

HOUSE OF REPRESENTATIVES

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

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

"SECTION 1. 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.

The legislature further finds that, while same sex marriage would be a great advancement for human liberty, this change, could have serious implications if steps are not taken to protect the liberties and equal rights of those religious organizations and believers who cannot conscientiously recognize or facilitate same-sex civil marriages. There will be no net gain for human liberty and equal rights if same-sex couples are permitted to oppress religious dissenters in the same way that those dissenters, when they had the power to do so, oppressed same-sex couples. There is no reason to let either side oppress the other. Same-sex couples should not be denied the right to marriage, and the State should not force dissenting religious believers or organizations to recognize or facilitate same-sex marriage.

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; and

- (2) Protect religious freedom and liberty by:
 - (A) Ensuring that no clergy or other officer of any religious organization will be required to solemnize any marriage, in accordance with the Hawaii State Constitution and the United States Constitution; and
 - (B) Clarifying that unless a religious organization allows use of its facilities or grounds by the general public for weddings for a profit, such organization shall not be required to make its facilities or grounds available for solemnization of any marriage celebration; and
- (3) Harmonize the right to equal protection under the law for same-sex couples with the equally important right to the free exercise of religion.

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

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

"CHAPTER

RELIGIOUS FREEDOM RESTORATION ACT

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

- (1) It shall be the policy of the State that the compelling interest test in the free exercise of religion, as established by the United States Supreme Court under *Shubert v. Verner*, 374 U.S. 398 (1963), shall be the standard applicable by the courts of this State in all cases where religious exercise is substantially burdened; and
- (2) This chapter shall provide a claim or defense to persons whose religious exercise is substantially burdened by government.

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

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

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

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

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

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

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

"§572-A Continuity of rights; civil union and reciprocal beneficiary relationships. (a) Two individuals who are civil union partners or reciprocal beneficiaries with each other and who seek to marry each other shall be permitted to apply for a marriage license under section 572-6 and to marry each other under this chapter without first terminating their civil union

or reciprocal beneficiary relationship; provided that the two individuals are otherwise eligible to marry under this chapter.

(b) The couple's civil union or reciprocal beneficiary relationship shall continue uninterrupted until the solemnization of the marriage consistent with this chapter, and the solemnization of the couple's marriage shall automatically terminate the couple's civil union or reciprocal beneficiary relationship.

(c) The act of seeking a license for or entering into a marriage under this chapter shall not diminish any of the rights, benefits, protections, and responsibilities that existed previously due to the couple's earlier status as civil union partners or reciprocal beneficiaries.

(d) The rights, benefits, protections, and responsibilities created by the civil union or reciprocal beneficiary relationship shall be continuous through solemnization of the marriage and deemed to have accrued as of the first date these rights existed under the civil union or reciprocal beneficiary relationship; provided that the civil union or reciprocal beneficiary relationship was in effect at the time of the solemnization of the couple's marriage to each other.

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

(f) Property held by the couple in tenancy by the entirety shall be subject to section 509-3.

§572-B Interpretation of terminology to be gender neutral. When necessary to implement the rights, benefits, protections, and responsibilities of spouses under the laws of this State, all gender-specific terminology, such as "husband", "wife", "widow", "widower", or similar terms, shall be construed in a gender-neutral manner. This interpretation shall apply to all sources of law, including statutes, administrative rules, court decisions, common law, or any other source of law.

§572-C Reliance on federal law. Any law of this State that refers to, adopts, or relies upon federal law shall apply to all marriages recognized under the laws of this State as if federal law recognized such marriages in the same manner as the laws of this State so that all marriages receive equal treatment.

§572-D Refusal to solemnize a marriage. Nothing in this chapter shall be construed to require 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

pursuant to this chapter to solemnize any marriage. No such person who fails or refuses to solemnize any marriage under this section for any reason shall be subject to any fine, penalty, injunction, administrative proceeding, or other civil liability for the failure or refusal.

§572-E Religious organizations and facilities; liability exemption under certain circumstances. Notwithstanding any other law to the contrary, no religious organization shall be subject to any fine, penalty, injunction, administrative proceeding, or civil liability for refusing to make its facilities or grounds available for solemnization of any marriage celebration under this chapter; provided that the religious organization does not make its facilities or grounds available to the general public for solemnization of any marriage celebration for a profit.

For purposes of this section, a religious organization accepting donations from the public, providing religious services to the public, or otherwise permitting the public to enter the religious organization's premises shall not constitute "for a profit".

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,]~~ permitted between two individuals without regard to gender, 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]~~ two siblings of the half as well as to the whole blood, uncle and niece, uncle and nephew, aunt and nephew, or aunt and niece, 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;]~~ Neither party has at the time any

lawful wife, husband, or civil union partner living, except as provided in section 572-A;

- (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]~~ parties 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]~~ parties 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 572-3, Hawaii Revised Statutes, is amended to read as follows:

"§572-3 Contracted without the State. Marriages between ~~[a man and a woman]~~ two individuals regardless of gender and legal [in the country] where contracted shall be held legal in the courts of this State."

SECTION 6. Section 572-6, Hawaii Revised Statutes, is amended to read as follows:

"§572-6 Application; license; limitations. To secure a license to marry, the persons applying for the license shall appear personally before an agent authorized to grant marriage licenses and shall file with the agent an application in writing. The application shall be accompanied by a statement signed and sworn to by each of the persons, setting forth: the person's full name, date of birth, social security number, residence; their relationship, if any; the full names of parents; and that all prior marriages~~[,]~~ or civil unions, if any, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution. If all prior marriages or civil unions, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution, the statement shall also set forth the date of death of the last prior spouse or the date and jurisdiction in which the last decree of dissolution was entered. Any other information consistent with the standard marriage certificate as recommended by the Public Health Service, National Center for Health Statistics, may be requested for statistical or other purposes, subject to approval of and modification by the department of health; provided that the information shall be

provided at the option of the applicant and no applicant shall be denied a license for failure to provide the information. The agent shall indorse on the application, over the agent's signature, the date of the filing thereof and shall issue a license which shall bear on its face the date of issuance. Every license shall be of full force and effect for thirty days commencing from and including the date of issuance. After the thirty-day period, the license shall become void and no marriage ceremony shall be performed thereon.

It shall be the duty of every person, legally authorized to grant licenses to marry, to immediately report the issuance of every marriage license to the agent of the department of health in the district in which the license is issued, setting forth all facts required to be stated in such manner and on such form as the department may prescribe."

SECTION 7. Section 572-13, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Recordkeeping. Every person authorized to solemnize marriage shall make and preserve a record of every marriage by the person solemnized, comprising the names of the [~~man and woman~~] parties married, their place of residence, and the date of their marriage.

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

(b) Marriages, reported by whom. It shall be the duty of every person, legally authorized to perform the marriage ceremony, to report within three business days every marriage ceremony, performed by the person, to the agent of the department of health in the district in which the marriage takes place setting forth all facts required to be stated in a standard certificate of marriage, the form and contents of which shall be prescribed by the department of health[-]; provided that if any person who has solemnized a marriage fails to report it to the agent of the department of health, the parties married may provide the department of health with a notarized affidavit attesting to the fact that they were married and stating the date and place of the solemnization of the marriage. Upon the receipt of that affidavit by the department of health, the marriage shall be deemed to be valid as of the date of the solemnization of the marriage stated in the affidavit; provided that the requirements of section 572-1 are met."

SECTION 8. Section 572B-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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

SECTION 9. Section 572C-2, Hawaii Revised Statutes, is amended to read as follows:

"~~[§]572C-2~~ **Findings.** ~~[The legislature finds that the people of Hawaii choose to preserve the tradition of marriage as a unique social institution based upon the committed union of one man and one woman. The legislature further finds that because of its unique status, marriage provides access to a multiplicity of rights and benefits throughout our laws that are contingent upon that status. As such, marriage should be subject to restrictions such as prohibiting respective parties to a valid marriage contract from standing in relation to each other, i.e., brother and sister of the half as well as to the whole blood, uncle and niece, aunt and nephew.~~

~~However, the legislature concurrently]~~ The legislature acknowledges that there are many individuals who have significant personal, emotional, and economic relationships with another individual yet are prohibited by ~~[such]~~ legal restrictions from marrying. For example, two individuals who are related to one another, such as a widowed mother and her unmarried son~~[, or two individuals who are of the same gender]~~. Therefore, the legislature believes that certain rights and benefits presently available only to married couples should be made available to couples comprised of two individuals who are legally prohibited from marrying one another."

SECTION 10. Notwithstanding any other provision of law, nothing in this Act shall invalidate any civil union or reciprocal beneficiary relationship in existence before the effective date of this Act. Any such civil unions or reciprocal beneficiary relationships shall continue until terminated in accordance with applicable law.

SECTION 11. The department of health may, in its discretion, make any changes that it deems necessary to internal procedures or forms, to aid in the implementation of this Act.

SECTION 12. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity shall affect all other provisions or applications of the Act that can be given effect, and to this end the provisions of this Act are inseverable.

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

SECTION 14. This Act shall take effect on November 18, 2013."

CARRIED

FAILED TO CARRY

WITHDRAWN

CHIEF CLERK, HOUSE OF REPRESENTATIVES