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## A BILL FOR AN ACT

RELATING TO CIVIL LIBERTIES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature acknowledges the recent  
2 decision of the United States Supreme Court in *United States v.*  
3 *Windsor*, 133 S.Ct. 2675 (2013), which held that section 3 of the  
4 Defense of Marriage Act, Public Law 104-199, unlawfully  
5 discriminated against married same-sex couples by prohibiting  
6 the federal government from recognizing those marriages and by  
7 denying federal benefits and protections to those couples. This  
8 legislature had previously extended to same-sex couples the  
9 right to enter into civil unions that provide the same rights,  
10 benefits, protections, and responsibilities under state law as  
11 afforded to opposite-sex couples who marry. However, these  
12 civil unions are not recognized by federal law and will not  
13 receive treatment equal to a marriage under federal law.

14           The legislature further finds that in *Garden State Equity*  
15 *v. Dow*, Docket No. L-1729-11 (New Jersey, September 27, 2013),  
16 the superior court of New Jersey granted summary judgment  
17 extending civil marriage to same-sex couples. Citing *Windsor*,  
18 the New Jersey appellate court held that by creating two



1 distinct labels - marriage for opposite-sex couples and civil  
2 unions for same-sex couples - New Jersey civil union partners  
3 are excluded from certain federal benefits that legally married  
4 same-sex couples are able to enjoy. The court held that this  
5 unequal treatment requires New Jersey to extend civil marriage  
6 to same-sex couples to satisfy the equal protection guarantees  
7 of the New Jersey Constitution.

8 The legislature further finds that, while same-sex civil  
9 marriage would be a great advancement for human liberty, this  
10 change could have serious implications if steps are not taken to  
11 protect the liberties of those religious organizations and  
12 believers who cannot conscientiously recognize or facilitate  
13 same-sex civil marriages. There will be no net gain for human  
14 liberty if same-sex couples are permitted to oppress religious  
15 dissenters in the same way that those dissenters, when they had  
16 the power to do so, oppressed same-sex couples.

17 Sexual minorities and religious minorities make essentially  
18 parallel claims on the larger society, and the strongest  
19 features of the case for same-sex civil marriage make an equally  
20 strong case for protecting the religious liberty of dissenters.  
21 Both same-sex couples and committed religious believers argue  
22 that some aspects of human identity are so fundamental that they



1 should be left to each individual, free of all nonessential  
2 regulation, even when manifested in conduct. For same-sex  
3 couples, the conduct at issue is to join personal commitment and  
4 sexual expression in a multifaceted intimate relationship with  
5 the person they love. For religious believers, the conduct at  
6 issue is to live and act consistently with the demands made by  
7 the Being that they believe made us all and holds the whole  
8 world together.

9       There is no reason to let either side oppress the other.  
10 Same-sex couples should not be denied the right to civil  
11 marriage, and the State should not force dissenting religious  
12 organizations to recognize or facilitate same-sex marriages.

13       The legislature also finds that in some religious faiths,  
14 marriage is a contract composed of two parts - an agreement  
15 between the individuals being married, and an agreement between  
16 the couple and the church. While the first agreement ensures  
17 that the relationship between the individuals is based on mutual  
18 love and respect and be "to death" or for "eternity," the second  
19 agreement formalizes the couple's recognition in the church and  
20 memorializes the rights, duties, and obligations of the church  
21 and the couple.



1           For example, according to the Catechism of the Catholic  
2 Church (1631), ". . . marriage introduces one into an  
3 ecclesiastical order, and creates rights and duties in the  
4 church between the spouses and toward their children. . ." For  
5 the Church of Jesus Christ of Latter-Day Saints, ". . .  
6 [marriage] is a pledge, or solemn covenant, a spiritual sign or  
7 bond between the contracting parties themselves and between them  
8 and God. . ."

9           While the State has asserted its sovereign authority to  
10 regulate the civil aspects of marriage, the legislature also  
11 recognizes that the broad application of this authority may  
12 impair the exercise of religious freedom and the ability for the  
13 couple to "contract" with a religious organization in the  
14 context of marriage.

15           The Hawaii supreme court's seminal ruling in *Baehr v.*  
16 *Miike*, 74 Haw. 530, 852 P.2 44 (Haw. 1993), spoke to the State's  
17 authority to issue marriage licenses by holding that the  
18 department of health could not deny a same-sex couple a marriage  
19 license solely on the basis of gender. But efforts to change  
20 the Hawaii marriage law to effectuate this principle run the  
21 risk of exceeding the scope of what is required under equal



1 protection and entering into realms that are essential for  
2 citizens to exercise their religious freedom.

3 As such, the legislature asserts the need to separate the  
4 licensing aspects of marriage, which clearly may be governed  
5 under civil law, from the contractual aspects of marriage  
6 between the individuals being married and the religious  
7 organization solemnizing the marriage in accordance with common  
8 practice, canon, and common law for hundreds of years.

9 It is the intent of the legislature that:

- 10 (1) Same-sex couples be able to take full advantage of  
11 federal benefits and protections granted to married  
12 opposite-sex couples by allowing same-sex couples to  
13 marry under the laws of this State;
- 14 (2) Marriages solemnized in accordance with this Act be  
15 equal in all respects to the marriages of opposite-sex  
16 couples under the laws of this State;
- 17 (3) There be no legal distinction between same-sex married  
18 couples and opposite-sex married couples with respect  
19 to marriage under the laws of this State;
- 20 (4) All provisions of law regarding marriage be applied  
21 equally to same-sex couples and opposite-sex couples,



1           regardless of whether this Act amends any such  
2           provision of law; and  
3         (5) The statutory system of inequity within domestic  
4           relations be reformed to ensure that the bundle of  
5           rights afforded to married couples, including the  
6           unique meanings and traditions associated with it, are  
7           not denied by the State (in its capacity as a  
8           licensing authority) to any couple solely on the basis  
9           of gender.

10           Accordingly, the purpose of this Act is to harmonize the  
11           right to equal protection under the law for same-sex couples, as  
12           guaranteed by the Fourteenth and Fifth amendments of the United  
13           States Constitution and article I, section 3 of the Constitution  
14           of the State of Hawaii, with the equally important right to the  
15           free exercise of religion, as guaranteed by the First Amendment  
16           of the United States Constitution and article I, section 4 of  
17           the Constitution of the State of Hawaii.

18           SECTION 2. The Hawaii Revised Statutes is amended by  
19           adding a new chapter to be appropriately designated and to read  
20           as follows:

**"CHAPTER**

**RELIGIOUS FREEDOM RESTORATION ACT**



- 1       §   -1 Findings. (a) The legislature finds that:
- 2       (1) The authors of the Bill of Rights secured the free
- 3       exercise of religion as an unalienable right under the
- 4       First Amendment of the United States Constitution;
- 5       (2) The free exercise of religion is also guaranteed under
- 6       article I, section 4 of the Constitution of the State
- 7       of Hawaii;
- 8       (3) Laws neutral toward religion may substantially burden
- 9       religious exercise as surely as laws intended to
- 10      interfere with religious exercise;
- 11      (4) Government should not substantially burden religious
- 12      exercise without compelling justification;
- 13      (5) The United States Supreme Court in a recent decision
- 14      virtually eliminated the requirement that the
- 15      government justify burdens on religious exercise
- 16      imposed by laws neutral toward religion; and
- 17      (6) The compelling interest test in the free exercise of
- 18      religion established by the United States Supreme
- 19      Court is a workable test for striking sensible
- 20      balances between religious liberty and competing
- 21      government interests.
- 22      (b) The legislature declares its intent that:

1           (1) It shall be the policy of the State that the  
2                    compelling interest test in the free exercise of  
3                    religion as established by the United States Supreme  
4                    Court under 494 U.S. 872 (1990); shall be the standard  
5                    applicable by the courts of this State in all cases  
6                    where religious exercise is substantially burdened;  
7                    and

8           (2) This chapter shall provide a claim or defense to  
9                    persons whose religious exercise is substantially  
10                   burdened by government.

11           §   -2 **Free exercise of religion protected.** (a) The  
12           State and its political subdivisions shall not substantially  
13           burden a person's exercise of religion even if the burden  
14           results from a rule of general applicability, except as provided  
15           in subsection (b).

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

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



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

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

9           (e) Nothing in this chapter shall be construed to affect,  
10 interpret, or in any way address that portion of article I,  
11 section 4 of the Constitution of the State of Hawaii,  
12 prohibiting laws respecting the establishment of religion.  
13 Granting government funding, benefits, or exemptions, to the  
14 extent permissible under article I, section 4 of the  
15 Constitution of the State of Hawaii, shall not constitute a  
16 violation of this chapter."

17           SECTION 3. Chapter 321, Hawaii Revised Statutes, is  
18 amended by adding a new part to be appropriately designated and  
19 to read as follows:

20                               "PART . LICENSING AND CERTIFICATION  
21                               OF DOMESTIC RELATIONS CONTRACTS



1           **§321-A Rights and obligations.** (a) Upon the issuance of  
2 a marriage license, the parties named in the license shall be  
3 entitled to those rights and obligations provided by law to  
4 married persons. The rights and obligations of marriage shall  
5 be granted to the licensees upon the solemnization of the  
6 marriage ceremony; provided that the marriage shall be  
7 solemnized within the thirty-day period in which the marriage  
8 license is valid in accordance with this part.

9           (b) Upon the issuance of a certificate of reciprocal  
10 beneficiary relationship, the parties named in the certificate  
11 shall be granted those rights and obligations provided by law to  
12 reciprocal beneficiaries. Unless otherwise expressly provided  
13 by law, reciprocal beneficiaries shall not have the same rights  
14 and obligations under the law that are conferred through  
15 marriage under this part.

16           **§321-B Reliance on federal law.** Any law of this State  
17 that refers to, adopts, or relies upon federal law, including  
18 but not limited to the Internal Revenue Code, as amended, shall  
19 apply to all marriage licenses recognized under the laws of this  
20 State as if federal law recognized the marriage licenses in the  
21 same manner as the laws of this State, so that all marriage  
22 licensees receive equal treatment.



1           §321-C Requisites of marriage license. (a) The  
2 department of health shall issue a marriage license if the  
3 department determines that all of the following requisites are  
4 met:

5           (1) The applicants do not stand in relation to each other  
6 of ancestor and descendant of any degree whatsoever,  
7 siblings of the half as well as the whole blood, uncle  
8 and niece, uncle and nephew, aunt and nephew, aunt and  
9 niece, whether the relationship is the result of the  
10 issue of parents married or not married to each other;

11           (2) Both applicants at the time of applying for the  
12 license are at least sixteen years of age; provided  
13 that with the written approval of the family court of  
14 the circuit within which the minor resides, a marriage  
15 license may be issued to applicants under the age of  
16 sixteen years, but in no event under the age of  
17 fifteen years, in accordance with this section;

18           (3) Neither applicant at the time of applying for the  
19 marriage license has any lawful living spouse;

20           (4) Both applicants consent to marriage with neither  
21 applicant consenting under force, duress, or fraud;

1 (5) Neither applicant is a person afflicted with any  
2 loathsome disease concealed from, and unknown to, the  
3 other party;

4 (6) The applicants are applying for the marriage license  
5 with an agent duly appointed and authorized to grant  
6 marriage licenses; and

7 (7) The marriage ceremony is performed in the State by a  
8 person or society with a valid license to solemnize  
9 marriages, and the applicants and the person  
10 performing the marriage ceremony are all physically  
11 present at the same place and time for the marriage  
12 ceremony.

13 (b) A marriage license shall not be denied to any couple  
14 solely because both applicants are of the same gender.

15 (c) Whenever any person who is under the age of eighteen  
16 applies for a marriage license, the written consent of the  
17 applicant's parents or guardian or other person in whose care  
18 and custody the applicant may be, shall accompany the  
19 application for a marriage license. No license shall be issued  
20 to any minor who is under the jurisdiction of the family court  
21 without the written consent of a judge of the court.

1           (d) Whenever any person under the age of eighteen and  
2 whose parents are deceased, or who is a ward of a family court,  
3 applies for a marriage license, the applicant shall set forth in  
4 the statement accompanying the application, the name of the  
5 applicant's guardian or of any other person in whose care and  
6 custody the applicant may be.

7           (e) If any applicant for a marriage license appears to any  
8 agent to be under the age of eighteen years, the agent shall,  
9 before granting a marriage license, require the production of a  
10 certificate of birth or other satisfactory proof showing the age  
11 of the applicant.

12           **§321-D Requisites of reciprocal beneficiary certificate.**

13 The department of health shall issue a reciprocal beneficiary  
14 certificate if the department determines that all of the  
15 following requisites are met:

- 16           (1) Each of the applicants is at least eighteen years old;  
17           (2) Neither of the applicants is married, a party to  
18           another reciprocal beneficiary relationship, or a  
19           partner in a civil union;  
20           (3) The applicants are legally prohibited from obtaining a  
21           marriage license under this part;



1           (4) Consent of either party to the reciprocal beneficiary  
2           relationship has not been obtained by force, duress,  
3           or fraud; and

4           (5) The applicants have signed a declaration of reciprocal  
5           beneficiary relationship in accordance with this part.

6           **§321-E Registration as reciprocal beneficiaries; filing**  
7           **fees; records.** (a) Two persons, who meet the criteria set  
8           forth in section 321-D, may enter into a reciprocal beneficiary  
9           relationship and register their relationship as reciprocal  
10          beneficiaries by filing a signed notarized declaration of  
11          reciprocal beneficiary relationship with the director of health.  
12          For the filing of the declaration, the director shall collect a  
13          fee of \$8, which shall be remitted to the director of finance  
14          for deposit into the general fund.

15          (b) Upon the payment of the fee prescribed under  
16          subsection (a), the director of health shall register the  
17          declaration and provide a certificate of reciprocal beneficiary  
18          relationship to each party named on the declaration. The  
19          director shall maintain a record of each declaration of  
20          reciprocal beneficiary relationship filed with or issued by the  
21          director.



1           §321-F Termination of reciprocal beneficiary relationship;  
2 filing fees and records; termination upon marriage. (a) Either  
3 party to a reciprocal beneficiary relationship may terminate the  
4 relationship by filing a signed notarized declaration of  
5 termination of reciprocal beneficiary relationship by either of  
6 the reciprocal beneficiaries with the director of health. For  
7 the filing of the declaration, the director shall collect a fee  
8 of \$8, which shall be remitted to the director of finance for  
9 deposit into the general fund.

10           (b) Upon the payment of the fee prescribed under  
11 subsection (a), the director of health shall file the  
12 declaration and issue a certificate of termination of reciprocal  
13 beneficiary relationship to each party of the former  
14 relationship. The director shall maintain a record of each  
15 declaration and certificate of termination of reciprocal  
16 beneficiary relationship filed with or issued by the director.

17           (c) A reciprocal beneficiary relationship shall  
18 automatically terminate when:

19           (1) Either party to the reciprocal beneficiary  
20 relationship obtains the rights and obligations of  
21 marriage in accordance with this part; or



1           (2) Either party to the reciprocal beneficiary  
2           relationship obtains the rights and obligations of  
3           marriage outside the State in accordance with laws  
4           outside the State.

5           (d) If either party to a reciprocal beneficiary  
6           relationship enters into a legal marriage, the parties shall no  
7           longer have a reciprocal beneficiary relationship and shall no  
8           longer be entitled to the rights and benefits of reciprocal  
9           beneficiaries.

10           **§321-G Non-domestic marriage licenses, right of domicile.**

11           (a) Marriage licenses between two individuals, regardless of  
12           gender and legal where issued, shall be held legal in the courts  
13           of this State.

14           (b) The right of an individual to be or to become a  
15           resident domiciled in this State shall not be denied or abridged  
16           because of the marital status of the individual. The residence  
17           of one spouse shall not establish the residence of the other  
18           spouse, which shall be determined by the same factors that apply  
19           in determining the residence of any other individual capable of  
20           having an independent residence.

21           **§321-H Marriage license; agent to grant; fee.** (a) The  
22           director of health shall appoint, and at its pleasure remove,





1 one or more suitable persons as agents authorized to grant  
2 marriage licenses under this part in each judicial circuit. The  
3 agents may issue licenses from any state facility when deemed  
4 necessary by the director. Any agent appointed under this  
5 subsection and receiving an application for a marriage license  
6 shall collect from the applicant a fee of \$60, of which the  
7 agent shall retain \$9 for the agent's benefit and compensation  
8 and shall remit \$51 to the director of health, except as  
9 otherwise provided under subsection (b). Upon the receipt of  
10 remittances under this subsection, the director of health shall  
11 deposit:

- 12 (1) \$32 for each license issued to the credit of the  
13 general fund of the State;
- 14 (2) \$4.50 for each license issued to the credit of the  
15 spouse and child abuse special account established  
16 under section 346-7.5;
- 17 (3) \$4.50 for each license issued to the credit of the  
18 spouse and child abuse special account established  
19 under section 601-3.6; and
- 20 (4) \$10 for each license issued to the credit of the birth  
21 defects special fund established under section 321-  
22 426.



1           In addition, an agent appointed under this subsection shall  
2 collect from the applicant a surcharge of \$5, of which the agent  
3 shall retain the full amount for the agent's additional benefit  
4 and compensation.

5           (b) The director of health may appoint, as regular  
6 employees under the civil service and classification laws, the  
7 number of suitable persons as agents authorized to grant  
8 marriage licenses for whom provision has been made in the  
9 general appropriations act. In the case of agents appointed  
10 under this subsection, the full amount of the fee collected from  
11 applicants pursuant to subsection (a) shall be remitted to the  
12 director of health. Upon the receipt of remittances under this  
13 subsection, the director shall deposit:

- 14           (1) \$41 for each license issued to the credit of the  
15                 general fund of the State;
- 16           (2) \$4.50 for each license issued to the credit of the  
17                 spouse and child abuse special account established  
18                 under section 346-7.5;
- 19           (3) \$4.50 for each license issued to the credit of the  
20                 spouse and child abuse special account established  
21                 under section 601-3.6; and



1           (4) \$10 for each license issued to the credit of the birth  
2                   defects special fund established under section 321-  
3                   426.

4           (c) Every agent appointed under this section may  
5 administer any oaths that may be required under this part.

6           (d) The department of health or its authorized agents  
7 shall furnish to each female applicant for a marriage license a  
8 brochure explaining rubella, the risks of infection with rubella  
9 during pregnancy, and how to seek testing and immunization. The  
10 department or its authorized agents shall also furnish to each  
11 applicant for a marriage license information, to be provided by  
12 the department, relating to acquired immune deficiency syndrome  
13 (AIDS), including the availability of any anonymous testing for  
14 human immunodeficiency virus (HIV) infection at alternate test  
15 sites, and information relating to population stabilization,  
16 family planning, birth control, and fetal alcohol and drug  
17 syndromes.

18           **§321-I Applications; license; limitations.** To secure a  
19 marriage license, the applicants for the license shall appear  
20 personally before an agent authorized to grant marriage licenses  
21 under section 321-H and shall file with the agent an application



1 in writing. The application shall be accompanied by a statement  
2 signed and sworn to by each applicant, setting forth:

- 3 (1) The applicant's full name, date of birth, social  
4 security number, and residence;
- 5 (2) The relationship between the applicants, if any;
- 6 (3) The full names of the applicants' parents; and
- 7 (4) That any prior marriage or civil union other than an  
8 existing civil union between the persons applying for  
9 a marriage license has been dissolved by death or  
10 dissolution.

11 If all prior marriages or civil unions, other than an existing  
12 civil union between the persons applying for a marriage license,  
13 have been dissolved by death or dissolution, the statement shall  
14 also set forth the date of death of the last prior spouse or the  
15 date and jurisdiction in which the last decree of dissolution  
16 was entered. Any other information consistent with the standard  
17 marriage certificate as recommended by the Public Health  
18 Service, National Center for Health Statistics, may be requested  
19 for statistical or other purposes, subject to approval of and  
20 modification by the department of health; provided that the  
21 information shall be provided at the option of the applicant and  
22 no applicant shall be denied a license for failure to provide



1 the information. The agent shall indorse on the application,  
2 over the agent's signature, the date of the filing thereof and  
3 shall issue a license which shall bear on its face the date of  
4 issuance. The license shall authorize the licensees to  
5 solemnize the marriage within thirty days commencing from and  
6 including the date of issuance. Upon solemnization at a  
7 marriage ceremony in accordance with this part, all rights and  
8 obligations of marriage authorized under law shall be granted to  
9 the licensees. However, if after the thirty-day period the  
10 marriage is not solemnized at a marriage ceremony, the license  
11 shall become void and no marriage ceremony shall be performed  
12 thereafter without the issuance of a new marriage license.

13 It shall be the duty of every person, legally authorized to  
14 grant licenses to marry, to immediately report the issuance of  
15 every marriage license to the agent of the department of health  
16 in the district in which the license is used, setting forth all  
17 facts required to be stated in a manner and on a form as the  
18 department may prescribe.

19 **§321-J Marriage ceremony; license to solemnize.** (a) It  
20 shall be unlawful for any person to perform a marriage ceremony  
21 within the State without first obtaining from the department of  
22 health a license to solemnize marriages.



1           (b) Any license to solemnize marriages issued pursuant to  
2 this part may be revoked or suspended by the department of  
3 health, if the holder of the license has failed to comply with  
4 the applicable provisions of this part or of the rules of the  
5 department of health.

6           **§321-K By whom solemnized.** (a) A license to solemnize  
7 marriages may be issued to, and the marriage rite may be  
8 performed and solemnized by, any minister, priest, or officer of  
9 any religious denomination or society who has been ordained or  
10 is authorized to solemnize marriages according to the usages of  
11 the denomination or society, or any religious society not having  
12 clergy but providing solemnization in accordance with the rules  
13 and customs of the society, or any justice or judge or  
14 magistrate, active or retired, of a state or federal court in  
15 the State, upon presentation to the person or society of a  
16 license to marry, as prescribed by this part. The person or  
17 society may receive the price stipulated by the parties or the  
18 gratification tendered.

19           (b) The authority of any appropriately licensed person to  
20 solemnize a marriage, including any minister, priest, or officer  
21 of any religious denomination or society licensed to solemnize  
22 marriage in accordance with the usages of the denomination or



1 society, shall be absolute. No refusal to solemnize a marriage  
2 by any person licensed to solemnize a marriage, including any  
3 licensed minister, priest, or officer of any religious  
4 denomination or society shall result in a civil claim or cause  
5 of action challenging the refusal under law, nor shall any  
6 action by any state or county agency to penalize or withhold  
7 benefits from any person licensed to solemnize marriage,  
8 including a licensed minister, priest, or officer of any  
9 religious denomination or society, or the denomination or  
10 society itself, under the laws of this State or its political  
11 subdivisions including laws regarding employment discrimination,  
12 housing, public accommodations, educational institutions,  
13 licensing, government contracts or grants, or tax-exempt status,  
14 because of the refusal of a person licensed to solemnize  
15 marriage, including any minister, priest, or officer of any  
16 religious denomination or society to solemnize a marriage.

17 **§321-L Record of solemnization; marriages, reported by**  
18 **whom; certified copies.** (a) Every person authorized to  
19 solemnize marriage shall make and preserve a record of every  
20 marriage by the person solemnized, comprising the names of the  
21 licensees married, their place of residence, and the date of  
22 their marriage.



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

4 (b) Each person legally authorized to perform a marriage  
5 ceremony shall report within three business days every marriage  
6 ceremony performed by the person to the agent of the department  
7 of health in the district in which the marriage takes place,  
8 setting forth all facts required to be stated in a standard  
9 certificate of marriage, the form and contents of which shall be  
10 prescribed by the department of health.

11 (c) The department of health shall deliver one certified  
12 copy of the certificate of marriage or any part thereof as  
13 provided in section 338-13 to the persons married. The  
14 certificate shall be prima facie evidence of the fact of  
15 marriage in any proceeding in any court.

16 The department of health shall upon request furnish to any  
17 applicant additional certified copies of the certificate of  
18 marriage, or any part thereof.

19 Copies of the contents of any certificate on file in the  
20 department, certified by the department, shall be considered for  
21 all purposes the same as the original.





1           The department may prescribe reasonable fees, if any, to be  
2 paid for certified copies of certificates.

3           **§321-M Delivery of records to department of health;**  
4 **penalty.** Whenever any agent authorized to grant marriage  
5 licenses ceases to be an agent, or is directed to do so by the  
6 department of health, or leaves the State, the agent shall  
7 deliver to the department all the agent's records of marriage  
8 licenses. Upon the death of an agent, the records shall be  
9 delivered to the department by the agent's personal  
10 representative or other legal representative.

11           Whenever any person holding a license to perform the  
12 marriage ceremony is directed to do so by the department of  
13 health, or whenever the license is canceled or otherwise  
14 terminated or upon the departure from the State of the person,  
15 the person shall deliver to the department all the person's  
16 records of marriages, or upon the death of the person the  
17 records shall be delivered to the department by the person's  
18 personal representative, or other legal representative.

19           Any person violating this section shall be fined not more  
20 than \$500.



1           **§321-N Administrative rules.** The director of health may  
2 adopt rules in accordance with chapter 91 necessary or  
3 appropriate to facilitate the provisions of this part.

4           **§321-O Construction.** This part shall be construed in  
5 favor of a broad protection of religious exercise, to the  
6 maximum extent permitted by the Constitution of the State of  
7 Hawaii and the United States Constitution."

8           SECTION 4. Chapter 489, Hawaii Revised Statutes, is  
9 amended by adding a new part to be appropriately designated and  
10 to read as follows:

11           **"PART . RELIGIOUS FREEDOM IN PUBLIC ACCOMMODATIONS**

12           **§489- Religious freedom in marriage guaranteed.**

13 Absolute freedom of conscience in all matters of religious  
14 sentiment, belief, and worship pertaining to marriage shall be  
15 guaranteed to every individual, and no one shall be molested or  
16 disturbed in person or property on account of religion; provided  
17 that the liberty of conscience secured shall not be so construed  
18 as to excuse acts of licentiousness or justify practices  
19 inconsistent with the peace and safety of the State.

20           **§489- Religious organizations protected.** No religious  
21 educational, healthcare, or denominational organization; no  
22 organization operated for charitable or educational purposes and



1 that is supervised, operated, controlled by, connected with, or  
2 publicly identified with a religious organization or group,  
3 regardless of whether its activities are deemed wholly or partly  
4 religious; and no individual employed or supervised by any of  
5 the foregoing organizations, while acting in the scope of that  
6 employment or supervision, shall be required to take any of the  
7 following actions if doing so would cause the organization or  
8 individual to violate their sincerely held religious beliefs:

9 (1) Provide services, accommodations, advantages,  
10 facilities, goods, benefits, or privileges for a  
11 purpose related to the solemnization or celebration of  
12 any marriage;

13 (2) Solemnize or celebrate any marriage; or

14 (3) Treat as valid any marriage;

15 provided that a religious organization engaged in the provision  
16 of health care, or its individual employees, shall treat a  
17 state-recognized marriage as valid for purposes of a spouse's  
18 rights to visitation or to surrogate health care decision  
19 making.

20 **§489- Individuals and small businesses protected. (a)**

21 No individual, sole proprietor, or small business shall be  
22 required to take any of the following actions if doing so would



1 cause the individual, sole proprietor, or small business to  
2 violate their sincerely held religious belief:

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

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

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

11 (b) This section shall not apply if either:

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

15 (2) In the case of an individual who is a government  
16 employee or official, another government employee or  
17 official is not promptly available and willing to  
18 provide the requested government service without  
19 inconvenience or delay; provided that no judicial  
20 officer authorized to solemnize marriages shall be  
21 required to solemnize any marriage if to do so would



1           violate the judicial officer's sincerely held  
2           religious beliefs.

3           (c) For purposes of this section:

4           "Small business" means a partnership or legal entity other  
5 than a natural person that either:

6           (1) Provides services that are primarily performed by an  
7           owner of the business;

8           (2) Has five or fewer employees; or

9           (3) Owns five or fewer units of housing in the case of a  
10          legal entity that offers housing for rent.

11          "Religious organization" means a privately held corporation  
12 or other legal entity that both:

13          (1) Holds itself out publicly as adhering to specific  
14          religious beliefs; and

15          (2) Is operated consistently with those beliefs.

16          **§489- Immunity from civil cause of action and other**  
17 **penalties.** Notwithstanding any other law to the contrary, no  
18 refusal to provide services, accommodations, facilities, goods,  
19 or benefits protected by this part shall result in any of the  
20 following:

21          (1) A civil claim or cause of action challenging the  
22          refusal under law; or



1           (2) Any action by any state or county agency to penalize  
2           or withhold benefits from any protected entity or  
3           individual under any laws of this State or its  
4           political subdivisions, including but not limited to  
5           laws regarding employment discrimination, housing,  
6           public accommodations, educational institutions,  
7           licensing, government contracts or grants, or tax-  
8           exempt status.

9           **§489- Construction.** This part shall be construed in  
10          favor of a broad protection of religious exercise, to the  
11          maximum extent permitted by the Constitution of the State of  
12          Hawaii and the United States Constitution."

13          SECTION 5. Chapter 572, Hawaii Revised Statutes, is  
14          amended by adding a new part to be appropriately designated and  
15          to read as follows:

16                           **"PART . RELIGIOUS FREEDOM IN MARRIAGE**

17          **§572- Religious freedom in marriage guaranteed.**  
18          Absolute freedom of conscience in all matters of religious  
19          sentiment, belief, and worship pertaining to this chapter shall  
20          be guaranteed to every individual, and no one shall be molested  
21          or disturbed in person or property on account of religion;  
22          provided that the liberty of conscience secured shall not be so

1 construed as to excuse acts of licentiousness or justify  
2 practices inconsistent with the peace and safety of the State.

3 §572- Religious organizations protected. No religious  
4 educational, healthcare, or denominational organization; no  
5 organization operated for charitable or educational purposes and  
6 that is supervised, operated, controlled by, connected with, or  
7 publicly identified with a religious organization or group,  
8 regardless of whether its activities are deemed wholly or partly  
9 religious; and no individual employed or supervised by any of  
10 the foregoing organizations, while acting in the scope of that  
11 employment or supervision, shall be required to take any of the  
12 following actions if doing so would cause the organization or  
13 individual to violate their sincerely held religious beliefs:

- 14 (1) Provide services, accommodations, advantages,  
15 facilities, goods, benefits, or privileges for a  
16 purpose related to the solemnization or celebration of  
17 any marriage;
- 18 (2) Solemnize or celebrate any marriage; or
- 19 (3) Treat as valid any marriage;

20 provided that a religious organization engaged in the provision  
21 of health care, or its individual employees, shall treat a  
22 state-recognized marriage as valid for purposes of a spouse's



1 rights to visitation or to surrogate health care decision  
2 making.

3 §572- Individuals and small businesses protected. (a)

4 No individual, sole proprietor, or small business shall be  
5 required to take any of the following actions if doing so would  
6 cause the individual, sole proprietor, or small business to  
7 violate their sincerely held religious belief:

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

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

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

16 (b) This section shall not apply if either:

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

20 (2) In the case of an individual who is a government  
21 employee or official, another government employee or  
22 official is not promptly available and willing to





1 provide the requested government service without  
2 inconvenience or delay; provided that no judicial  
3 officer authorized to solemnize marriages shall be  
4 required to solemnize any marriage if to do so would  
5 violate the judicial officer's sincerely held  
6 religious beliefs.

7 (c) For purposes of this section:

8 "Small business" means a partnership or legal entity other  
9 than a natural person that either:

- 10 (1) Provides services that are primarily performed by an  
11 owner of the business;
- 12 (2) Has five or fewer employees; or
- 13 (3) Owns five or fewer units of housing in the case of a  
14 legal entity that offers housing for rent.

15 "Religious organization" means a privately held corporation  
16 or other legal entity that both:

- 17 (1) Holds itself out publicly as adhering to specific  
18 religious beliefs; and
- 19 (2) Is operated consistently with those beliefs.

20 **§572- Immunity from civil cause of action and other**  
21 **penalties.** Notwithstanding any other law to the contrary, no  
22 refusal to provide services, accommodations, facilities, goods,



1 or benefits protected by this part shall result in any of the  
2 following:

- 3 (1) A civil claim or cause of action challenging the  
4 refusal under law; or
- 5 (2) Any action by any state or county agency to penalize  
6 or withhold benefits from any protected entity or  
7 individual under any laws of this State or its  
8 political subdivisions, including but not limited to  
9 laws regarding employment discrimination, housing,  
10 public accommodations, educational institutions,  
11 licensing, government contracts or grants, or tax-  
12 exempt status.

13 §572- Construction. This part shall be construed in  
14 favor of a broad protection of religious exercise, to the  
15 maximum extent permitted by the Constitution of the State of  
16 Hawaii and the United States Constitution."

17 SECTION 6. Section 321-426, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "[+]§321-426[+] Birth defects special fund. There is  
20 established within the state treasury the birth defects special  
21 fund to be administered and expended by the department of  
22 health, into which shall be deposited fees remitted pursuant to



1 [section] sections 321-H and 572-5. Moneys in the special fund  
2 shall be used for the payment of the operating expenses of the  
3 birth defects program."

4 SECTION 7. Section 346-7.5, Hawaii Revised Statutes, is  
5 amended by amending subsection (c) to read as follows:

6 "(c) The account shall consist of fees remitted pursuant  
7 to sections 321-H, 338-14.5, and 572-5, income tax remittances  
8 allocated under section 235-102.5, interest and investment  
9 earnings, grants, donations, and contributions from private or  
10 public sources. All realizations of the account shall be  
11 subject to the conditions specified in subsection (b)."

12 SECTION 8. Section 572-21, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "[+]§572-21[+] **Presumption of separate property.** There is  
15 a rebuttable presumption that all property, both real and  
16 personal, acquired in the name of [~~the husband or of the wife,~~]  
17 either party to the marriage, without regard to the time of  
18 acquisition thereof, is the separate property of the spouse in  
19 the name of whom the same has been acquired."

20 SECTION 9. Section 601-3.6, Hawaii Revised Statutes, is  
21 amended by amending subsection (c) to read as follows:



1           "(c) The account shall consist of fees remitted pursuant  
2 to sections 321-H, 338-14.5, and 572-5, income tax remittances  
3 allocated under section 235-102.5, fines collected pursuant to  
4 sections [†]586-4(e) [†], 580-10, and 586-11, interest and  
5 investment earnings, grants, donations, and contributions from  
6 private or public sources. All realizations of the account  
7 shall be subject to the conditions specified in subsection (b)."

8           SECTION 10. Chapter 572, part I, Hawaii Revised Statutes,  
9 is repealed.

10          SECTION 11. Chapter 572B, Hawaii Revised Statutes, is  
11 repealed.

12          SECTION 12. Chapter 572C, Hawaii Revised Statutes, is  
13 repealed.

14          SECTION 13. (a) Upon the repeal of chapter 572B, Hawaii  
15 Revised Statutes, pursuant to section 11 of this Act, all  
16 rights, obligations, benefits, protections, and responsibilities  
17 granted by the State, whether derived from statutes,  
18 administrative rules, court decisions, the common law, or any  
19 other source of civil law, as are granted to those who contract,  
20 obtain a license, and are solemnized in accordance with chapter  
21 572B, Hawaii Revised Statutes, are extinguished.



1           (b) Two individuals who are civil union partners and  
2 seeking to jointly obtain a marriage license shall be permitted  
3 to apply for a marriage license without first terminating their  
4 civil union; provided that the two individuals are otherwise  
5 eligible to marry under chapter 321, Hawaii Revised Statutes, as  
6 amended by this Act.

7           (c) A civil union relationship under subsection (b) shall  
8 continue uninterrupted until the parties to the civil union have  
9 solemnized their marriage consistent with chapter 321, Hawaii  
10 Revised Statutes, as amended by this Act, and the solemnization  
11 of the marriage shall automatically terminate the civil union.

12           (d) Civil union partners who entered into the civil union  
13 in this State may elect to have their civil union legally  
14 converted to a marriage by operation of law without appearing  
15 personally before an agent and without solemnization as required  
16 by this Act by:

17           (1) Applying for a marriage license pursuant to chapter  
18 321, Hawaii Revised Statutes, as amended by this Act,  
19 by filing their application, in person or by mail with  
20 the department of health;

21           (2) Providing a signed, notarized declaration that the  
22 civil union was entered into in this State and that



1           the civil union partners are seeking to convert their  
2           civil union into a marriage;

3           (3)   Paying the marriage license fee as required by chapter  
4           321, Hawaii Revised Statutes, as amended by this Act;  
5           and

6           (4)   Providing all information required by the marriage  
7           license application.

8           (e)   Upon receipt of a marriage license application and  
9           notarized declaration requesting conversion, the department of  
10          health shall confirm that the applicants are civil union  
11          partners who entered into their civil union in Hawaii and shall  
12          issue a certificate of marriage, with the effective date of the  
13          marriage being the date the department accepts for filing the  
14          request for conversion.

15          (f)   All rights, benefits, protections, and  
16          responsibilities of marriage shall apply to civil unions that  
17          are administratively converted to marriages pursuant to this  
18          section.

19          (g)   Certificates of marriage issued pursuant to this  
20          section shall be deemed the same as certificates of marriage  
21          issued pursuant to chapter 321, Hawaii Revised Statutes, as  
22          amended by this Act, and shall be processed in the same manner.



1 (h) Marriages converted from civil unions pursuant to this  
2 section shall be deemed solemnized for all purposes.

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

8 SECTION 15. In codifying the new sections added by section  
9 3 of this Act, the revisor of statutes shall substitute  
10 appropriate section numbers for the letters used in designating  
11 the new sections in this Act.

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

14 SECTION 17. This Act shall take upon its approval;  
15 provided that:

16 (1) Section 11 of this Act shall take effect on January 1,  
17 2016; and

18 (2) Sections 4 and 5 of this Act shall be repealed on July  
19 1, 2016.

20

INTRODUCED BY:



OCT 28 2013



**Report Title:**

Same-sex Marriage; Religious Freedom; Licensing

**Description:**

Applies the compelling interest test as set forth in *Sherbert v. Verner* and *Wisconsin v. Yoder* to balance religious liberty and competing government interest; authorizes the issuance of marriage licenses to same-sex couples; prohibits DOH from denying a marriage license to a same-sex couple solely on the basis of gender; applies the compelling interest test to state judicial cases in which a law allegedly impairs the free exercise of religious freedom; provides direct access to the courts in cases where a law allegedly impairs the free exercise of religious freedom; repeals Hawaii's Civil Unions Law on January 1, 2016; extinguishes all accrued rights, obligations, benefits, protections, and responsibilities of civil unions; establishes procedures for the transition of persons in civil unions to marriage.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

