

# HOUSE OF REPRESENTATIVES

AMENDMENT TO: S.B. No. 1, H.D. 1OFFERED BY: DATE: 11/08/13

SECTION 1. Senate Bill No. 1, H.D. 1, is amended by deleting its contents and inserting the following provisions:

"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;

- (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;
- (C) Authorizing individuals to discriminate in public accommodations and employee benefits if their sincerely held religious beliefs would be otherwise violated; and
- (D) Harmonizing the right of equal protection under the law for same-sex couples with the equally important right to the free exercise of religion.

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

SECTION 2. Chapter 489, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**"§489-A Free exercise of religion protected.** (a) The State and its political subdivisions shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Neither the State nor its political subdivisions shall substantially burden a person's exercise of religion unless it demonstrates that imposition of the burden on the person both:

- (1) Furthers a compelling government interest; and
- (2) Is the least restrictive means of furthering that compelling interest.

(c) Notwithstanding any law to the contrary, a person whose religious exercise has been substantially burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against the State or its political subdivisions.

(d) Nothing in this chapter shall be construed to authorize the State or its political subdivisions to substantially burden any religious belief.

(e) Nothing in this chapter shall be construed to affect, interpret, or in any way address that portion of article I,

section 4 of the Constitution of the State of Hawaii, prohibiting laws respecting the establishment of religion. Granting government funding, benefits, or exemptions, to the extent permissible under article I, section 4 of the Constitution of the State of Hawaii, shall not constitute a violation of this chapter.

**§489-B Individuals protected.** (a) No individual shall be required to take any of the following actions if doing so would cause the individual to violate the individual's sincerely held religious belief:

- (1) Provide any facility, good, or service that assists or promotes the solemnization or celebration of any marriage, or provide counseling or other services that facilitate the formation or perpetuation of any marriage;
- (2) Provide benefits to any spouse of an employee; or
- (3) Provide housing, lodging, or similar accommodation to any couple.
- (b) This section shall not apply if either:
  - (1) A party to the marriage is unable to obtain any similar good or service, employment benefits, or housing elsewhere without substantial hardship; or
  - (2) In the case of an individual who is a government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay; provided that no judicial officer authorized to solemnize marriages shall be required to solemnize any marriage if to do so would violate the judicial officer's sincerely held religious beliefs."

SECTION 3. Chapter 572, Hawaii Revised Statutes, is amended by adding six new sections to be appropriately designated and to read as follows:

**"§572-A Continuity of rights; civil union and reciprocal beneficiary relationships.** (a) Two individuals who are civil union partners or reciprocal beneficiaries with each other and who seek to marry each other shall be permitted to apply for a marriage license under section 572-6 and to marry each other under this chapter without first terminating their civil union or reciprocal beneficiary relationship; provided that the two individuals are otherwise eligible to marry under this chapter.

(b) The couple's civil union or reciprocal beneficiary relationship shall continue uninterrupted until the solemnization of the marriage consistent with this chapter, and the solemnization of the couple's marriage shall automatically

terminate the couple's civil union or reciprocal beneficiary relationship.

(c) The act of seeking a license for or entering into a marriage under this chapter shall not diminish any of the rights, benefits, protections, and responsibilities that existed previously due to the couple's earlier status as civil union partners or reciprocal beneficiaries.

(d) The rights, benefits, protections, and responsibilities created by the civil union or reciprocal beneficiary relationship shall be continuous through the marriage and deemed to have accrued as of the first date these rights existed under the civil union or reciprocal beneficiary relationship; provided that the civil union or reciprocal beneficiary relationship was in effect at the time of the solemnization of the couple's marriage to each other.

(e) Any rights, benefits, protections, and responsibilities created by the solemnization of a marriage that were not included within the reciprocal beneficiary relationship shall be recognized as of the date the marriage was solemnized.

(f) Property held by the couple in tenancy by the entirety shall be subject to section 509-3.

**§572-B Interpretation of terminology to be gender neutral.**  
When necessary to implement the rights, benefits, protections, and responsibilities of spouses under the laws of this State, all gender-specific terminology, such as "husband", "wife", "widow", "widower", or similar terms, shall be construed in a gender-neutral manner. This interpretation shall apply to all sources of law, including statutes, administrative rules, court decisions, common law, or any other source of law.

**§572-C Reliance on federal law.** Any law of this State that refers to, adopts, or relies upon federal law shall apply to all marriages recognized under the laws of this State as if federal law recognized such marriages in the same manner as the laws of this State so that all marriages receive equal treatment.

**§572-D Refusal to solemnize a marriage.** (a) Notwithstanding any other law to the contrary, a 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 pursuant to this chapter shall not be required to solemnize any marriage that is in violation of their religious beliefs or faith.

(b) A clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that, pursuant to this section, fails or refuses to perform the solemnization of a

marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.

**§572-E Religious organizations; exemption under certain circumstances.** (a) Notwithstanding any other law to the contrary, 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 that is in violation of its religious beliefs or faith.

(b) A religious organization or nonprofit organization operated, supervised, or controlled by a religious organization that, pursuant to this section, fails or refuses to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal.

**§572-F Individuals protected.** (a) No individual shall be required to take any of the following actions if doing so would cause the individual to violate the individual's sincerely held religious belief:

(1) Provide any facility, good, or service that assists or promotes the solemnization or celebration of any marriage, or provide counseling or other services that facilitate the formation or perpetuation of any marriage;

(2) Provide benefits to any spouse of an employee; or

(3) Provide housing, lodging, or similar accommodation to any couple.

(b) This section shall not apply if either:

(1) A party to the marriage is unable to obtain any similar good or service, employment benefits, or housing elsewhere without substantial hardship; or

(2) In the case of an individual who is a government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay; provided that no judicial officer authorized to solemnize marriages shall be required to solemnize any marriage if to do so would violate the judicial officer's sincerely held religious beliefs."

SECTION 4. Section 572-1, Hawaii Revised Statutes, is amended to read as follows:

**"§572-1 Requisites of valid marriage contract.** In order to make valid the marriage contract, which shall be [only

~~between a man and a woman,~~ permitted between two individuals without regard to gender, it shall be necessary that:

- (1) The respective parties do not stand in relation to each other of ancestor and descendant of any degree whatsoever, ~~[brother and sister]~~ two siblings of the half as well as to the whole blood, uncle and niece, uncle and nephew, aunt and nephew, or aunt and niece, whether the relationship is the result of the issue of parents married or not married to each other or parents who are partners in a civil union or not partners in a civil union;
- (2) Each of the parties at the time of contracting the marriage is at least sixteen years of age; provided that with the written approval of the family court of the circuit within which the minor resides, it shall be lawful for a person under the age of sixteen years, but in no event under the age of fifteen years, to marry, subject to section 572-2;
- (3) ~~[The man does not at the time have any lawful wife or civil union partner living and that the woman does not at the time have any lawful husband or civil union partner living;]~~ Neither party has at the time any lawful wife, husband, or civil union partner living, except as provided in section 572-A;
- (4) Consent of neither party to the marriage has been obtained by force, duress, or fraud;
- (5) Neither of the parties is a person afflicted with any loathsome disease concealed from, and unknown to, the other party;
- (6) The ~~[man and woman]~~ parties to be married in the State shall have duly obtained a license for that purpose from the agent appointed to grant marriage licenses; and
- (7) The marriage ceremony be performed in the State by a person or society with a valid license to solemnize marriages and the ~~[man and the woman]~~ parties to be married and the person performing the marriage ceremony be all physically present at the same place and time for the marriage ceremony."

SECTION 5. Section 572-3, Hawaii Revised Statutes, is amended to read as follows:

**"§572-3 Contracted without the State.** Marriages between ~~[a man and a woman]~~ two individuals regardless of gender and legal [in the country] where contracted shall be held legal in the courts of this State."

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

"§572-6 **Application; license; limitations.** To secure a license to marry, the persons applying for the license shall appear personally before an agent authorized to grant marriage licenses and shall file with the agent an application in writing. The application shall be accompanied by a statement signed and sworn to by each of the persons, setting forth: the person's full name, date of birth, social security number, residence; their relationship, if any; the full names of parents; and that all prior marriages~~[7]~~ or civil unions, if any, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution. If all prior marriages or civil unions, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution, the statement shall also set forth the date of death of the last prior spouse or the date and jurisdiction in which the last decree of dissolution was entered. Any other information consistent with the standard marriage certificate as recommended by the Public Health Service, National Center for Health Statistics, may be requested for statistical or other purposes, subject to approval of and modification by the department of health; provided that the information shall be provided at the option of the applicant and no applicant shall be denied a license for failure to provide the information. The agent shall indorse on the application, over the agent's signature, the date of the filing thereof and shall issue a license which shall bear on its face the date of issuance. Every license shall be of full force and effect for thirty days commencing from and including the date of issuance. After the thirty-day period, the license shall become void and no marriage ceremony shall be performed thereon.

It shall be the duty of every person, legally authorized to grant licenses to marry, to immediately report the issuance of every marriage license to the agent of the department of health in the district in which the license is issued, setting forth all facts required to be stated in such manner and on such form as the department may prescribe."

SECTION 7. Section 572-13, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Recordkeeping. Every person authorized to solemnize marriage shall make and preserve a record of every marriage by the person solemnized, comprising the names of the ~~[man and woman]~~ parties married, their place of residence, and the date of their marriage.

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

(b) Marriages, reported by whom. It shall be the duty of every person, legally authorized to perform the marriage ceremony, to report within three business days every marriage ceremony, performed by the person, to the agent of the department of health in the district in which the marriage takes place setting forth all facts required to be stated in a standard certificate of marriage, the form and contents of which shall be prescribed by the department of health[-]; provided that if any person who has solemnized a marriage fails to report it to the agent of the department of health, the parties married may provide the department of health with a notarized affidavit attesting to the fact that they were married and stating the date and place of the solemnization of the marriage. Upon the receipt of that affidavit by the department of health, the marriage shall be deemed to be valid as of the date of the solemnization of the marriage stated in the affidavit; provided that the requirements of section 572-1 are met."

SECTION 8. Section 572B-4, Hawaii Revised Statutes, is amended to read as follows:

**"§572B-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 clergy, minister, priest, rabbi, or officer of any religious denomination or society who has been ordained or is authorized to solemnize civil unions according to the usages of such denomination or society, or any religious society not having clergy but providing solemnization in accordance with the rules and customs of that society, may solemnize a civil union.

(c) ~~[Nothing in this section shall be construed to require any person]~~ Notwithstanding any other law to the contrary, a 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 [pursuant to chapter 572 or] of 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, penalty, or other civil action for the failure or refusal.] shall not be required to solemnize any civil union that is in violation of their religious beliefs or faith.

(d) A clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that, pursuant to



this section, fails or refuses to perform the solemnization of a civil union shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability by the State or any of its subdivisions, agencies, or commissions for the failure or refusal.

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

~~[(e)]~~ (f) 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."

SECTION 9. Section 572B-9.5, Hawaii Revised Statutes, is amended to read as follows:

**~~"[~~§~~572B-9.5~~]~~—Religious organizations and facilities; liability exemption under certain circumstances.~~** (a) A religious organization shall not be required to make a religious facility owned or leased by the religious organization available for solemnization of a civil union; provided that:

- ~~(1) The religious facility is regularly used by the religious organization for its religious purposes;~~
- ~~(2) For solemnization of marriages pursuant to chapter 572, the religious organization restricts use of the religious facility to its members; and~~
- ~~(3) The religious organization does not operate the religious facility as a for profit business.~~

~~(b) A religious organization that refuses to make a religious facility available for solemnization of a civil union under subsection (a) shall not be subject to any fine, penalty, or civil liability for the refusal.~~

~~(c) Nothing in this section shall be interpreted to exempt the owner or operator of any religious facility from the requirements of chapter 489 if the religious facility is a place of public accommodation as defined in section 489-2.]~~ **Religious organizations; exemption under certain circumstances.** (a)

Notwithstanding any other law to the contrary, 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 civil union that is in violation of its religious beliefs or faith.

(b) A religious organization or nonprofit organization operated, supervised, or controlled by a religious organization

that, pursuant to this section, fails or refuses to provide goods, services, or its facilities or grounds for the solemnization or celebration of a civil union shall be immune from any fine, penalty, injunction, administrative proceeding, or any other legal or administrative liability for the failure or refusal."

SECTION 10. Section 572C-2, Hawaii Revised Statutes, is amended to read as follows:

**"[~~§~~572C-2~~]~~ Findings.** ~~[The legislature finds that the people of Hawaii choose to preserve the tradition of marriage as a unique social institution based upon the committed union of one man and one woman. The legislature further finds that because of its unique status, marriage provides access to a multiplicity of rights and benefits throughout our laws that are contingent upon that status. As such, marriage should be subject to restrictions such as prohibiting respective parties to a valid marriage contract from standing in relation to each other, i.e., brother and sister of the half as well as to the whole blood, uncle and niece, aunt and nephew.~~

~~However, the legislature concurrently]~~ The legislature acknowledges that there are many individuals who have significant personal, emotional, and economic relationships with another individual yet are prohibited by ~~[such]~~ legal restrictions from marrying. For example, two individuals who are related to one another, such as a widowed mother and her unmarried son~~[, or two individuals who are of the same gender]~~. Therefore, the legislature believes that certain rights and benefits presently available only to married couples should be made available to couples comprised of two individuals who are legally prohibited from marrying one another."

SECTION 11. Notwithstanding any other provision of law, nothing in this Act shall invalidate any civil union or reciprocal beneficiary relationship in existence before the effective date of this Act. Any such civil unions or reciprocal beneficiary relationships shall continue until terminated in accordance with applicable law.

SECTION 12. The department of health shall adopt rules, pursuant to chapter 91, Hawaii Revised Statutes, to effect changes to internal procedures or forms necessary to implement this Act.

Section 13. If any provision of this Act, or the application thereof to any person or circumstance, results in a determination by the United States Department of Labor that the State is subject to the loss of its exemption from preemption from the Employee Retirement Income Security Act of 1974, such a determination shall act to invalidate every provision or

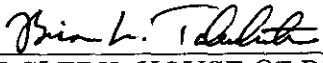
application of this Act, and to this end the provisions of this Act are inseverable.

SECTION 14. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity shall affect all other provisions or applications of the Act that can be given effect, and to this end the provisions of this Act are inseverable.

SECTION 15. In codifying the new sections added by sections 2 and 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 17. This Act shall take effect on December 2, 2013."

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CHIEF CLERK, HOUSE OF REPRESENTATIVES		