

## ACT 179

H.B. NO. 485

A Bill for an Act Relating to Marriage.

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

SECTION 1. The legislature finds that, according to a 2016 report by the Williams Institute on sexual orientation and gender identity law and public policy, Hawaii has the highest percentage of transgender-identifying adults in the United States. The legislature notes that, in general, a transgender-identifying individual experiences high levels of discrimination in all aspects of the individual's life. The legislature also notes that Hawaii has been at the forefront of implementing policies to protect transgender persons and believes that the State should continue to take proactive measures.

The legislature further finds that, according to a 2013 report by the university of Hawaii, gender-stereotypical policies and norms continue to stigmatize and exclude transgender persons in the State. Additionally, according to the 2018 Hawaii Sexual and Gender Minority Health Report by the department of health, the stigmatized minority status of transgender individuals is causing negative and disproportionate health outcomes, fewer economic opportunities, and less sociopolitical power.

The legislature recognizes that Act 148, Session Laws of Hawaii 2019, expanded the gender identity options available on Hawaii driver's licenses and state identification cards, enabling transgender and gender-nonconforming persons to avoid invasive questioning and discriminatory treatment. Accordingly, as of July 1, 2020, any person may specify the person's gender designation as "F", "M", or "X" on a Hawaii driver's license or state identification card. However, under existing law, a transgender-identifying person is limited in changing the person's gender designation on a marriage certificate. Name changes are permitted only within a four-week period after the marriage or through a court order. This makes it difficult and expensive for a transgender-identifying person to update a marriage certificate to reflect the person's identity, causing confusion and stress when the person is asked to produce this documentation.

Accordingly, the purpose of this Act is to require the department of health to issue a new marriage certificate when necessary to reflect a change in name or gender, upon receipt of the required supporting documentation.

SECTION 2. Chapter 338, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

**“§338- New certificates of marriage; issuance; gender and sex identifiers.** (a) The department of health shall allow any person who possesses a valid certificate of marriage that has been filed with the department and that includes gender and sex identifiers for the person that differ from the person’s changed gender and sex identifiers and, if applicable, changed name, to apply for a new certificate of marriage; provided that the department shall require the applicant to submit the following:

- (1) An application for a new certificate of marriage providing the applicant’s requested:
  - (A) Designation as “bride”, “groom”, “partner”, or “spouse”; and
  - (B) Name, if applicable;
- (2) A copy of one of the following documents:
  - (A) The applicant’s new certificate of birth reflecting the applicant’s change of gender and sex identifier;
  - (B) A government-issued identification document reflecting the applicant’s change of gender and sex identifier, including any change of gender accomplished by an order of any court of any state or territory of the United States, the District of Columbia, or any foreign court; or
  - (C) An affidavit attesting, under penalty of perjury, that the request for a change of the designation of the applicant as “bride”, “groom”, “partner”, or “spouse” is to conform to the applicant’s gender identity and is not made for any fraudulent purpose;
- (3) If the applicant requests that the new certificate of marriage reflect a different name for the applicant than what is provided on the original certificate of marriage, a certified copy of the applicant’s change of name order obtained under section 574-5(a)(1) or (5), including a certified English translation, if applicable; and
- (4) A notarized letter from the current non-applicant spouse consenting to the changes to be made to the original certificate of marriage; provided further that the notarized letter shall substantially contain the following language:
 

“I, (non-applicant spouse’s full name), stipulate to an issuance of a new certificate of marriage for myself that reflects my spouse’s legal gender, sex, and, if applicable, name.”

(b) Each new certificate of marriage issued pursuant to this section shall:

- (1) Reflect the applicant’s changed:
  - (A) Designation as “bride”, “groom”, “partner”, or “spouse”; and
  - (B) Name, if applicable; and
- (2) Replace the original certificate of marriage.
- (c) No new certificate of marriage issued pursuant to this section shall:
  - (1) Be marked as amended; or
  - (2) Reveal the language of the original certificate of marriage that was changed.

(d) The department of health shall establish fees pursuant to chapter 91 to be paid for the issuance of a new certificate of marriage pursuant to this section.

(e) Upon receipt of the documents submitted pursuant to subsection (a) and the applicant's payment of the fees established pursuant to subsection (d), the department of health shall:

- (1) Issue to the applicant a new certificate of marriage; and
- (2) Seal and file any documents evidencing the preparation of the new certificate of marriage, including the original certificate of marriage; provided that these documents shall only be opened pursuant to an order of any court of competent jurisdiction within a state, territory, or possession of the United States, or by request of the marriage registrant.

(f) The department of health shall issue a new certificate of marriage to any applicant who satisfies the requirements of this section regardless of the date of the applicable marriage.”

SECTION 3. Section 572-13, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(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] Upon request, the~~ department of health shall ~~[upon request,]~~ furnish to any applicant additional certified copies of the certificate of marriage or any part thereof.

~~[Copies] Except for any certificate of marriage replaced, sealed, and filed pursuant to section 338-~~ , copies of the contents of any certificate on file ~~[in the department,]~~ with, and certified by, the department shall be considered the same as the original for all purposes ~~[the same as the original].~~

The department may prescribe reasonable fees, if any, to be paid for certified copies of certificates.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 5. This Act shall take effect on January 1, 2024.

(Approved July 3, 2023.)

#### Note

1. Edited pursuant to HRS §23G-16.5.