

HOUSE OF REPRESENTATIVES

AMENDMENT TO: S.B. No. 1 H.D. 1OFFERED BY: Representative Gene Ward DATE: November 6, 2013

SECTION 1. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the words "Part I" just above Section 1 of the bill.

SECTION 2. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by amending Section 1 to read as follows:

SECTION 1. This Act shall be known as the Hawaii Marriage Equality Act of 2013.

The legislature acknowledges the recent decision of the United States Supreme Court in *United States v. Windsor*, 133 S. Ct. 2675 (2013), which held that Section 3 of the Defense of Marriage Act, Public Law 104-199, unlawfully discriminated against married same-sex couples by prohibiting the federal government from recognizing those marriages and by denying federal rights, benefits, protections, and responsibilities to those couples. The legislature has already extended to same-sex couples the right to enter into civil unions that provide the same rights, benefits, protections, and responsibilities under state law as afforded to opposite-sex couples who marry.

However, these civil unions are not recognized by federal law and will not be treated equally to a marriage under federal law.

Therefore, it is the intent of the legislature to:

- (1) Ensure that same-sex couples are able to take full advantage of federal rights, benefits, protections, and responsibilities granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State;
- (2) Ensure that there be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State by applying all provisions of law regarding marriage equally to same-sex couples and opposite-sex couples regardless of whether this Act does or does not amend any particular provision of law; and
- (3) Protect religious freedom and liberty by:
 - (A) Ensuring that any 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 shall not be required to solemnize any marriage or civil union that is against their religious beliefs or faith, in

accordance with the Hawaii state constitution and the United States Constitution; and

- (B) Clarifying that 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 marriage or civil union that is in violation of its religious beliefs or faith.

The purpose of this Part is to recognize marriages between individuals of the same sex in the State of Hawaii.

SECTION 3. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the following new Part immediately after Section 12 of the bill.

"Part II

SECTION 13. The First Amendment to the U.S. Constitution and Article I, section 4 of the Hawaii Constitution both protect the right to free exercise of religion. The legislature finds that if same-sex marriage becomes legal in Hawaii, it will be imperative to protect our nation's long and rich tradition of religious freedom. In particular, many religious communities and religiously committed persons have a deeply held understanding of marriage as a relationship that can exist only between a man and a woman. Without legislative safeguards, many

religious individuals will be forced to engage in conduct that violates their deepest religious beliefs.

Therefore, the purpose of this Part is to amend the law on discrimination in public accommodations by ensuring that private individuals, sole proprietors, and owners of small businesses are protected from any type of civil or criminal liability for refusing to provide goods, services, facilities, privileges, advantages, or accommodations that assist or promote the solemnization or celebration of any marriage or civil union, or that directly facilitate the perpetuation of any marriage or civil union, if providing such goods, services, facilities, privileges, advantages, or accommodations would cause such individuals, sole proprietors, or owners of such small businesses to violate their sincerely held religious beliefs.

SECTION 14. Section 489-3, Hawaii Revised Statutes, is amended to read as follows:

"§489-3 Discriminatory practices prohibition. (a) Unfair discriminatory practices that deny, or attempt to deny, a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of race, sex, including gender identity or expression, sexual orientation, color, religion, ancestry, or disability are prohibited.

(b) Notwithstanding any other law to the contrary, and except as provided in subsection (c), no individual, sole proprietor, or small business shall be required to:

(1) Provide goods or services that assist or promote the solemnization or celebration of any marriage or civil union, or provide counseling or other services that directly facilitate the perpetuation of any marriage or civil union; or

(2) Provide housing or lodging to any couple, if providing such goods, services, housing, or lodging would cause such individuals, sole proprietors, or owners of such small businesses to violate their sincerely held religious beliefs.

For the purpose of this subsection, "small business" means: a legal entity other than a natural person that provides services which are primarily performed by an owner of the business; or a legal entity that has five or fewer employees; or in the case of a legal entity that offers housing or lodging for rent, that owns five or fewer units of housing or lodging.

(c) Subsection (b) shall not apply if a party to the marriage or civil union is unable to obtain any similar goods or services, or housing or lodging elsewhere, without substantial hardship.

(d) Notwithstanding any other provision in this chapter, no refusal to provide goods, services, facilities, privileges, advantages, or accommodations pursuant to subsection (b) shall constitute an unfair discriminatory practice and shall not result in any civil or criminal claim or cause of action challenging such refusal, nor result in any action by the State or any of its political subdivisions to penalize or withhold benefits or privileges, including but not limited to tax exemptions or governmental contracts, grants, or licenses, from any protected entity or individual."

SECTION 4. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the words "Part III" immediately following Section 14 of the new Part II of this bill as amended.

SECTION 5. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by renumbering Sections 13, 14, 15, and 16 as Sections 15, 16, 17, and 18, as follows:

SECTION 15. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 16. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.