 H. 392.

" **[§572-13.5] Revocation or suspension of licenses to solemnize.** Any license to solemnize marriages issued pursuant to section 572-12 may be revoked or suspended by the department of health, if the holder of the license has failed to comply with the applicable provisions of this chapter or of the rules of the department of health. [L 1981, c 202, §3]

" **§572-14 REPEALED.** L 1974, c 31, §3.

" **§572-15 Delivery of records to department of health; penalty.** Whenever any agent authorized to grant marriage licenses ceases to be an agent, or is directed to do so by the department of health, or leaves the State, the agent shall deliver to the department all the agent's records of marriage licenses. Upon the death of any such agent such records shall be delivered to the department by the agent's personal representative or other legal representative.

Whenever any person holding a license to perform the marriage ceremony is directed to do so by the department, or whenever the license is canceled or otherwise terminated or upon the departure from the State of any such person, the person shall deliver to the department all the person's records of marriages, or upon the death of any such person such records shall be delivered to the department by the person's personal representative, or other legal representative.

Any person violating this section shall be fined not more than \$500. [L 1864, p 22; am L 1903, c 8, §2; RL 1925, §2953; am L 1929, c 104, §7; am L 1931, c 65, §2; RL 1935, §4643; RL 1945, §12364; RL 1955, §323-15; am L Sp 1959 2d, c 1, §19; HRS §572-15; am L 1976, c 200, pt of §1; gen ch 1985]

" **[§572-16] Rules and regulations.** The director of health may make such rules and regulations as may be necessary or appropriate to carry out the provisions of this chapter. [L 1969, c 19, §3]

"PART II. PROPERTY CONTRACTS, DEBTS, AND LIABILITIES

Note

Part heading added by L 1984, c 79, §1.

Cross References

Community property, see chapter 510.

[§572-21] Presumption of separate property. There is a rebuttable presumption that all property, both real and personal, acquired in the name of the husband or of the wife, without regard to the time of acquisition thereof, is the separate property of the spouse in the name of whom the same has been acquired. [L 1945, c 273, pt of §1; am L 1949, c 242, §3(a); RL 1955, §326-1; HRS §510-1; ren L 1984, c 79, §1]

" **§572-22 Contracts.** A married person may make contracts, oral and written, sealed and unsealed, with her or his spouse, or any other person, in the same manner as if she or he were sole.

An agreement between spouses providing for periodic payments for the support and maintenance of one spouse by the other, or for the support, maintenance, and education of children of the parties, when the agreement is made in contemplation of divorce or judicial separation, is valid provided that the agreement shall be subject to approval by the court in any subsequent proceeding for divorce or judicial separation and that future payments under an approved agreement shall nevertheless be subject to increase, decrease, or termination from time to time upon application and a showing of circumstances justifying a modification thereof.

All contracts made between spouses, whenever made, whether before or after June 6, 1987, and not otherwise invalid because of any other law, shall be valid. [L 1888, c 11, §2; RL 1925, §2994; am L 1931, c 146, §1; RL 1935, §4645; am L 1939, c 17, §1; RL 1945, §12366; am L 1945, c 5, §1; RL 1955, §325-2; HRS §573-2; am L 1969, c 222, §1; am L 1976, c 200, pt of §1; ren and am L 1984, c 79, §2; am L 1987, c 194, §1]

Revision Note

"June 6, 1987" substituted for "the effective date of this Act".

Law Journals and Reviews

Agreement for alimony and settling property rights in contemplation of divorce or separation; effect thereof; enforceability by contempt proceedings. Haw. Supp, 4 HBJ, Feb 1967, at 18.

Case Notes

Before June 23, 1888: Contract of wife for personal service voidable at instance of husband, not void. 1 H. 467. Separated wife domiciled in foreign country could contract with husband domiciled in Hawaii. 10 H. 138, 144, 622.

After June 23, 1888: Wife may be surety for husband. 20 H. 47. Or agent for husband. 17 H. 481. Married woman may contract for necessaries. 19 H. 494; 20 H. 598. And may recover on joint note of husband and others against such others. 27 H. 369. Suretyship. 33 H. 226. Resulting trusts. 34 H. 363; 40 H. 593. Assignment of leasehold may be made by husband to wife, being in the nature of a gift, and not a contract under this section. 16 H. 731. See 4 U.S.D.C. Haw. 547, 561.

Approval of divorce judge not required for valid property settlements not technically alimony. 41 H. 89.

Child support agreement, modification thereof, court's inherent power over welfare of child. 52 H. 480, 478 P.2d 852.

Agreement for periodic payment, merely approved by court, is not incorporated into divorce decree. 53 H. 123, 488 P.2d 537.

An incorporation by reference of a property settlement agreement, whether the decree specifically sets forth all the terms of the agreement, is an actual incorporation. 1 H. App. 605, 623 P.2d 893.

To change a marital agreement after incorporating it into a consent decree of divorce, consent of both parties required or must move case from uncontested to contested calendar. 3 H. App. 51, 641 P.2d 333.

Spousal support payable for indefinite period is subject to further court order. 6 H. App. 66, 708 P.2d 143.

Where a conveyance to nonparties was agreed to in a valid and enforceable divorce agreement, this section authorized and required the family court to order the conveyance. 83 H. 412 (App.), 927 P.2d 420.

Cases under Hawaii uniform parentage act involving written promises for child support are not subject to the court approval specified in this section. 87 H. 369 (App.), 956 P.2d 1301.

Agreement in contemplation of divorce entered into eighteen years prior to the filing for divorce was enforceable in divorce case unless the agreement showed that it was not intended to

apply to the divorce proceedings, the parties abandoned the agreement prior to the proceedings, or the agreement was unconscionable. 87 H. 419 (App.), 958 P.2d 541.

Cited: 9 H. 369, 371; 23 H. 761, 764; 35 H. 382, 385.

Hawaii Legal Reporter Citations

Antenuptial agreement reviewable by court. Intent. 82-1 HLR 820387.

" **[\$572-23] Not liable for spousal debts.** A married person is not liable for the debts of a spouse; nor is a married person's property liable to be taken on execution or other process against that person's spouse. [L 1888, c 11, §6; RL 1925, §2999; RL 1935, §4650; RL 1945, §12371; am L 1945, c 254, §2; RL 1955, §325-6; HRS §573-6; am L 1978, c 77, §1(1); ren L 1984, c 79, §1]

Case Notes

Wife who takes whole as surviving tenant by the entirety not liable for husband's debts. 47 H. 629, 645, 394 P.2d 432. See 3 H. 802.

" **[\$572-24] Spousal liabilities.** Both spouses of a marriage, whether married in this State or in some other jurisdiction, and residing in this, shall be bound to maintain, provide for, and support one another during marriage, and shall be liable for all debts contracted by one another for necessities for themselves, one another, or their family during marriage; provided that when a support or maintenance obligation, however designated, is imposed upon a spouse under chapter 580 or any other law, the amount of such obligation shall be determined by the appropriate court on the basis of factors enumerated in section 580-47(a). [L 1888, c 11, pt of §7; RL 1925, pt of §3000; am L 1933, c 68, §1; RL 1935, §4651; RL 1945, §12372; am L 1945, c 254, §3 and c 273, §6; RL 1955, §325-7; HRS §573-7; am L 1972, c 191, §1; am L 1978, c 77, §1(2); ren L 1984, c 79, §1]

Case Notes

A husband being solely responsible for the support of the family, wife entitled to advances made by her to family venture as creditor in equity of husband; also, entitled to contributions to mutual business investment. 4 U.S.D.C. Haw. 547, 561.

Husband is also liable for breach of implied warranty where only wife and another defendant are registered partners if wife is found to be husband's agent. 198 F. Supp. 78, aff'd 304 F.2d 149.

Torts: Under prior law, held husband liable alone for torts of wife. 1 H. 83.

As to wife's debts prior to marriage. 3 H. 374, questioned. 9 H. 543, 545.

Necessaries: Husband not liable for attorney's fee for defense of wife in criminal action for desertion of husband. 5 H. 23. Husband not liable at law for attorney's fee in defending wife in libel for divorce. 19 H. 463. Husband not liable for attorney's fee in criminal action against husband by wife for assault and battery. 22 H. 377.

Husband not liable for necessities, if wife living apart in notorious adultery. 5 H. 695. If credit for necessities is given solely to the wife, the husband is not responsible. 6 H. 212. Wife may purchase necessities and those furnishing necessities may sue husband for their value. 14 H. 554.

Remedy of wife in case of failure of support. 8 H. 495.

Section construed liberally. 19 H. 326.

Recovery cannot be had against husband without proof of delivery and wife is not agent of husband to start an account on his behalf. 22 H. 1.

Necessaries, showing required. 34 H. 423. Liable for necessities under rule of "enforced agency" or "agency by necessity". 34 H. 709.

The statutory duty of spousal support for necessities continues past the filing of a divorce action, and absent some interim court order concerning "support or maintenance" as provided in this section, remains in effect until the final disposition of divorce proceedings. 88 H. 489 (App.), 967 P.2d 686.

Where husband's medical services were necessities for which husband was indebted to hospital and debt was contracted for during period when husband was married to wife, under the terms of this section, wife became "liable" for the hospital debt incurred by husband. 88 H. 489 (App.), 967 P.2d 686.

Cited: 38 H. 1, 4.

" **§572-25 Separate property.** The real and personal property of a spouse, upon marriage, shall remain that spouse's separate property, free from the management, control, debts, and obligations of the other spouse; and a spouse may receive, receipt for, hold, manage, and dispose of property, real and personal, in the same manner as if that spouse were sole. [L 1888, c 11, §1; RL 1925, §2993; am L 1925, c 274, §1; RL 1935,

§4644; RL 1945, §12365; RL 1955, §325-1; HRS §573-1; am L 1984, c 159, §1; ren L 1987, c 46, §1]

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For a discussion of the general effect of married women's acts on estates by the tenancy, see Summary of the Law on Tenancies. 2 HBJ, Jul 1964, at 12.

Case Notes

Not violated by discharge of wife, who along with husband, violated company policy by forming own company while still working for employer. 558 F. Supp. 1229.

Before June 23, 1888: A power of attorney from husband to wife with respect to his own lands, did not authorize the wife to mortgage her separate property. 7 H. 216. Wife could not convey land without husband's consent in writing. 11 H. 497. And could not convey to husband during coverture. 6 H. 69 and 297. But husband could lease or otherwise dispose of wife's real property for a definite term pending his natural life, with wife's written consent. 11 H. 777. Husband joining wife as lessor of wife's property liable on covenant only during his life. 8 H. 249. A devise to husband and wife created an estate in entirety. 3 H. 725; 5 H. 123; 7 H. 575; 13 H. 196. Choses in action of wife not reduced into possession by husband remain wife's property. 5 H. 550. Previously money accruing and paid to wife vested immediately to husband without his reducing it to possession. 7 H. 327. See 8 H. 245.

After June 23, 1888 and before May 5, 1925: Wife could execute valid lease of land so as to entitle lessee to possession after husband's death although the land acquired and marriage occurred prior to June 23, 1888. 9 H. 369. Action after Act of 1888 on contract made by wife with consent of husband before such act should be against wife only. 9 H. 543. Common law fiction of unity of husband and wife destroyed by Act of 1888. 16 H. 731. Deficiency judgment on mortgage foreclosure may be rendered against married woman. 16 H. 799. Warranty deed by husband and wife, who were tenants by the entirety sufficient though no express consent by husband, and statement by husband in deed of wife's separate property conveying his right as husband in the land a sufficient consent. 28 H. 385. Income from wife's separate property mingled by her with husband's funds for long period and used to defray general expenses of family and business held gift and not recoverable as debt or trust by wife from husband after divorce. 30 H. 392.

Purchase of property husband taking title in wife's name raises rebuttable presumption of gift. 30 H. 565, aff'd 35 F. 943.

Liability of a wife who is joint owner of land with her husband as tenant by the entirety. 47 H. 149, 384 P.2d 303.

There is no conflict between this section and §580-47. 59 H. 32, 575 P.2d 468.

Cited: 31 H. 817, 910; 33 H. 34, 50.

" **§572-26 May be personal representative, guardian, trustee, or other fiduciary.** A married person may be a personal representative, guardian, trustee, custodian, or other fiduciary and may bind the person's self and the estate the person represents without any act or assent on the part of the person's spouse. [L 1888, c 11, §4; RL 1925, §2996; RL 1935, §4647; RL 1945, §12368; RL 1955, §325-3; HRS §573-3; am L 1976, c 200, pt of §1; ren and am L 1987, c 46, pt of §2]

" **§572-27 Persons as sureties.** All persons, upon attaining their majority, and having the necessary property qualifications as by law required, may act, serve, and be sureties on all bonds and undertakings required under the laws of the State. [L 1923, c 9, §1; RL 1925, §2997; RL 1935, §4648; RL 1945, §12369; RL 1955, §325-4; HRS §573-4; ren and am L 1987, c 46, pt of §2]

" **§572-28 Suits by and against.** A married person may sue and be sued in the same manner as if the person were sole. This section shall be construed to authorize tort suits between spouses. [L 1888, c 11, §5; RL 1925, §2998; RL 1935, §4649; RL 1945, §12370; RL 1955, §325-5; HRS §573-5; ren and am L 1987, c 46, pt of §2; am L 1993, c 70, §2]

Cross References

Torts, who may sue and for what, see §663-1.

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Empowering Battered Women: Changes in Domestic Violence Laws in Hawai'i. 17 UH L. Rev. 575.

Interspousal Torts: A Procedural Framework for Hawai'i. 19 UH L. Rev. 377.

Case Notes

Prior to 1993 amendment:

See 4 U.S.D.C. Haw. 547, 561.

Action on contract. 9 H. 543.

Section does not preclude wife from contracting to pay for articles which the husband is bound to furnish. 19 H. 494.

Married female infant cannot sue without next friend or other proper representative. 20 H. 596.

Wife cannot sue husband in equity without next friend. 24 H. 632.

Promissory note by agent of husband as such agent payable to wife is void. 31 H. 32.

Prohibition does not extend to suits in equity involving adjudication of property rights of spouses. 42 H. 455.

Liability of wife who is joint owner of land with her husband. 47 H. 149, 384 P.2d 303.

Interspousal tort immunity upheld. 63 H. 653, 634 P.2d 586.

Does not bar third party action by defendant against plaintiff's wife. 68 H. 505, 720 P.2d 181.

" **§572-29 Marriage settlement not invalidated.** Nothing contained in this part shall invalidate any marriage settlement or contract. [L 1888, c 11, §11; RL 1925, §3004; RL 1935, §4655; RL 1945, §12376; RL 1955, §325-8; HRS §573-8; ren and am L 1987, c 46, §3 and am c 283, §59]

Hawaii Legal Reporter Citations

Pre-nuptial agreements. 82-1 HLR 820387.