

**Session Laws of Hawaii
Passed By The
Twenty-Sixth State Legislature
Regular Session
2011**

ACT 1

S.B. NO. 232

A Bill for an Act Relating to Civil Unions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The intent of this measure is to recognize civil unions in Hawaii. By establishing the status of civil unions in this State, it is not the legislature's intent to revise the definition or eligibility requirements of marriage under chapter 572, Hawaii Revised Statutes.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
CIVIL UNIONS**

§ -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.

§ -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, a spouse in a marriage, or a party to a reciprocal beneficiary relationship pursuant to chapter 572C;
- (2) At least eighteen years of age; and
- (3) Not related to the other proposed partner in the civil union, as provided in section -3.

§ -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 per-

sons who stand in relation to each other as ancestor and descendant of any degree whatsoever.

§ -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 ordained or licensed member of the clergy may solemnize a civil union. Solemnization may be entirely secular or may be performed according to the forms and usages of any religious denomination in this State. Nothing in this section shall be construed to require any person authorized to perform solemnizations of marriages or civil unions to perform a solemnization of a civil union, and no such authorized person who fails or refuses for any reason to join persons in a civil union shall be subject to any fine or other penalty for the failure or refusal.

(c) Nothing in this section shall be construed to require any person authorized to perform solemnizations pursuant to chapter 572 or civil unions pursuant to this chapter to perform a solemnization of a civil union, and no such authorized person who fails or refuses for any reason to join persons in a civil union shall be subject to any fine or other penalty for the failure or refusal.

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

(e) 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.

§ -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 -2;
- (2) Complied with section -6 and, if applicable, section -7; and
- (3) Been issued a license by an agent in the judicial circuit in which a civil union is to be solemnized or in which either person resides, which license shall bear the certification of the agent that the persons named therein have met the requirements of section -2 and have complied with section -6 and, if applicable, section -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.

§ -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 differ-

ent 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 by the agent as application fees under this chapter shall be retained or remitted and apportioned in the same manner as prescribed in section 572-5.

§ -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.

§ -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 the fact, time, and place of the solemnization of the civil union and return the certificate to the agent 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 agent as required under subsection (a), the partners joined in a civil union may provide the agent 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 agent, 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.

§ -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.

§ -10 Civil unions performed in other jurisdictions. All unions entered into in other jurisdictions between two individuals not recognized under section 572-3 shall be recognized as civil unions; 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.

§ -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.”

SECTION 3. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

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“§231- Effect of civil union. All provisions of the Internal Revenue Code referred to in this chapter that apply to a husband and wife, spouses, or person in a legal marital relationship shall be deemed to apply in this chapter to partners in a civil union with the same force and effect as if they were “husband and wife”, “spouses”, or other terms that describe persons in a legal marital relationship.”

SECTION 4. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§235- Effect of civil union. All provisions of the Internal Revenue Code referred to in this chapter that apply to a husband and wife, spouses, or person in a legal marital relationship shall be deemed to apply in this chapter to partners in a civil union with the same force and effect as if they were “husband and wife”, “spouses”, or other terms that describe persons in a legal marital relationship.”

SECTION 5. Chapter 236D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§236D- Effect of civil union. All provisions of the Internal Revenue Code referred to in this chapter that apply to a husband and wife, spouses, or person in a legal marital relationship shall be deemed to apply in this chapter to partners in a civil union with the same force and effect as if they were “husband and wife”, “spouses”, or other terms that describe persons in a legal marital relationship.”

SECTION 6. Section 580-1, Hawaii Revised Statutes, is amended to read as follows:

“§580-1 Jurisdiction; hearing. Exclusive original jurisdiction in matters of annulment, divorce, and separation, subject to section 603-37 as to change of venue, and subject also to appeal according to law, is conferred upon the family court of the circuit in which the applicant has been domiciled or has been physically present for a continuous period of at least three months next preceding the application therefor. No absolute divorce from the bond of matrimony shall be granted for any cause unless either party to the marriage has been domiciled or has been physically present in the State for a continuous period of at least six months next preceding the application therefor. A person who may be residing on any military or federal base, installation, or reservation within the State or who may be present in the State under military orders shall not thereby be prohibited from meeting the requirements of this section. The family court of each circuit shall have jurisdiction over all proceedings relating to the annulment, divorce, and separation of civil unions entered into in this State in the same manner as marriages.”

SECTION 7. Section 572-1.6, Hawaii Revised Statutes, is repealed.

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 10. This Act shall take effect on January 1, 2012, provided sections 3, 4, and 5 of this Act shall apply to taxable years beginning after December 31, 2011.

(Approved February 23, 2011.)

Note

1. Edited pursuant to HRS §23G-16.5.