

HOUSE OF REPRESENTATIVES

AMENDMENT TO: S.B. No. 1, H.D. 1OFFERED BY: DATE: 11/5/13

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

"SECTION 1. The legislature finds that the issue of legalizing same-sex marriage is the most contentious issue of this generation. After receiving Senate Bill No. 1, during the second special session of 2013, the joint house committee on judiciary and finance conducted a public hearing on the measure, which began on October 31, 2013, and lasted until November 4, 2013. No other issue has ever precipitated as much public testimony at a single public hearing in the history of the house of representatives. After receiving more than forty hours of oral testimony from 5,184 individuals, memorialized in over fifteen thousand pages of documents (or the equivalent of thirty reams of paper), it is immediately evident that the issue of legalizing same-sex marriage has divided Hawaii's community and raised compelling points both in support of and opposition to this monumental legislation.

Be that as it may, however, in a very short amount of time, the house of representatives has learned that:

- (1) The majority of federal benefits that are available to same-sex couples may already be obtained by Hawaii citizens who get married in a state that authorizes same-sex marriage and return to Hawaii to reside;
- (2) Because many federal agencies are still trying to determine how the United States Supreme Court's decision in United States v. Windsor, 133 S. Ct. 2675 (2013), would affect their operations, the total number of benefits and services, as well as the obligations that would apply to married same-sex couples have not yet been determined;
- (3) Couples who are situated in loving, committed relationships have been denied access to federal benefits for a period much longer than same-sex

- couples because the State of Hawaii does not recognize common-law marriage;
- (4) The bill, as received from the senate, may contravene domiciliary requirements for divorce and may pose questions on the validity of Hawaii state judicial decisions as they are recognized in other states. In Williams v. North Carolina, 317 U.S. 287 (1942), the United States Supreme Court held that the federal government determines marriage and divorce status between state lines, and that the State of North Carolina was not required to recognize a Nevada divorce decree because the State of Nevada did not require either spouse to be domiciled in the State. By allowing any same-sex couple married in Hawaii not domiciled here to access our courts for purposes of obtaining a divorce decree, it is arguable that the bill, as received from the senate, will jeopardize the validity of all divorce decrees issued in the State of Hawaii as they are recognized in other states;
- (5) The bill, as received from the senate, may extinguish parental rights and entitlements of children. In the senate version, the bill does not take into account that existing law takes gender into consideration regarding paternity, maternity, and parentage. While the policy goal of eliminating gender discrimination is a worthwhile and noble goal, the application of a blanket definitional statutory change that does not take into account the context of how these terms are used, may precipitate enormous difficulties in the application and implementation of family law. This is clearly evident by its potential impacts on parentage rights insofar as the rights of a same-sex parent might supersede, or even extinguish the parental rights of the biological parent. Likewise, the blanket definitional statutory change may raise questions on the manner in which the race of the child of a same-sex couple will be determined, and whether such a determination would effectively bar the child from receiving entitlements regardless of the child's genetic makeup;
- (6) Because the legal recognition of same-sex couples will require employers to provide certain benefits to employees and their spouses differently in accordance with a statutory change, it is unclear whether the enactment of the senate version of this bill would constitute a material change to the application of the prepaid health care act, chapter 393, Hawaii Revised

Statutes, and result in the State of Hawaii losing its exemption from preemption under the federal Employee Retirement Income Security Act (ERISA) in accordance with 29 U.S.C. §1144(b)(5)(B)(ii); and

- (7) Lastly, the bill, as received from the Senate, would fundamentally alter religious freedoms and denigrate First Amendment rights. This bill, as received from the Senate, would provide the Hawaii civil rights commission with broad authority to determine whether an activity of a religious organization is protected under the First Amendment or subject to the Hawaii public accommodations law, chapter 489, Hawaii Revised Statutes. Not only will this create a chilling effect that will interfere with religious exercise, the senate version of this bill might not provide any protections whatsoever for individual religious and conscientious beliefs. While the house of representatives has considered broader religious exemptions modeled after the State of Connecticut's public accommodations law, the house of representatives acknowledges that the State of Connecticut, which is nicknamed "the Constitution State" because its constitution is one of the oldest in North America (1662), has a long history of protecting religious freedom, and that these protections are embedded throughout its constitution, statutes, and common law. Founded by Congregationalists who split away from the Massachusetts colony because of religious persecution, Connecticut enacted strong protections within its laws to protect religious and conscientious beliefs. In particular, article seven of the Constitution of the State of Connecticut states:

"It being the right of all men to worship the Supreme Being, the Great Creator and Preserver of the Universe, and to render that worship in a mode consistent with the dictates of their consciences, no person shall by law be compelled to join or support, nor be classed or associated with, any congregation, church or religious association. No preference shall be given by law to any religious society or denomination in the State. Each shall have and enjoy the same and equal powers, rights and privileges, and may

support and maintain the ministers or teachers of its society or denomination, and may build and repair houses for public worship."

As such, while it is true that the religious exemption found in the Connecticut public accommodations law appears to be broader than what is proposed in the bill received from the senate, Connecticut might not be a suitable model because unlike that state, Hawaii does not have these additional constitutional, statutory, and common law protections for religious and conscientious liberty that would be applicable to not only religious organizations, but to individuals as well.

In light of these findings, and to afford the house of representatives with the maximum flexibility to review the enormous and unprecedented volume of testimony received, the purpose of this Act is to facilitate continued discussions on the issue of legalizing same-sex marriage during the remainder of the second special session of the twenty-seventh legislature of the State of Hawaii, 2013.

SECTION 2. The Hawaii Revised Statutes are amended to implement the purpose of this Act.

SECTION 3. This Act shall take effect on July 1, 2030."

<u>CARRIED</u>	<u>FAILED TO CARRY</u>	<u>WITHDRAWN</u>
<u>Brian G. Tardiff</u>		
CHIEF CLERK, HOUSE OF REPRESENTATIVES		