

HOUSE OF REPRESENTATIVES

AMENDMENT TO: S.B. No. 1 H.D. 1OFFERED BY: Representative Gene Ward DATE: November 6, 2013

SECTION 1. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the words "Part I" just above Section 1 of the bill.

SECTION 2. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by amending Section 1 to read as follows:

SECTION 1. This Act shall be known as the Hawaii Marriage Equality Act of 2013.

The legislature acknowledges the recent decision of the United States Supreme Court in *United States v. Windsor*, 133 S. Ct. 2675 (2013), which held that Section 3 of the Defense of Marriage Act, Public Law 104-199, unlawfully discriminated against married same-sex couples by prohibiting the federal government from recognizing those marriages and by denying federal rights, benefits, protections, and responsibilities to those couples. The legislature has already extended to same-sex couples the right to enter into civil unions that provide the same rights, benefits, protections, and responsibilities under state law as afforded to opposite-sex couples who marry.

However, these civil unions are not recognized by federal law and will not be treated equally to a marriage under federal law.

Therefore, it is the intent of the legislature to:

- (1) Ensure that same-sex couples are able to take full advantage of federal rights, benefits, protections, and responsibilities granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State;
- (2) Ensure that there be no legal distinction between same-sex married couples and opposite-sex married couples with respect to marriage under the laws of this State by applying all provisions of law regarding marriage equally to same-sex couples and opposite-sex couples regardless of whether this Act does or does not amend any particular provision of law; and
- (3) Protect religious freedom and liberty by:
 - (A) Ensuring that any clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations shall not be required to solemnize any marriage or civil union that is against their religious beliefs or faith, in

accordance with the Hawaii state constitution and the United States Constitution; and

- (B) Clarifying that a religious organization or nonprofit organization operated, supervised, or controlled by a religious organization shall not be required to provide goods, services, or its facilities or grounds for the solemnization or celebration of a marriage or civil union that is in violation of its religious beliefs or faith.

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

SECTION 3. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the following new Part immediately after Section 12 of the bill.

"Part II

SECTION 13. Within the past three years, several states, including Hawaii, have enacted laws that require school districts that teach sexuality health education to include age appropriate, medically accurate health education. The legislature finds that while sexuality health education in schools is intended to assist students in their growth and development, great care must be taken to uphold religious liberty for individuals of conscience, whether they be teachers, parents, or legal guardians of those students.

The increasing incidence of teaching so-called "alternative lifestyles" in schools, particularly homosexual lifestyles, necessarily implicates the First Amendment right to free exercise of religion under the Constitutions of the United States and the State of Hawaii. Many religious traditions do not condone homosexuality or homosexual relationships and therefore, teachers must be given the right to "opt out" of having to teach sexuality health education material that promotes or otherwise addresses homosexuality or homosexual relationships, if doing so would violate the teacher's sincerely held religious beliefs. Likewise, parents and legal guardians must also be given the right to "opt out" of having their child receive any sexuality health education that promotes or otherwise addresses homosexuality or homosexual relationships, if doing so would violate the parent's or legal guardian's sincerely held religious beliefs.

Therefore, the purpose of this Part is to clarify that:

- (1) A teacher shall not be required to teach sexuality health education material that promotes or otherwise addresses homosexuality or homosexual relationships, if doing so would violate the teacher's sincerely held religious beliefs. No teacher who fails or refuses to teach such material under this Act shall be subject to any fine, penalty, injunction, administrative

proceeding, or other civil or criminal liability for the failure or refusal. The school may, in its discretion, arrange for another teacher to teach the material in question;

- (2) A parent or legal guardian shall not be required to ensure the attendance of the parent's or legal guardian's child at sexuality health education classes if the material promotes or otherwise addresses homosexuality or homosexual relationships, if doing so would violate the parent's or legal guardian's sincerely held religious beliefs. No parent or legal guardian who fails or refuses to ensure the attendance of the parent's or legal guardian's child under this Act shall be subject to any fine, penalty, injunction, administrative proceeding, or other civil or criminal liability for the failure or refusal; and
- (3) A student shall be excused from sexuality health education classes or any portion thereof pursuant to this Act, only upon the written request of the student's parent or legal guardian. A student shall not be subject to any disciplinary action, academic penalty, or other sanction if the student's parent or legal guardian requests that the student not receive instruction under this Act.

SECTION 14. Section 321-11.1, Hawaii Revised Statutes, is amended to read as follows:

"[+]§321-11.1[+] Medically accurate sexuality health education. (a) Sexuality health education programs funded by the State shall provide medically accurate and factual information that is age appropriate and includes education on abstinence, contraception, and methods of disease prevention to prevent unintended pregnancy and sexually transmitted disease, including human immunodeficiency virus.

(b) For the purposes of this section:

"Age appropriate" means suitable to a particular age or age group based on developing cognitive, emotional, and behavioral capacity typical for that age or age group.

"Factual information" means medical, psychiatric, psychological, empirical, or statistical information that is verified or supported by research conducted by recognized medical, psychiatric, psychological, and public health professionals or organizations.

"Medically accurate" means verified or supported by research conducted in compliance with accepted scientific methods and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the federal Centers for Disease Control and Prevention, the American Public Health Association, the American Academy of

Pediatrics, and the American College of Obstetricians and Gynecologists.

"Sexuality health education" means education in any medium regarding human development and sexuality, including education on pregnancy, family planning, and sexually transmitted diseases."

(c) A teacher shall not be required to teach sexuality health education material that promotes or otherwise addresses homosexuality or homosexual relationships, if doing so would violate the teacher's sincerely held religious beliefs. No teacher who fails or refuses to teach such material under this section shall be subject to any fine, penalty, injunction, administrative proceeding, or other civil or criminal liability for the failure or refusal. The school may, in its discretion, arrange for another teacher to teach the material in question.

(d) A parent or legal guardian shall not be required to ensure the attendance of the parent's or legal guardian's child at sexuality health education classes if the material promotes or otherwise addresses homosexuality or homosexual relationships, if doing so would violate the parent's or legal guardian's sincerely held religious beliefs. No parent or legal guardian who fails or refuses to ensure the attendance of the parent's or legal guardian's child under this section shall be subject to any fine, penalty, injunction, administrative

proceeding, or other civil or criminal liability for the failure or refusal.

(e) A student shall be excused from sexuality health education classes or any portion thereof pursuant to this section, only upon the written request of the student's parent or legal guardian. A student shall not be subject to any disciplinary action, academic penalty, or other sanction if the student's parent or legal guardian requests that the student not receive instruction under this section.

SECTION 4. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by inserting the words "Part III" immediately following Section 14 of the new Part II of this bill as amended.

SECTION 5. Senate Bill No. 1 H.D. 1 RELATING TO EQUAL RIGHTS, is amended by renumbering Sections 13, 14, 15, and 16 as Sections 15, 16, 17, and 18, as follows:

SECTION 15. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 16. In codifying the new sections added by section 2 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 17. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 18. This Act shall take effect on December 2, 2013.

<u>CARRIED</u>	<u>X</u> <u>FAILED TO CARRY</u>	<u>WITHDRAWN</u>
<i>Mia L. T. DeLoach</i>		
CHIEF CLERK, HOUSE OF REPRESENTATIVES		