



GOV. MSG. NO. 652

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 6, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB444 HD1 SD1, without my approval, and with the statement of objections relating to the measure.

HB444 HD1 SD1

A BILL FOR AN ACT
RELATING TO CIVIL UNIONS.

Sincerely,

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 6, 2010

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 444

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 444, entitled "A Bill for an Act Relating to Civil Unions."

There are many aspects to House Bill No. 444, but in its language, this legislation seeks to change Hawaii's current laws to grant partners in a civil union "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," our marriage statute. It is essentially marriage by another name.

I have been open and consistent in my opposition to same gender marriage, but my personal opinion is not the basis for my decision against passage of this legislation.

This decision is of such societal significance that the people of Hawaii deserve the right to directly decide whether the changes contemplated by House Bill No. 444 should become law. It would be a mistake to allow a decision of this magnitude to be made solely on the views of a single individual or by 76 elected officials out of a population of 1,300,000. Ours is a system of representative government, but also one that recognizes that,

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from time to time, there are issues that require the reflection, collective wisdom, and consent of the people and reserves to them the right to directly decide those matters. This is one such issue.

The subject of this legislation has touched the hearts and minds of our citizens as no other social issue of the day, and it has touched me deeply as well.

I have been deliberative in undertaking an extensive review of this matter, inviting public testimony that has provided me with thousands of responses in the form of poignant letters, calls, emails, petitions, and personal meetings.

I have read commentaries and legal opinions, and held sessions with numerous individuals and groups, both for and against House Bill No. 444. I am extremely grateful to all who have taken the time to share with me their thoughts and feelings on this important matter.

Through this process I have gained a greater respect, understanding, and appreciation of the deeply felt emotions and beliefs that people hold on this issue and of the passion of both sides in advocating for something in which they believe so strongly.

This process has convinced me that my personal beliefs alone should not be the basis for my decision.

I have weighed the legal arguments and opinions offered on the bill and heard concerns over ambiguities that some have

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cited as reason enough for disallowing its passage. But this is also not a matter that should ultimately be determined on the basis of technical issues. It is a decision that should only be made based on what we as a society are willing to support.

It is not only a question of whether expanded legal recognition of same gender couples should be allowed, but a question of who should make that determination and how it should be made.

Unfortunately, the manner in which this bill has been handled has brought into question the fairness of the legislative process. A member of the majority party in the House said, "This is one of the most important votes any legislator will ever make. It is a shame that the vote couldn't have been done in a more dignified and open way." That member went on to assert, "When the legislative process is manipulated - whether unintentionally or deliberately - the public feels deceived."

I have chosen not to allow House Bill No. 444 to become law because of the respect that I have for the importance of this issue. It is one that should be decided not behind closed doors but behind the curtain of a voting booth. I have full faith and confidence that the good people of Hawaii, if given the opportunity, will choose what is best for our society.

Therefore, I call upon the members of the Legislature to allow Hawaii's citizens the right to determine whether we reserve marriage and its rights, benefits, protections, and responsibilities to heterosexual couples or expand the definition of marriage to include same gender unions by placing on the

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ballot at the next opportunity a straightforward question that settles this important issue.

For the foregoing reasons, I am returning House Bill No. 444 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE
Governor of Hawaii

1 § **-2 Eligibility to enter into a civil union.** A person
2 shall be eligible to enter into a civil union only if the person
3 is:

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

10 § **-3 Civil unions void; when.** A civil union shall be
11 void between the following persons: parent and child,
12 grandparent and grandchild, two siblings, aunt and nephew, aunt
13 and niece, uncle and nephew, uncle and niece; persons who stand
14 in relation to each other of ancestor and descendant of any
15 degree whatsoever.

16 § **-4 Solemnization; license to perform; refusal to join**
17 **persons in a civil union.** (a) A civil union shall become valid
18 only upon completion of a solemnization by a person licensed in
19 accordance with this section.

20 (b) Any judge or retired judge, including a federal judge
21 or judge of another state who may legally join persons in
22 chapter 572 or a civil union, may solemnize a civil union. Any

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

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

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

19 (e) No person shall perform solemnization of a civil union
20 without first having obtained a license from the department of
21 health. The department of health shall issue licenses to
22 solemnize civil unions in the same manner as it issues licenses

1 pursuant to chapter 572. The department of health may revoke or
2 suspend a license to solemnize civil unions. Any penalties or
3 fines that may be levied or assessed by the department of health
4 for violation of chapter 572 shall apply equally to a person
5 licensed to solemnize civil unions.

6 § -5 Applicants for civil union; license required;

7 limitations. (a) No persons may be joined in a civil union in
8 this State unless both partners have:

9 (1) Met the requirements of section -2;

10 (2) Complied with sections -6 and, if applicable,
11 section -7; and

12 (3) Been issued a license by the agent in the judicial
13 circuit in which a civil union is to be solemnized or
14 in which either person resides, which license shall
15 bear the certification of the agent that the persons
16 named therein have met the requirements of section
17 -2 and have complied with sections -6 and, if
18 applicable, section -7.

19 (b) The license, when certified by the agent, is
20 sufficient authority for any person authorized to perform a
21 civil union solemnization in this State to join the persons in a
22 civil union; provided that the solemnization is performed not

1 more than thirty days after the date of issuance. The license
2 shall become void thirty days after issuance.

3 **§ -6 Application for license for persons who wish to**
4 **enter into a civil union; fee.** (a) No license for a civil
5 union may be issued by the agent until both applicants have
6 appeared before the agent and applied for a license. The
7 application for the license shall be completed in its entirety,
8 dated, signed, and sworn to by each applicant and shall state
9 each applicant's full name, date of birth, birthplace,
10 residence, social security number, whether single, widowed, or
11 divorced, and whether the applicant is under the supervision or
12 control of a conservator or guardian. If the application is
13 signed and sworn to by the applicants on different dates, the
14 earlier date shall be deemed the date of application. The agent
15 shall issue a copy of this chapter to any person applying for a
16 license.

17 (b) The fee for a license to enter into a civil union
18 shall be an amount equal to the amount prescribed in section
19 572-5, and all amounts collected by the agent as application
20 fees under this chapter shall be retained or remitted and
21 apportioned in the same manner as prescribed in section 572-5.

1 § -7 **Persons under control of conservator or guardian.**

2 (a) No civil union license may be issued to any applicant under
3 the supervision or control of a conservator or guardian,
4 appointed in accordance with chapter 560, unless the written
5 consent of the conservator or guardian, signed and notarized, is
6 filed with the agent.

7 (b) Any person who enters into a civil union without the
8 consent provided for in subsection (a) shall acquire no rights,
9 by that civil union, in the property of any person who was under
10 the control or supervision of a conservator or guardian at the
11 time the civil union was entered into.

12 § -8 **Record of solemnization; reported by whom;**
13 **affidavit; evidentiary weight of certificate or affidavit.** (a)

14 Each person who solemnizes a civil union shall certify upon the
15 civil union license certificate the fact, time, and place of the
16 solemnization of the civil union and return the license to the
17 agent within three business days following the solemnization of
18 the civil union, or as may otherwise be prescribed by the
19 department of health.

20 (b) If any person who has solemnized a civil union fails
21 to return the certificate to the agent as required under
22 subsection (a), the partners joined in a civil union may provide

1 the agent with a notarized affidavit attesting to the fact that
2 they were joined in a civil union and stating the date and place
3 of the solemnization of the civil union. Upon the recording of
4 that affidavit by the agent, the civil union of the partners
5 shall be deemed to be valid as of the date of the solemnization
6 of the civil union stated in the affidavit.

7 (c) The certificate required by subsection (a) or an
8 affidavit recorded pursuant to subsection (b) shall be prima
9 facie evidence of the facts stated therein.

10 **§ -9 Benefits, protections, and responsibilities.**

11 Partners to a civil union lawfully entered into pursuant to this
12 chapter shall have all the same rights, benefits, protections,
13 and responsibilities under law, whether derived from statutes,
14 administrative rules, court decisions, the common law, or any
15 other source of civil law, as are granted to those who contract,
16 obtain a license, and are solemnized pursuant to chapter 572.

17 **§ -10 Civil unions performed in other jurisdictions.**

18 All unions between two individuals not recognized under section
19 572-3 shall be recognized as civil unions provided that the
20 relationship meets the eligibility requirements of this
21 chapter."

1 SECTION 3. Section 572-1.6, Hawaii Revised Statutes, is
2 repealed.

3 ~~["§572-1.6] Private solemnization not unlawful. Nothing~~
4 ~~in this chapter shall be construed to render unlawful, or~~
5 ~~otherwise affirmatively punishable at law, the solemnization of~~
6 ~~same-sex relationships by religious organizations; provided that~~
7 ~~nothing in this section shall be construed to confer any of the~~
8 ~~benefits, burdens, or obligations of marriage under the laws of~~
9 ~~Hawaii."]~~

10 SECTION 4. A party to a civil union shall be included in
11 any definition or use of the terms "spouse", "family",
12 "immediate family", "dependent", "next of kin" and other terms
13 that denote the spousal relationship, as those terms are used
14 throughout the law.

15 SECTION 5. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun, before its effective date.

18 SECTION 6. Statutory material to be repealed is bracketed
19 and stricken.

20 SECTION 7. This Act shall take effect on January 1, 2010.