



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2017**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1054, RELATING TO MARRIAGE.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Thursday, February 23, 2017      **TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Douglas S. Chin, Attorney General, or  
Jill T. Nagamine, Deputy Attorney General

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Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General provides the following comments.

This bill would add a new section to chapter 572, Hawaii Revised Statutes (HRS), entitled "Common law marriage." It would recognize as legally married those persons who, for a continuous period of ten years, cohabit, acknowledge each other as spouses, and are generally reputed to be spouses. Persons who opt for common law marriages would not be required to obtain a marriage license or have their marriage solemnized as required by section 572-1(6) and (7), HRS. As written, the ten year period would begin after enactment of this bill, recognizing common law marriages no earlier than 2027. Common law marriages would be subject to chapter 580, HRS, which provides for annulment, divorce, and separation.

We have the following legal concerns and comments about this bill.

(1) Other than a couple's representations, there would be no evidence to prove the existence of the marriage or the date the marriage began. This could create difficulties, including (a) imprecision in calculating the start date of government benefits, (b) doubtful applicability of exemptions for taxes owing, (c) inability to make presumptions of parenthood, (d) confusion surrounding inheritance rights, and (e) uncertainty regarding spousal obligations and liabilities.

(2) Without the requirements of section 572-1(6), HRS, there would be no way to ensure that couples entering common law marriages in Hawaii would be of a

minimum age; or that their consent to the marriage had not been obtained by force, duress, or fraud; or that the parties to the marriage do not stand in an unacceptable degree of relationship with each other, such as a father and daughter.

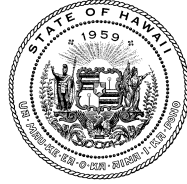
(3) The Supreme Court of the Territory of Hawaii addressed common law marriage nearly one hundred years ago in the case of Parke v. Parke, 25 Haw. 397 (1920), and ruled against it. The Court, in determining that a common law marriage was not valid for a woman to inherit from a man she lived with for five years before his death, found that the laws requiring a license to marry "clearly demonstrate an early determination on the part of the law-makers in these Islands to add vitality to the loose and doubtful marriage system which had grown up under the common law and to make of marriage a homogeneous, staple and certain institution." 25 Haw. 397 at 404.

(4) Fewer than ten states still allow common law marriage, with Alabama being the most recent to abolish it, effective January 1, 2017. (Ala. Code 1975 § 30-1-20).

If this Committee decides to pass this bill, we respectfully ask that it amend the bill to require a means of documenting or registering the marriage, similar to the requirements already provided in chapter 572, HRS.

DAVID Y. IGE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809  
PHONE NO: (808) 587-1540  
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MARIA E. ZIELINSKI  
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE  
DEPUTY DIRECTOR

To: The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members of the Senate Committee on Judiciary and Labor

Date: Thursday, February 23, 2017

Time: 9:00 A.M.

Place: Conference Room 016, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: S.B. 1054, Relating to Marriage

The Department of Taxation (Department) appreciates the intent of S.B. 1054 and provides the following comments for your consideration.

S.B. 1054 provides that common-law marriages shall be recognized as valid marriages. The marriage is recognized after a minimum of ten years cohabiting and acknowledging one another as spouses after the effective date of the measure. S.B 1054 is effective upon approval.

The Department first notes that if this measure becomes law, common law marriages would be recognized as valid for state and federal tax purposes without any further amendments to the law. This is because the determination of marital status for Hawaii and federal tax purposes is determined under state law. See section 235-93, Hawaii Revised Statutes; 26 C.F.R. 30107701-18(b). The Internal Revenue Service confirmed this in Revenue Ruling 58-66, when it stated that common law marriages that are valid under state law are valid for determination of income tax filing status.

Finally, as currently written, the first tax year that taxpayers could file jointly based on common law marriage is tax year 2027.

Thank you for the opportunity to provide comments.



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P. O. Box 3378  
Honolulu, HI 96801-3378  
doh.testimony@doh.hawaii.gov

**Testimony in OPPOSITION to SB 1054  
WRITTEN TESTIMONY ONLY**

**RELATING TO MARRIAGE**

SENATOR GILBERT S.C. KEITH-AGARAN, CHAIR  
SENATE COMMITTEE ON JUDICIARY AND LABOR

Hearing Date: February 23, 2017

Room Number: 016

1 **Fiscal Implications:** \$209,000 in Additional General Funds

2 **Department Testimony:** SB 1054 provides that common law marriages be lawfully recognized  
3 subject to certain conditions. The bill provides that persons cohabitating and acknowledging each  
4 other as spouses for a continuous period of not less than ten years be deemed to be legally married.  
5 The addition of common law marriages would create confusion and negatively impact the  
6 registration of births, deaths and marriages in Hawaii. The addition of common law marriages  
7 would impact the registration of births because it is not clear how a parentage presumption would  
8 apply. The inclusion of common law marriages would also create confusion about the marital  
9 status on a death certificate, which is important for inheritance purposes. The law would create  
10 confusion about how to issue a marriage license to a person who is already in a common law  
11 marriage. HRS §572-1 specifies the requisites of a valid marriage contract, which include  
12 requirements regarding the degree of relationship, each party having a minimum age of 16 years  
13 old, neither party already married or in a civil union, both parties providing voluntary consent, and  
14 both parties free of loathsome disease. The bill is unclear whether the requisites of a valid marriage  
15 contract, as stated in §572-1, would apply to common law marriages as well. If the Legislature  
16 decides to provide a means to verify a common law marriage and determines that the Department  
17 of Health ought to have that responsibility, then that requirement would burden already limited  
18 staff resources. The bill does not specify the fee for the common law marriage and does not specify  
19 the distribution of fees.

20 If the Department of Health is assigned any regulatory oversight of common law marriages in  
21 Hawaii, it would cost the Office of Health Status Monitoring \$100,000 in additional General Funds  
22 to revise its online birth, death, marriage, and certified copies ordering systems and to revise its  
23 Vital Statistics System. The addition of common law marriages will also cost the Office of Health  
24 Status Monitoring \$51,000 per year in additional General Funds for a full-time Public Health

1 Administrative Officer to account for the collecting and distribution of the additional fees, \$58,000  
2 per year in additional General funds for an Office Assistant IV to handle the registration of  
3 common law marriages and an Office Assistant III to handle the issuance of certified copies of  
4 common law marriages. Without the additional general funds, the bill would cause undue financial  
5 burden on the Office of Health Status Monitoring.

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7 We appreciate the opportunity to testify and strongly urge you to hold SB 1054.

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9 **Offered Amendments: None.**

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**Date:** Tuesday, February 21, 2017 6:59:47 PM

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**SB1054**

Submitted on: 2/21/2017

Testimony for JDL on Feb 23, 2017 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
allen yamaguchi	Individual	Support	No

Comments:

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# BARINNA POON

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February 21, 2017

Committee on Judiciary and Labor  
Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Karl Rhoads, Vice Chair

**Re: SB 1054 - Relating to marriage (Provides that common law marriages shall be lawfully recognized, subject to certain conditions)**

Dear Senator Gilbert S.C. Keith-Agaran and Senator Karl Rhoads:

Please accept this letter as my strong testimony in support of SB 1054. The passage of this bill is imperative to prevent acrimonious legal battles like the one I am currently embroiled in. Because Hawaii does not recognize common law marriage, I have suffered immensely.

For more than eighteen years, I was the life partner and significant other of Thomas P. Dunn (“Tom”). I was the love of Tom’s life, his companion, nurse, confidante, homemaker, housekeeper, cook, secretary, business partner and advisor. Throughout my relationship with him, we held ourselves as though we were married to each other, treated each other like spouses, and believed ourselves to be a single, undivided union, including with respect to our personal finances.

In July 1997, I was pregnant with Tom’s child. Tom asked me to move in with him at his Hawaii Kai home, which I did, to build our family and future together. I have always considered this place as my home and since August 1997 until his sudden death in December 2015, Tom and I lived continuously together.

Tom and I consistently referred to, considered and intended our respective property interests, whether titled jointly or separately, to be “ours.” Our expenses and income was shared and resulted in our joint labor, efforts, and undertaking. With respect to our home, I made payments on the mortgage, real property taxes, maintenance, repairs, replacements, landscaping, upkeep and other costs of shared ownership, for Tom and my benefit. Tom always told me that he would always provide for my financial support and fulfil my needs for the rest of my life. He promised me these things because he said I was his only family and because he loved me.

In January 2008, when Tom’s health rapidly declined he suffered from various health issues including losing his eyesight and having diabetic episodes, one that resulted in the amputation of five toes. Because of these health complications, Tom relied heavily upon me to take care of him. Since January 2008, I sacrificed my career for his sake. I tended to Tom by performing among many thing, the duties of a practical nurse, dressing him, doing household duties, preparing his meals, writing business letters for him and attending to his business affairs, doing his laundry, helping him exercise, driving him to where he needed, and did whatever was necessary to enable him to thrive.

Tom's death was sudden, unexpected and a surprise to everyone including himself. Tom and I talked often about marriage, our family, and commitment. Although he and I were going to get married, we thought we had more time to plan out. Life is so fragile and precious. It is unfortunate that sometimes you do not realize this until it is too late. Because Tom and I did not formalize our relationship as an actual and legal married couple, since his death my life totally turn up-side-down, I have suffered emotional distress and depression. On top of it, I've faced tremendous legal problems with his siblings, because of the anxiety and uncertainty of my future, it affects my focus to work and make a living. As a result, I am also facing financial difficulty.

I will potentially lose the home I have lived in for over eighteen years. Tom did not have a will. Consequently, I am unable to inherit Tom's estate because Hawaii does not recognize common law marriages. As such, my love, contributions, and sacrifices to Tom are largely unrecognized and meaningless under the eyes of the law. I am hopeful that the legislature will rectify this wrong and that it will prevent others from suffering as much as I have.

Thank you very much for this opportunity to testify on this important matter. It is my desired to testify in person this coming Thursday, February 23<sup>rd</sup> at 9:00am; however, I have a court hearing at the same time for Tom's matter. I asked a friend of mine and she is a community leader, Ms. Chu Lan Shubert-Kwock, who will testify on behalf of me. Please feel free to contact me at any time should you have any questions or comments.

Yours very truly,

A handwritten signature in black ink, appearing to read "Barinna Poon". The signature is fluid and cursive, with a large initial "B" and a long, sweeping underline.

Barinna Poon



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**Subject:** Submitted testimony for SB1054 on Feb 23, 2017 09:00AM  
**Date:** Sunday, February 19, 2017 6:53:30 PM

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**SB1054**

Submitted on: 2/19/2017

Testimony for JDL on Feb 23, 2017 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Bee Leng Chua, PhD	Individual	Support	No

Comments: This testimonial supports HB1239 and Senate Bill SB1054 for a Common Law Marriage. People do not formally marry for various reasons. Often there are unintended and unfair consequences for victims who are the long-term live-in partner and children. I witnessed this situation of Tom and Mary (not real name) who lived together for 20 years in Tom's house. Tom died suddenly of a heart attack last year without a will. They were in a loving and mutually supportive relationship and presented themselves to the community and friends as being a couple. Tom had no children from his first marriage, and treated Karen, Mary's daughter, as his own. Tom's heart attack was highly unexpected. Tom's siblings have now filed proceedings to obtain the house. The siblings who are from, and lived on the US Mainland have not contributed to the purchase or maintenance of the house. Their actions showing greed and lack of compassion will take away the home that Mary and Tom have built for the past 20 years. A passed common law marriage bill would give justice and protection to partners and children of the relationship. It would give recognition to the relationship of two people who have lived together for many years. A marriage is more than a certificate. There are emotional factors, as it comprised commitment, supporting and caring for each other. This gives a nuclear family the stability and security that is good for the greater society. In the absence of a will, the Common Law Marriage Bill will also reduce ambiguity and conflict that is now playing out in Tom and Mary's story.

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**Date:** Monday, February 20, 2017 9:30:00 AM

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**SB1054**

Submitted on: 2/20/2017

Testimony for JDL on Feb 23, 2017 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Cali K. Gullion	Individual	Comments Only	No

Comments: I am Cali K. Gullion at I have known Thomas Dunn and Barina Poon since 1998 as husband and wife,they have lived together with their daughter Karen all these years. I was shocked to hear of Tom's death and his siblings trying to evict Barinna and Karen from the home they have lived in. I support common law marriage.

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To whom it may concern:

I am writing in regards to SB.NO. 1054, regarding common law marriage. I agree with this bill, stating that after cohabitating with ten plus years they will be recognized as lawfully married. This seems like a reasonable measure. Since these two people have been together for this long, it is not crazy to assume that they plan on being together for the foreseeable future. They may not have wed due to finances or such. This measure acknowledging them as married, will hopefully also grant them the benefits of being married. These benefits include medical insurance and tax breaks for married couples. These rights are guaranteed to people who have been married for less than ten years so why not make the rights guaranteed to those who have been together for much longer. I do not think that people should be penalized for not being able to afford something. So, if some couples are not married due to financial hardship I think this measure will help get the benefits of married people.

Thank you for your time,

Cassidy Maselli

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**Date:** Tuesday, February 21, 2017 8:44:02 AM

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**SB1054**

Submitted on: 2/21/2017

Testimony for JDL on Feb 23, 2017 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Cleota Browm	Individual	Support	No

Comments: I'm in favor of SB1054 Common Law Marriages should be recognized in the State of Hawaii. To not recognize puts our most vulnerable women, children and elders at risk when a partner dies without a will. I've seen estranged families with no rights to assets take control and put families out of their homes or strip their assets. I encourage the Senate to pass this bill and protect women, children and elders.

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**SB1054**

Submitted on: 2/21/2017

Testimony for JDL on Feb 23, 2017 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Janet Huang	Individual	Comments Only	No

Comments: Right things to do in Hawaii. Protect Woman children and love one.

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**SB1054**

Submitted on: 2/21/2017

Testimony for JDL on Feb 23, 2017 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Karen Poon	Individual	Comments Only	No

Comments: I have written a testimony already but I felt I need to rewrite a stronger statement. I am a supporter and a victim of Hawaii not being a State that recognizes Common Law Marriage. I am a victim and going through this. My mom was with her life partner for over 20 years and they lived together for over 18 years. Unfortunately, due to a sudden heart attack. We were not prepared and did not have any set plans. Now we are in a struggle with his family. This has been our home for the last 18 years and for an outsider to come in and take our home away is not right. It was hard enough to lose someone and have to go through the grieving stage. Its worse, when you cannot even go through that stage and have to fight for our home and survival. I would never wish anyone to go through what my mom and I have gone through. I hope we can help anyone out there who is or have gone through this struggle. Unfortunately, I will not be able to go to this hearing on Thursday. We will be in Court fighting for our home.

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**SB1054**

Submitted on: 2/21/2017

Testimony for JDL on Feb 23, 2017 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Keith Lim	Individual	Support	No

Comments: I support this bill! For all the families it my help

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**SB1054**

Submitted on: 2/20/2017

Testimony for JDL on Feb 23, 2017 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Nick Chu	Individual	Support	No

Comments: Besides giving credit where credit is due, it serves to overcome the issue of substance over form. Society as a whole benefits from stable human relationship just like businesses that offer retirement benefits to their employees enjoy a myriad of financial rewards.

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**SB1054**

Submitted on: 2/20/2017

Testimony for JDL on Feb 23, 2017 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Paul Klink	Individual	Support	No

Comments: In support. Mahalo! Live Aloha, Paul Klink

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**SB1054**

Submitted on: 2/21/2017

Testimony for JDL on Feb 23, 2017 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
William Reese Liggett	Individual	Support	No

Comments: I William Reese Liggett, residence

present testimony in strong support of SB1054 (Provides that common law marriages shall be lawfully recognized, subject to certain conditions.) This legislation is long overdue to catch up with modern living. I give my strongest support for the committee to pass this on to the legislature to become law.

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