

ACT 267

H.B. NO. 2569

A Bill for an Act Relating to Civil Unions.

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

SECTION 1. Act 1, Session Laws of Hawaii 2011, gave civil union partners all the same rights, benefits, protections, and responsibilities under law as those who contract, obtain a license, and are solemnized pursuant to chapter 572, Hawaii Revised Statutes. During the months of preparation to implement Act 1 and in the time since Act 1 became effective on January 1, 2012, however, it has become clear that certain provisions of the civil unions law would benefit from additional clarification to minimize confusion and aid in the proper implementation of Act 1. Therefore, in making these amendments with this Act, it is the legislature’s intent to reconfirm and clarify the provisions of chapter 572B, Hawaii Revised Statutes, as enacted by Act 1, Session Laws of Hawaii 2011. Nothing in this Act shall be interpreted to weaken, lessen, expand, or enlarge any of the protections, obligations, rights, and responsibilities governed by any provision of Act 1.

SECTION 2. Chapter 509, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§509- Tenancy by the entirety when owners change relationship status.

(a) When two individuals who hold property as tenants by the entirety enter into a different legal relationship with each other that also allows them to hold property as tenants by the entirety, their ownership as tenants by the entirety shall be continuous:

- (1) If the new legal relationship is entered into simultaneously with the termination of the earlier legal relationship; or
- (2) If the new legal relationship is entered into within ninety days after the termination of the earlier legal relationship; provided that no liens were perfected and attached on the property in the interim.

(b) The continuity of a tenancy by the entirety under this section shall apply to couples married under chapter 572, civil union partners under chapter 572B, and reciprocal beneficiaries under chapter 572C.

(c) Nothing in this section precludes any individuals from opting to hold their property in another manner as permitted under this chapter.

(d) Nothing in this section shall impact liens perfected and attached on the property after the earlier legal relationship was terminated and before the date this Act became law upon its approval.”

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

“§572B-A Rights held by reciprocal beneficiaries who enter into a civil union. (a) If two reciprocal beneficiaries enter into a civil union with each other, the rights, benefits, protections, or responsibilities created by the reciprocal beneficiary relationship shall be continuous through the civil union and deemed to have accrued as of the first date these rights existed under the reciprocal beneficiary relationship; provided that the individuals terminated their reciprocal beneficiary relationship simultaneously with their entry into a civil union, or within the ninety days immediately preceding their entry into a civil union.

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

(c) Property held in tenancy by the entirety shall be subject to section 509-

§572B-B 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.”

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, 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 of the half as well as to the whole blood, uncle and niece, aunt and nephew, 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;
- (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 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 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 572B-2, Hawaii Revised Statutes, is amended to read as follows:

“[§572B-2] Eligibility to enter into a civil union. A person shall be eligible to enter into a civil union only if the person is:

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

SECTION 6. Section 572B-4, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(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 ~~[ordained or licensed member of the clergy]~~ minister, priest, 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. ~~[Solemnization may be entirely secular or may be performed according to the forms and usages of any religious denomination in this State. Nothing in this section shall be construed to require any person authorized to perform solemnizations of marriages or civil unions 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 or other penalty for the failure or refusal.]~~

(c) Nothing in this section shall be construed to require any person authorized to perform solemnizations pursuant to chapter 572 or 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 ~~[or other]~~, penalty, or other civil action for the failure or refusal.”

SECTION 7. Section 572B-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No persons may be joined in a civil union in this State unless both partners have:

- (1) Met the requirements of section 572B-2;
- (2) Complied with section 572B-6 and, if applicable, section 572B-7; and
- (3) Been issued a license by an agent ~~[in the judicial circuit in which a civil union is to be solemnized or in which either person resides]~~, which license shall bear the certification of the agent that the persons named therein have met the requirements of section 572B-2 and have complied with section 572B-6 and, if applicable, section 572B-7.”

SECTION 8. Section 572B-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The fee for a license to enter into a civil union shall be an amount equal to the amount prescribed in section 572-5, and all amounts collected ~~[by the agent]~~ pursuant to section 321-1(g) as application fees under this chapter shall be retained or remitted and apportioned in the same manner as prescribed in section 572-5.”

SECTION 9. Section 572B-8, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Each person who solemnizes a civil union shall certify upon the civil union license certificate ~~[the fact, time, and place of the solemnization of the civil union]~~ all the facts required to be stated in a standard certificate of civil union, the form and contents of which shall be prescribed by the department of health, and return the certificate to the [agent] department of health within three business days following the solemnization of the civil union, or as may otherwise be prescribed by the department of health.

(b) If any person who has solemnized a civil union fails to return the certificate to the ~~[agent]~~ department of health as required under subsection (a), the partners joined in a civil union may provide the ~~[agent]~~ department of health with a notarized affidavit attesting to the fact that they were joined in a civil union and stating the date and place of the solemnization of the civil union. Upon the receipt of that affidavit by the ~~[agent,]~~ department of health, the civil union of the partners shall be deemed to be valid as of the date of the solemnization of the civil union stated in the affidavit.”

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

~~“[§572B-10]—Civil unions] Unions performed in other jurisdictions. [All unions entered into in other jurisdictions between two individuals not recognized under section 572-3 shall be recognized as civil unions;] A legal union of two persons that is not a marriage under chapter 572, which was validly formed in another jurisdiction, and which is substantially equivalent to a civil union under this chapter, shall be recognized as a valid civil union in this State and shall be treated the same as a civil union entered into in this State regardless of whether it bears the name civil union; provided that the relationship meets the eligibility~~

requirements of this chapter, has been entered into in accordance with the laws of that jurisdiction, and can be documented.”

SECTION 11. Section 572C-4, Hawaii Revised Statutes, is amended to read as follows:

“~~§~~**572C-4** **Requisites of a valid reciprocal beneficiary relationship.** In order to enter into a valid reciprocal beneficiary relationship, it shall be necessary that:

- (1) Each of the parties be at least eighteen years old;
- (2) Neither of the parties be married ~~[nor]~~, a party to another reciprocal beneficiary relationship~~[-]~~, or a partner in a civil union;
- (3) The parties be legally prohibited from marrying one another under chapter 572;
- (4) Consent of either party to the reciprocal beneficiary relationship has not been obtained by force, duress, or fraud; and
- (5) Each of the parties sign a declaration of reciprocal beneficiary relationship as provided in section 572C-5.”

SECTION 12. Section 572C-7, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) ~~[Any marriage license subsequently issued by the department to any individual registered as a]~~ A reciprocal beneficiary relationship shall automatically terminate [the individual’s existing reciprocal beneficiary relationship.] when:

- (1) Either party to the reciprocal beneficiary relationship enters into a marriage or civil union solemnized by a person licensed by the department of health; or
- (2) Either party to the reciprocal beneficiary relationship enters into a union outside the State that is recognized by law as a marriage or civil union in the State.

(d) If either party to a reciprocal beneficiary relationship enters into a legal marriage~~[-]~~ or civil union, the parties shall no longer have a reciprocal beneficiary relationship and shall no longer be entitled to the rights and benefits of reciprocal beneficiaries~~[-]~~, except as provided in section 572B-A.”

SECTION 13. Section 574-1, Hawaii Revised Statutes, is amended to read as follows:

“**§574-1 Married persons~~[-]~~; civil union partners.** Upon marriage or civil union, each of the parties to a marriage or partners in a civil union shall declare the middle and last names each will use as a married person~~[-]~~ or civil union partner. The last name or names chosen may be any middle or last name legally used at any time, past or present, by either spouse~~[-]~~ or partner, or any combination of such names, which may, but need not, be separated by a hyphen. The middle name or names chosen may be any middle or last name legally used at any time, past or present, by either spouse~~[-]~~ or partner, or any combination of such names, which may, but need not, be separated by a hyphen.”

SECTION 14. Section 574-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It shall be unlawful to change any name adopted or conferred under this chapter, except:

- (1) Upon an order of the lieutenant governor;

- (2) By a final order, decree, or judgment of the family court issued as follows:
- (A) When in an adoption proceeding a change of name of the person to be adopted is requested and the court includes the change of name in the adoption decree;
 - (B) When in a divorce proceeding either party to the proceeding requests to resume the middle name or names and the last name used by the party prior to the marriage or civil union or a middle name or names and last name declared and used during any prior marriage or civil union and the court includes the change of names in the divorce decree; or
 - (C) When in a proceeding for a change of name of a legitimate or legitimated minor initiated by one parent, the family court, upon proof that the parent initiating the name change has made all reasonable efforts to locate and notify the other parent of the name change proceeding but has not been able to locate, notify, or elicit a response from the other parent, and after an appropriate hearing, orders a change of name determined to be in the best interests of the minor; provided that the family court may waive the notice requirement to the noninitiating, noncustodial parent where the court finds that the waiver is necessary for the protection of the minor;
- (3) Upon marriage or civil union pursuant to section 574-1;
 - (4) Upon legitimation pursuant to section 338-21; or
 - (5) By an order or decree of any court of competent jurisdiction within any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, changing the name of a person born in this State.

[Any] Notwithstanding any law to the contrary [notwithstanding], no person who is a covered offender subject to the registration requirements of section 846E-2 may obtain a name change, other than as provided in paragraph (2), (3), (4), or (5), unless a court determines that it is in the best interest of justice to grant the petition and that doing so will not adversely affect the public safety.”

SECTION 15. Section 580-1, Hawaii Revised Statutes, is amended to read as follows:

“§580-1 Jurisdiction; hearing. Exclusive original jurisdiction in matters of annulment, divorce, and separation, subject to section 603-37 as to change of venue, and subject also to appeal according to law, is conferred upon the family court of the circuit in which the applicant has been domiciled or has been physically present for a continuous period of at least three months next preceding the application therefor. No absolute divorce from the bond of matrimony shall be granted for any cause unless either party to the marriage has been domiciled or has been physically present in the State for a continuous period of at least six months next preceding the application therefor. A person who may be residing on any military or federal base, installation, or reservation within the State or who may be present in the State under military orders shall not thereby be prohibited from meeting the requirements of this section. The family court of each circuit shall have jurisdiction over all proceedings relating to the annulment, divorce, and separation of civil unions entered into in this State or unions recognized as civil unions in this State in the same manner as marriages.”

SECTION 16. If two individuals terminated a reciprocal beneficiary relationship on or after October 3, 2011, but before the date this Act became law

upon its approval, and the two individuals subsequently enter or entered into a civil union no later than ninety days after their reciprocal beneficiary relationship terminated, their reciprocal beneficiary relationship shall be deemed to continue uninterrupted until the civil union is or was solemnized. The couple shall suffer no loss or interruption of any rights, benefits, protections, or obligations derived from their reciprocal beneficiary relationship, and those rights, benefits, protections, or obligations shall be deemed to have accrued as of the first date they existed under the beneficiary relationship, if they meet the requirements of this section.

For purposes of this section, holding title to property as tenants by the entirety shall be included among the rights of a reciprocal beneficiary relationship that shall continue uninterrupted under this section; provided that no intervening liens were perfected and attached on the property after the reciprocal beneficiary relationship was terminated, and before the date this Act became law upon its approval.

SECTION 17. Notwithstanding subsection 572C-7(c), Hawaii Revised Statutes, if before the effective date of this section, two individuals entered into a valid legal union in another jurisdiction that is not a marriage recognized under chapter 572, Hawaii Revised Statutes, and is substantially equivalent to a civil union under chapter 572B, Hawaii Revised Statutes, and are also parties to a reciprocal beneficiary relationship in this State, the reciprocal beneficiary relationship shall terminate and their valid legal union entered into in another jurisdiction shall be recognized as a civil union under section 572B-10, Hawaii Revised Statutes, on the voluntary termination of the reciprocal beneficiary relationship under subsection 572C-7(a), Hawaii Revised Statutes, but no later than one year after the date this Act becomes law upon its approval.

SECTION 18. In codifying the new sections added by section 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 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 20. This Act shall take effect retroactive to January 1, 2012; provided that:

- (1) Section 16 shall take effect retroactive to October 3, 2011; and
- (2) Section 17 shall take effect upon its approval.

(Approved July 6, 2012.)

Note

1. Edited pursuant to HRS §23G-16.5.