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# A BILL FOR AN ACT

RELATING TO LICENSING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that marriage in the  
2 United States is a civil institution and the right to marry  
3 belongs to citizens without regard to their particular moral  
4 beliefs or religious creed. There is no existing statutory  
5 requirement that marriage be approved by a church or any other  
6 religious community. Religious officials - whether priests,  
7 rabbis, ministers, imams, or others - may preside at weddings,  
8 but neither they nor their religions may define what constitutes  
9 marriage in the civil arena.

10           Apart from justices, judges, or magistrates, state law  
11 requires a marriage officiant to be affiliated with or ordained  
12 by a religious denomination or society. The legislature finds  
13 that this policy undermines the neutrality of marriage law that  
14 governs everyone equally. By unduly preferring religion over  
15 non-religion, the legislature further finds that this



1 requirement implicates the Establishment Clause of the First  
2 Amendment to the United States Constitution.

3 The purpose of this Act is to ensure the State's marriage  
4 laws govern everyone equally by removing the requirement for the  
5 solemnization of marriage.

6 SECTION 2. Section 572-1, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "§572-1 Requisites of valid marriage contract. In order  
9 to make valid the marriage contract, which shall be permitted  
10 between two individuals without regard to gender, it shall be  
11 necessary that:

12 (1) The respective parties do not stand in relation to  
13 each other of ancestor and descendant of any degree  
14 whatsoever, two siblings of the half as well as to the  
15 whole blood, uncle and niece, uncle and nephew, aunt  
16 and nephew, or aunt and niece, whether the  
17 relationship is the result of the issue of parents  
18 married or not married to each other or parents who  
19 are partners in a civil union or not partners in a  
20 civil union;



- 1 (2) Each of the parties at the time of contracting the  
2 marriage is at least sixteen years of age; provided  
3 that with the written approval of the family court of  
4 the circuit within which the minor resides, it shall  
5 be lawful for a person under the age of sixteen years,  
6 but in no event under the age of fifteen years, to  
7 marry, subject to section 572-2;
- 8 (3) Neither party has at the time any lawful wife,  
9 husband, or civil union partner living, except as  
10 provided in section 572-1.7;
- 11 (4) Consent of neither party to the marriage has been  
12 obtained by force, duress, or fraud;
- 13 (5) Neither of the parties is a person afflicted with any  
14 loathsome disease concealed from, and unknown to, the  
15 other party; and
- 16 (6) The parties to be married in the State shall have duly  
17 obtained a license for that purpose from the agent  
18 appointed to grant marriage licenses [~~;~~ and
- 19 ~~(7) The marriage ceremony be performed in the State by a~~  
20 ~~person or society with a valid license to solemnize~~  
21 ~~marriages and the parties to be married and the person~~



1           ~~performing the marriage ceremony be all physically~~  
2           ~~present at the same place and time for the marriage~~  
3           ~~ceremony]."~~

4           SECTION 3. Section 572-11, Hawaii Revised Statutes, is  
5           repealed.

6           ~~["§572-11 Marriage ceremony; license to solemnize. It~~  
7           ~~shall not be lawful for any person to perform the marriage~~  
8           ~~ceremony within the State without first obtaining from the~~  
9           ~~department of health a license to solemnize marriages."]~~

10          SECTION 4. Section 572-12, Hawaii Revised Statutes, is  
11          repealed.

12          ~~["§572-12 By whom solemnized. A license to solemnize~~  
13          ~~marriages may be issued to, and the marriage rite may be~~  
14          ~~performed and solemnized by any minister, priest, or officer of~~  
15          ~~any religious denomination or society who has been ordained or~~  
16          ~~is authorized to solemnize marriages according to the usages of~~  
17          ~~such denomination or society, or any religious society not~~  
18          ~~having clergy but providing solemnization in accordance with the~~  
19          ~~rules and customs of that society, or any justice or judge or~~  
20          ~~magistrate, active or retired, of a state or federal court in~~  
21          ~~the State, upon presentation to such person or society of a~~



1 ~~license to marry, as prescribed by this chapter. Such person or~~  
2 ~~society may receive the price stipulated by the parties or the~~  
3 ~~gratification tendered." ]~~

4 SECTION 5. Section 572-12.1, Hawaii Revised Statutes, is  
5 repealed.

6 [ "~~§572-12.1~~ ~~Refusal to solemnize a marriage.~~ (a)  
7 ~~Notwithstanding any other law to the contrary, a clergy,~~  
8 ~~minister, priest, rabbi, officer of any religious denomination~~  
9 ~~or society, or religious society not having clergy but providing~~  
10 ~~solemnizations that is authorized to perform solemnizations~~  
11 ~~pursuant to this chapter shall not be required to solemnize any~~  
12 ~~marriage that is in violation of their religious beliefs or~~  
13 ~~faith.~~

14 (b) ~~A clergy, minister, priest, rabbi, officer of any~~  
15 ~~religious denomination or society, or religious society not~~  
16 ~~having clergy but providing solemnizations that, pursuant to~~  
17 ~~this section, fails or refuses to perform the solemnization of a~~  
18 ~~marriage shall be immune from any fine, penalty, injunction,~~  
19 ~~administrative proceeding, or any other legal or administrative~~  
20 ~~liability for the failure or refusal." ]~~



1 SECTION 6. Section 572-12.2, Hawaii Revised Statutes, is  
2 repealed.

3 ~~["§572-12.2] Religious organizations; exemption under~~  
4 ~~certain circumstances. (a) Notwithstanding any other law to~~  
5 ~~the contrary, a religious organization or nonprofit organization~~  
6 ~~operated, supervised, or controlled by a religious organization~~  
7 ~~shall not be required to provide goods, services, or its~~  
8 ~~facilities or grounds for the solemnization or celebration of a~~  
9 ~~marriage that is in violation of its religious beliefs or faith.~~  
10 ~~(b) A religious organization or nonprofit organization~~  
11 ~~operated, supervised, or controlled by a religious organization~~  
12 ~~that, pursuant to this section, fails or refuses to provide~~  
13 ~~goods, services, or its facilities or grounds for the~~  
14 ~~solemnization or celebration of a marriage shall be immune from~~  
15 ~~any fine, penalty, injunction, administrative proceeding, or any~~  
16 ~~other legal or administrative liability for the failure or~~  
17 ~~refusal." ]~~

18 SECTION 7. Section 572-13, Hawaii Revised Statutes, is  
19 repealed.

20 ~~["§572-13 Record of solemnization; marriages, reported by~~  
21 ~~whom; certified copies. (a) Recordkeeping. Every person~~



1 ~~authorized to solemnize marriage shall make and preserve a~~  
2 ~~record of every marriage by the person solemnized, comprising~~  
3 ~~the names of the parties married, their place of residence, and~~  
4 ~~the date of their marriage.~~

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

8 ~~(b) Marriages, reported by whom. It shall be the duty of~~  
9 ~~every person, legally authorized to perform the marriage~~  
10 ~~ceremony, to report within three business days every marriage~~  
11 ~~ceremony, performed by the person, to the agent of the~~  
12 ~~department of health in the district in which the marriage takes~~  
13 ~~place setting forth all facts required to be stated in a~~  
14 ~~standard certificate of marriage, the form and contents of which~~  
15 ~~shall be prescribed by the department of health; provided that~~  
16 ~~if any person who has solemnized a marriage fails to report it~~  
17 ~~to the agent of the department of health, the parties married~~  
18 ~~may provide the department of health with a notarized affidavit~~  
19 ~~attesting to the fact that they were married and stating the~~  
20 ~~date and place of the solemnization of the marriage. Upon the~~  
21 ~~receipt of that affidavit by the department of health, the~~



1 ~~marriage shall be deemed to be valid as of the date of the~~  
2 ~~solemnization of the marriage stated in the affidavit, provided~~  
3 ~~that the requirements of section 572-1 are met.~~

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

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

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

16 ~~The department may prescribe reasonable fees, if any, to be~~  
17 ~~paid for certified copies of certificates." ]~~

18 SECTION 8. Section 572-13.5, Hawaii Revised Statutes, is  
19 repealed.

20 ~~["§572-13.5] Revocation or suspension of licenses to~~  
21 ~~solemnize. Any license to solemnize marriages issued pursuant~~





1 ~~to section 572-12 may be revoked or suspended by the department~~  
2 ~~of health, if the holder of the license has failed to comply~~  
3 ~~with the applicable provisions of this chapter or of the rules~~  
4 ~~of the department of health." ]~~

5 SECTION 9. Section 572-15, Hawaii Revised Statutes, is  
6 repealed.

7 [~~§572-15 Delivery of records to department of health;~~  
8 ~~penalty. Whenever any agent authorized to grant marriage~~  
9 ~~licenses ceases to be an agent, or is directed to do so by the~~  
10 ~~department of health, or leaves the State, the agent shall~~  
11 ~~deliver to the department all the agent's records of marriage~~  
12 ~~licenses. Upon the death of any such agent such records shall~~  
13 ~~be delivered to the department by the agent's personal~~  
14 ~~representative or other legal representative.~~

15 ~~Whenever any person holding a license to perform the~~  
16 ~~marriage ceremony is directed to do so by the department, or~~  
17 ~~whenever the license is canceled or otherwise terminated or upon~~  
18 ~~the departure from the State of any such person, the person~~  
19 ~~shall deliver to the department all the person's records of~~  
20 ~~marriages, or upon the death of any such person such records~~



1 ~~shall be delivered to the department by the person's personal~~  
2 ~~representative, or other legal representative.~~

3 ~~Any person violating this section shall be fined not more~~  
4 ~~than \$500."]~~

5 SECTION 10. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 11. This Act shall take effect upon its approval.



**Report Title:**

Marriage; License to Solemnize; Repeal

**Description:**

Repeals the requirement that a marriage must be solemnized.  
(HD1)

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

