

**[CHAPTER 572B]**  
**CIVIL UNIONS**

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## Note

L 2012, c 267, §§16 and 17 provide:

"SECTION 16. [*Section retroactive to October 3, 2011. L 2012, c 267, §20(1).*] If two individuals terminated a reciprocal beneficiary relationship on or after October 3, 2011, but before the date this Act became law upon its approval [*Act effective retroactive to January 1, 2012, and approved July 6, 2012*], and the two individuals subsequently enter or entered into a civil union no later than ninety days after their reciprocal beneficiary relationship terminated, their reciprocal beneficiary relationship shall be deemed to continue uninterrupted until the civil union is or was solemnized. The couple shall suffer no loss or interruption of any rights, benefits, protections, or obligations derived from their reciprocal beneficiary relationship, and those rights, benefits, protections, or obligations shall be deemed to have accrued as of the first date they existed under the beneficiary relationship, if they meet the requirements of this section.

For purposes of this section, holding title to property as tenants by the entirety shall be included among the rights of a reciprocal beneficiary relationship that shall continue uninterrupted under this section; provided that no intervening liens were perfected and attached on the property after the reciprocal beneficiary relationship was terminated, and before the date this Act became law upon its approval [*Act effective retroactive to January 1, 2012, and approved July 6, 2012*].

SECTION 17. Notwithstanding subsection 572C-7(c), Hawaii Revised Statutes, if before the effective date of this section [*retroactive to January 1, 2012*], two individuals entered into a valid legal union in another jurisdiction that is not a marriage recognized under chapter 572, Hawaii Revised Statutes, and is substantially equivalent to a civil union under chapter 572B, Hawaii Revised Statutes, and are also parties to a reciprocal beneficiary relationship in this State, the reciprocal beneficiary relationship shall terminate and their valid legal union entered into in another jurisdiction shall be recognized as a civil union under section 572B-10, Hawaii Revised Statutes, on the voluntary termination of the reciprocal beneficiary relationship under subsection 572C-7(a), Hawaii Revised Statutes, but no later than one year after the date this Act becomes law upon its approval [*Act effective retroactive to January 1, 2012, and approved July 6, 2012*]."

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

Civil unions, public employees' retirement system, see §88-1.2.

Continuity of rights; civil union and reciprocal beneficiary relationships, see §572-1.7.

## Law Journals and Reviews

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

## Case Notes

The passage of the civil unions law did not render Hawaii's existing marriage laws irrational and unconstitutional. 884 F. Supp. 2d 1065 (2012).

Complaint challenging the constitutionality of the civil unions law was moot because Act 267, L 2012, amended the civil unions law retroactively to add an immunity provision [§572B-9.5], which provided immunity for religious organizations that refused to make their facilities available for solemnizing civil unions. Granting leave to amend complaint would be futile because the action would remain nonjusticiable; plaintiffs did not demonstrate that they had standing or that the action was ripe. 903 F. Supp. 2d 1024 (2012).

" **[§572B-1] Definitions.** As used in this chapter, unless the context otherwise requires:

"Agent" means the person or persons appointed as an agent or agents by the department of health pursuant to section 572-5.

"Civil union" means a union between two individuals established pursuant to this chapter.

"Partner" means an individual who is a party to a civil union established pursuant to this chapter. [L 2011, c 1, pt of §2]

" **§572B-2 Eligibility to enter into a civil union.** A person shall be eligible to enter into a civil union only if the person is:

- (1) Not a partner in another civil union or a spouse in a marriage;
- (2) At least eighteen years of age; and
- (3) Not related to the other proposed partner in the civil union, as provided in section 572B-3. [L 2011, c 1, pt of §2; am L 2012, c 267, §5]

### Note

The 2012 amendment is retroactive to January 1, 2012. L 2012, c 267, §20.

" **[§572B-3] Civil unions void; when.** A civil union shall be void between the following persons: parent and child, grandparent and grandchild, two siblings, aunt and nephew, aunt and niece, uncle and nephew, uncle and niece, and persons who stand in relation to each other as ancestor and descendant of any degree whatsoever. [L 2011, c 1, pt of §2]

" **§572B-4 Solemnization; license to perform; refusal to join persons in a civil union.** (a) A civil union shall become valid only upon completion of a solemnization by a person licensed in accordance with this section.

(b) Any judge or retired judge, including a federal judge or judge of another state who may legally join persons in chapter 572 or a civil union, may solemnize a civil union. Any clergy, minister, priest, rabbi, or officer of any religious denomination or society who has been ordained or is authorized to solemnize civil unions 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, may solemnize a civil union.

(c) 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 of civil unions pursuant to this chapter shall not be required to solemnize any civil union that is in violation of their religious beliefs or faith.

(d) 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 civil union shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.

(e) No agent may solemnize a civil union; nor may any assistant or deputy of the agent solemnize a civil union.

(f) No person shall perform the solemnization of a civil union without first having obtained a license from the department of health. The department of health shall issue licenses to solemnize civil unions in the same manner as it issues licenses pursuant to chapter 572. The department of

health may revoke or suspend a license to solemnize civil unions. Any penalties or fines that may be levied or assessed by the department of health for violation of chapter 572 shall apply equally to a person licensed to solemnize civil unions. [L 2011, c 1, pt of §2; am L 2012, c 267, §6; am L Sp 2013 2d, c 1, §7]

### **Cross References**

Refusal to solemnize a marriage, see §572-12.1.

" **[§572B-4.5] Rights held by reciprocal beneficiaries who enter into a civil union.** (a) If two reciprocal beneficiaries enter into a civil union with each other, the rights, benefits, protections, or responsibilities created by the reciprocal beneficiary relationship shall be continuous through the civil union and deemed to have accrued as of the first date these rights existed under the reciprocal beneficiary relationship; provided that the individuals terminated their reciprocal beneficiary relationship simultaneously with their entry into a civil union, or within the ninety days immediately preceding their entry into a civil union.

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

(c) Property held in tenancy by the entirety shall be subject to section 509-3. [L 2012, c 267, pt of §3]

### **Note**

Section retroactive to January 1, 2012. L 2012, c 267, §20.

" **§572B-5 Applicants for civil union; license required; limitations.** (a) No persons may be joined in a civil union in this State unless both partners have:

- (1) Met the requirements of section 572B-2;
- (2) Complied with section 572B-6 and, if applicable, section 572B-7; and
- (3) Been issued a license by an agent, which license shall bear the certification of the agent that the persons named therein have met the requirements of section 572B-2 and have complied with section 572B-6 and, if applicable, section 572B-7.

(b) The license, when certified by the agent, is sufficient authority for any person authorized to perform a civil union solemnization in this State to join the persons in a

civil union; provided that the solemnization is performed not more than thirty days after the date of issuance. The license shall become void thirty days after issuance. [L 2011, c 1, pt of §2; am L 2012, c 267, §7]

#### **Note**

The 2012 amendment is retroactive to January 1, 2012. L 2012, c 267, §20.

" **§572B-6 Application for license for persons who wish to enter into a civil union; fee.** (a) No license for a civil union may be issued by an agent until both applicants have appeared before the agent and applied for the license. The application for the license shall be completed in its entirety, dated, signed, and sworn to by each applicant and shall state each applicant's full name, date of birth, birthplace, residence, social security number, whether single, widowed, or divorced, and whether the applicant is under the supervision or control of a conservator or guardian. If the application is signed and sworn to by the applicants on different dates, the earlier date shall be deemed the date of the application. The agent shall issue a copy of this chapter to any person applying for a license.

(b) The fee for a license to enter into a civil union shall be an amount equal to the amount prescribed in section 572-5, and all amounts collected pursuant to section 321-1(g) as application fees under this chapter shall be retained or remitted and apportioned in the same manner as prescribed in section 572-5. [L 2011, c 1, pt of §2; am L 2012, c 267, §8]

#### **Note**

The 2012 amendment is retroactive to January 1, 2012. L 2012, c 267, §20.

" **[§572B-7] Persons under control of conservator or guardian.** (a) No civil union license may be issued to any applicant under the supervision or control of a conservator or guardian, appointed in accordance with chapter 560, unless the written consent of the conservator or guardian is signed, notarized, and filed with the agent.

(b) Any person who enters into a civil union without the consent provided for in subsection (a) shall acquire no rights by that civil union in the property of any person who was under the control or supervision of a conservator or guardian at the time the civil union was entered into. [L 2011, c 1, pt of §2]

" **§572B-8 Record of solemnization; reported by whom; affidavit; evidentiary weight of certificate or affidavit.** (a) Each person who solemnizes a civil union shall certify upon the civil union license certificate all the facts required to be stated in a standard certificate of civil union, the form and contents of which shall be prescribed by the department of health, and return the certificate to the department of health within three business days following the solemnization of the civil union, or as may otherwise be prescribed by the department of health.

(b) If any person who has solemnized a civil union fails to return the certificate to the department of health as required under subsection (a), the partners joined in a civil union may provide the department of health with a notarized affidavit attesting to the fact that they were joined in a civil union and stating the date and place of the solemnization of the civil union. Upon the receipt of that affidavit by the department of health, the civil union of the partners shall be deemed to be valid as of the date of the solemnization of the civil union stated in the affidavit.

(c) The certificate required by subsection (a) or an affidavit received pursuant to subsection (b) shall be prima facie evidence of the facts stated therein. [L 2011, c 1, pt of §2; am L 2012, c 267, §9]

#### **Note**

The 2012 amendment is retroactive to January 1, 2012. L 2012, c 267, §20.

" **[§572B-9] Benefits, protections, and responsibilities.** Partners to a civil union lawfully entered into pursuant to this chapter shall have all the same rights, benefits, protections, and responsibilities under law, whether derived from statutes, administrative rules, court decisions, the common law, or any other source of civil law, as are granted to those who contract, obtain a license, and are solemnized pursuant to chapter 572. [L 2011, c 1, pt of §2]

#### **Attorney General Opinions**

Civil union partners have all the same rights, benefits, protections, and responsibilities under the law as married couples who are of the opposite gender; civil union partners have the same tax filing status options as married couples who are of the opposite gender for Hawaii income tax purposes for

taxable years beginning after December 31, 2011. Att. Gen. Op. 11-2.

Definitions of "marriage" and "spouse" under the federal Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419, may preclude civil union partners of the same gender under the State's Civil Union Act from filing jointly for federal income tax purposes, but they do not preclude civil union partners from filing joint tax returns for Hawaii income tax purposes. Att. Gen. Op. 11-2.

" **§572B-9.5 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 civil union 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 civil union shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal. [L 2012, c 267, pt of §3; am L Sp 2013 2d, c 1, §8]

### **Cross References**

Marriage, exemption for religious organizations, see §572-12.2.

### **Case Notes**

Complaint challenging the constitutionality of the civil unions law was moot because Act 267, L 2012, amended the civil unions law retroactively to add an immunity provision [this section], which provided immunity for religious organizations that refused to make their facilities available for solemnizing civil unions. Granting leave to amend complaint would be futile because the action would remain nonjusticiable; plaintiffs did not demonstrate that they had standing or that the action was ripe. 903 F. Supp. 2d 1024 (2012).

" **§572B-10 Unions performed in other jurisdictions.** A legal union of two persons that is not a marriage under chapter 572, which was validly formed in another jurisdiction, and which is



substantially equivalent to a civil union under this chapter, shall be recognized as a valid civil union in this State and shall be treated the same as a civil union entered into in this State regardless of whether it bears the name civil union; provided that the relationship meets the eligibility requirements of this chapter, has been entered into in accordance with the laws of that jurisdiction, and can be documented. [L 2011, c 1, pt of §2; am L 2012, c 267, §10]

#### **Note**

The 2012 amendment is retroactive to January 1, 2012. L 2012, c 267, §20.

" **[§572B-11] References and inclusions.** A party to a civil union shall be included in any definition or use of the terms "spouse", "family", "immediate family", "dependent", "next of kin", and other terms that denote the spousal relationship, as those terms are used throughout the laws of the State. [L 2011, c 1, pt of §2]

#### **Attorney General Opinions**

Civil union partners have all the same rights, benefits, protections, and responsibilities under the law as married couples who are of the opposite gender; civil union partners have the same tax filing status options as married couples who are of the opposite gender for Hawaii income tax purposes for taxable years beginning after December 31, 2011. Att. Gen. Op. 11-2.

Definitions of "marriage" and "spouse" under the federal Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419, may preclude civil union partners of the same gender under the State's Civil Union Act from filing jointly for federal income tax purposes, but they do not preclude civil union partners from filing joint tax returns for Hawaii income tax purposes. Att. Gen. Op. 11-2.