

HOUSE OF REPRESENTATIVES

AMENDMENT TO: S.B. No. 1, H.D. 1OFFERED BY: DATE: 11/3/13

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

"SECTION 1. 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 benefits and protections to those couples. This legislature had previously 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 receive treatment equal to a marriage under federal law.

The legislature further finds that in *Garden State Equity v. Dow*, Docket No. L-1729-11 (New Jersey, September 27, 2013), the superior court of New Jersey granted summary judgment extending civil marriage to same-sex couples. Citing *Windsor*, the New Jersey appellate court held that by creating two distinct labels - marriage for opposite-sex couples and civil unions for same-sex couples - New Jersey civil union partners are excluded from certain federal benefits that legally married same-sex couples are able to enjoy. The court held that this unequal treatment requires New Jersey to extend civil marriage to same-sex couples to satisfy the equal protection guarantees of the New Jersey Constitution.

The legislature further finds that, while same-sex civil 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.

Sexual minorities and religious minorities make essentially parallel claims on the larger society, and the strongest features of the case for same-sex civil marriage make an equally strong case for protecting the religious liberty of dissenters. Both same-sex couples and committed religious believers argue that some aspects of human identity are so fundamental that they should be left to each individual, free of all nonessential regulation, even when manifested in conduct. For same-sex couples, the conduct at issue is to join personal commitment and sexual expression in a multifaceted intimate relationship with the person they love. For religious believers, the conduct at issue is to live and act consistently with the demands made by the Being that they believe made us all and holds the whole world together.

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

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

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

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

The Hawaii supreme court's seminal ruling in *Baehr v. Miike*, 74 Haw. 530, 852 P.2 44 (Haw. 1993), spoke to the State's

authority to issue marriage licenses by holding that the department of health could not deny a same-sex couple a marriage license solely on the basis of gender. But efforts to change the Hawaii marriage law to effectuate this principle run the risk of exceeding the scope of what is required under equal protection and entering into realms that are essential for citizens to fully exercise their religious freedom.

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

It is the intent of the legislature that:

- (1) Same-sex couples be able to take full advantage of federal benefits and protections granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State;
- (2) Marriages solemnized in accordance with this Act be equal in all respects to the marriages of opposite-sex couples under the laws of this State;
- (3) 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;
- (4) All provisions of law regarding marriage be applied equally to same-sex couples and opposite-sex couples, regardless of whether this Act amends any such provision of law; and
- (5) The statutory system of inequity within domestic relations be reformed to ensure that the bundle of rights afforded to married couples, including the unique meanings and traditions associated with it, are not denied by the State (in its capacity as a licensing authority) to any couple solely on the basis of gender.

Accordingly, the purpose of this Act is to harmonize the right to equal protection under the law for same-sex couples, as guaranteed by the Fourteenth and Fifth amendments of the United States Constitution and article I, section 3 of the Constitution of the State of Hawaii, with the equally important right to the free exercise of religion, as guaranteed by the First Amendment of the United States Constitution and article I, section 4 of the Constitution of 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 *Sherbert 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 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . LICENSING AND CERTIFICATION
OF DOMESTIC RELATIONS CONTRACTS**

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

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

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

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

- (1) The applicants do not stand in relation to each other of ancestor and descendant of any degree whatsoever, siblings of the half as well as the whole blood, uncle

- and niece, uncle and nephew, aunt and nephew, aunt and niece, whether the relationship is the result of the issue of parents married or not married to each other;
- (2) Both applicants at the time of applying for the license are at least sixteen years of age; provided that with the written approval of the family court of the circuit within which the minor resides, a marriage license may be issued to applicants under the age of sixteen years, but in no event under the age of fifteen years, in accordance with this section;
 - (3) Neither applicant at the time of applying for the marriage license has any lawful living spouse;
 - (4) Both applicants consent to marriage with neither applicant consenting under force, duress, or fraud;
 - (5) Neither applicant is a person afflicted with any loathsome disease concealed from, and unknown to, the other party;
 - (6) The applicants are applying for the marriage license with an agent duly appointed and authorized to grant marriage licenses; and
 - (7) The marriage ceremony is performed in the State by a person or society with a valid license to solemnize marriages, and the applicants and the person performing the marriage ceremony are all physically present at the same place and time for the marriage ceremony.

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

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

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

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

§321-D Requisites of reciprocal beneficiary certificate.

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

- (1) Each of the applicants is at least eighteen years old;
- (2) Neither of the applicants is married, a party to another reciprocal beneficiary relationship, or a partner in a civil union;
- (3) The applicants are legally prohibited from obtaining a marriage license under this part;
- (4) Consent of either party to the reciprocal beneficiary relationship has not been obtained by force, duress, or fraud; and
- (5) The applicants have signed a declaration of reciprocal beneficiary relationship in accordance with this part.

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

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

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

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

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

- (1) Either party to the reciprocal beneficiary relationship obtains the rights and obligations of marriage in accordance with this part; or
- (2) Either party to the reciprocal beneficiary relationship obtains the rights and obligations of marriage outside the State in accordance with laws outside the State.

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

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

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

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

§321-H Marriage license; agent to grant; fee. (a) The director of health shall appoint, and at its pleasure remove, one or more suitable persons as agents authorized to grant marriage licenses under this part in each judicial circuit. The agents may issue licenses from any state facility when deemed necessary by the director. Any agent appointed under this subsection and receiving an application for a marriage license shall collect from the applicant a fee of \$60, of which the agent shall retain \$9 for the agent's benefit and compensation and shall remit \$51 to the director of health, except as otherwise provided under subsection (b). Upon the receipt of remittances under this subsection, the director of health shall deposit:

- (1) \$32 for each license issued to the credit of the general fund of the State;
- (2) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 346-7.5;
- (3) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 601-3.6; and

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

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

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

- (1) \$41 for each license issued to the credit of the general fund of the State;
- (2) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 346-7.5;
- (3) \$4.50 for each license issued to the credit of the spouse and child abuse special account established under section 601-3.6; and
- (4) \$10 for each license issued to the credit of the birth defects special fund established under section 321-426.

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

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

§321-I Applications; license; limitations. To secure a marriage license, the applicants for the license shall appear personally before an agent authorized to grant marriage licenses under section 321-H and shall file with the agent an application in writing. The application shall be accompanied by a statement signed and sworn to by each applicant, setting forth:

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

If all prior marriages or civil unions, other than an existing civil union between the persons applying for a 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. The license shall authorize the licensees to solemnize the marriage within thirty days commencing from and including the date of issuance. Upon solemnization at a marriage ceremony in accordance with this part, all rights and obligations of marriage authorized under law shall be granted to the licensees. However, if after the thirty-day period the marriage is not solemnized at a marriage ceremony, the license shall become void and no marriage ceremony shall be performed thereafter without the issuance of a new marriage license.

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 used, setting forth all facts required to be stated in a manner and on a form as the department may prescribe.

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

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

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

(b) The authority of any appropriately licensed person to solemnize a marriage, including any minister, priest, or officer of any religious denomination or society licensed to solemnize marriage in accordance with the usages of the denomination or society, shall be absolute. No refusal to solemnize a marriage by any person licensed to solemnize a marriage, including any licensed minister, priest, or officer of any religious denomination or society shall result in a civil claim or cause of action challenging the refusal under law, nor shall any action by any state or county agency to penalize or withhold benefits from any person licensed to solemnize marriage, including a licensed minister, priest, or officer of any religious denomination or society, or the denomination or society itself, under the laws of this State or its political subdivisions including laws regarding employment discrimination, housing, public accommodations, educational institutions, licensing, government contracts or grants, or tax-exempt status, because of the refusal of a person licensed to solemnize marriage, including any minister, priest, or officer of any religious denomination or society to solemnize a marriage.

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

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

(b) Each person legally authorized to perform a marriage ceremony shall 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.

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

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

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

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

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

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

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

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

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

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

"PART . RELIGIOUS FREEDOM IN PUBLIC ACCOMMODATIONS

§489- Religious freedom in marriage guaranteed.

Absolute freedom of conscience in all matters of religious sentiment, belief, and worship pertaining to marriage shall be

guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; provided that the liberty of conscience secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the State.

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

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

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

§489- Individuals and small businesses protected. (a) No individual, sole proprietor, or small business shall be required to take any of the following actions if doing so would cause the individual, sole proprietor, or small business to violate their sincerely held religious belief:

- (1) Provide any facility, good, or service that assists or promotes the solemnization or celebration of any marriage, or provide counseling or other services that facilitate the formation or perpetuation of any marriage;
 - (2) Provide benefits to any spouse of an employee; or
 - (3) Provide housing, lodging, or similar accommodation to any couple.
- (b) This section shall not apply if either:
- (1) A party to the marriage is unable to obtain any similar good or service, employment benefits, or housing elsewhere without substantial hardship; or
 - (2) In the case of an individual who is a government employee or official, another government employee or official is not promptly available and willing to

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

(c) For purposes of this section:

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

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

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

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

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

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

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

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

"PART . RELIGIOUS FREEDOM IN MARRIAGE

§572- Religious freedom in marriage guaranteed.

Absolute freedom of conscience in all matters of religious sentiment, belief, and worship pertaining to this chapter shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion;

provided that the liberty of conscience secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the State.

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

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

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

§572- Individuals and small businesses protected. (a) No individual, sole proprietor, or small business shall be required to take any of the following actions if doing so would cause the individual, sole proprietor, or small business to violate their sincerely held religious belief:

- (1) Provide any facility, good, or service that assists or promotes the solemnization or celebration of any marriage, or provide counseling or other services that facilitate the formation or perpetuation of any marriage;
 - (2) Provide benefits to any spouse of an employee; or
 - (3) Provide housing, lodging, or similar accommodation to any couple.
- (b) This section shall not apply if either:
- (1) A party to the marriage is unable to obtain any similar good or service, employment benefits, or housing elsewhere without substantial hardship; or
 - (2) In the case of an individual who is a government employee or official, another government employee or official is not promptly available and willing to provide the requested government service without inconvenience or delay; provided that no judicial

officer authorized to solemnize marriages shall be required to solemnize any marriage if to do so would violate the judicial officer's sincerely held religious beliefs.

(c) For purposes of this section:

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

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

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

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

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

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

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

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

"~~[§]~~**§321-426**~~[§]~~ **Birth defects special fund.** There is established within the state treasury the birth defects special fund to be administered and expended by the department of health, into which shall be deposited fees remitted pursuant to ~~[section]~~ sections 321-H and 572-5. Moneys in the special fund shall be used for the payment of the operating expenses of the birth defects program."

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

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

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

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

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

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

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

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

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

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

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

(c) A civil union relationship under subsection (b) shall continue uninterrupted until the parties to the civil union have solemnized their marriage consistent with chapter 321, Hawaii

Revised Statutes, as amended by this Act, and the solemnization of the marriage shall automatically terminate the civil union.

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

- (1) Applying for a marriage license pursuant to chapter 321, Hawaii Revised Statutes, as amended by this Act, by filing their application, in person or by mail with the department of health;
- (2) Providing a signed, notarized declaration that the civil union was entered into in this State and that the civil union partners are seeking to convert their civil union into a marriage;
- (3) Paying the marriage license fee as required by chapter 321, Hawaii Revised Statutes, as amended by this Act; and
- (4) Providing all information required by the marriage license application.

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

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

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

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

SECTION 14. 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 15. 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.

