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## A BILL FOR AN ACT

RELATING TO RELIGIOUS FREEDOM.

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

1           SECTION 1. The legislature finds that in 2013, the  
2 President responded to the decision of the United States Supreme  
3 Court in *U.S. v. Windsor*, 570 U.S. \_\_\_, 133 S. Ct. 2675 (2013)  
4 by recognizing that "Americans hold a wide range of views" on  
5 the issue of same-sex marriage, and "maintaining our Nation's  
6 commitment to religious freedom" is "vital". Subsequent to the  
7 Court's next landmark ruling in *Obergefell v. Hodges*, 576 U.S.  
8 \_\_\_, 135 S. Ct. 2071 (2015), legal scholars agree that conflicts  
9 between same-sex marriage and religious liberty are inevitable  
10 and, therefore, best addressed through legislation. In the  
11 *Obergefell v. Hodges* opinion, the Court held that same-sex  
12 couples have a right to marry, but also noted that "Many who  
13 deem same-sex marriage to be wrong reach that conclusion based  
14 on decent and honorable religious or philosophical premises, and  
15 neither they nor their beliefs are disparaged here."

16           The legislature thus also finds that the State is obligated  
17 to protect religious freedom from government intrusion by  
18 remedying, deterring, and preventing government interference



1 with religious exercise in a way that complements the  
2 protections mandated by the constitutions of the State of Hawaii  
3 and the United States. The societal benefit of laws that  
4 protect the free exercise of religious beliefs and moral  
5 convictions about marriage is that private citizens and  
6 institutions will be encouraged to demonstrate tolerance for  
7 those beliefs and convictions and therefore contribute to a more  
8 respectful, diverse, and peaceful society.

9 The purpose of this Act, to be known as the Hawaii  
10 Religious Freedom Restoration Act of 2016, is to:

11 (1) Protect religious freedom and liberty by establishing  
12 as a matter of State policy that the compelling  
13 interest test in the free exercise of religion, as  
14 established by the United States Supreme Court under  
15 *Shubert v. Verner*, 374 U.S. 398 (1963), shall be the  
16 standard applicable by the courts of this State in all  
17 cases where religious exercise is substantially  
18 burdened;

19 (2) Provide a means of judicial relief to persons whose  
20 religious exercise has been substantially burdened in  
21 violation of this Act; and



1 (3) Harmonize the right of equal protection under the law  
2 for same-sex couples with the equally important right  
3 to the free exercise of religion in the areas of  
4 marriage and public accommodations.

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

8 "CHAPTER

9 RELIGIOUS FREEDOM RESTORATION ACT

10 § -1 Findings. (a) The legislature finds that:

- 11 (1) The authors of the Bill of Rights secured the free  
12 exercise of religion as an unalienable right under the  
13 First Amendment of the United States Constitution;
- 14 (2) The free exercise of religion is also guaranteed under  
15 article I, section 4 of the Constitution of the State  
16 of Hawaii;
- 17 (3) Laws neutral toward religion may substantially burden  
18 religious exercise as surely as laws intended to  
19 interfere with religious exercise;
- 20 (4) Government should not substantially burden religious  
21 exercise without compelling justification;



1 (5) The United States Supreme Court in a recent decision  
2 virtually eliminated the requirement that the  
3 government justify burdens on religious exercise  
4 imposed by laws neutral toward religion; and

5 (6) The compelling interest test in the free exercise of  
6 religion established by the United States Supreme  
7 Court is a workable test for striking sensible  
8 balances between religious liberty and competing  
9 government interests.

10 (b) The legislature declares its intent that:

11 (1) It shall be the policy of the State that the  
12 compelling interest test in the free exercise of  
13 religion, as established by the United States Supreme  
14 Court under *Shubert v. Verner*, 374 U.S. 398 (1963),  
15 shall be the standard applicable by the courts of this  
16 State in all cases where religious exercise is  
17 substantially burdened; and

18 (2) This chapter shall provide a claim or defense to  
19 persons whose religious exercise is substantially  
20 burdened by government.

21 § -2 **Free exercise of religion protected.** (a) The  
22 State and its political subdivisions shall not substantially



1 burden a person's exercise of religion even if the burden  
2 results from a rule of general applicability, except as provided  
3 in subsection (b).

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

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

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

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

18 (e) Nothing in this chapter shall be construed to affect,  
19 interpret, or in any way address that portion of article I,  
20 section 4 of the Constitution of the State of Hawaii,  
21 prohibiting laws respecting the establishment of religion.

22 Granting government funding, benefits, or exemptions, to the



1 extent permissible under article I, section 4 of the  
2 Constitution of the State of Hawaii, shall not constitute a  
3 violation of this chapter."

4 SECTION 3. Chapter 489, Hawaii Revised Statutes, is  
5 amended by adding a new part to be appropriately designated and  
6 to read as follows:

7 "PART . RELIGIOUS FREEDOM IN PUBLIC ACCOMMODATIONS

8 §489- Religious freedom in marriage guaranteed.

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

16 §489- Religious organizations protected. No religious  
17 educational, healthcare, or denominational organization; no  
18 organization operated for charitable or educational purposes and  
19 that is supervised, operated, controlled by, connected with, or  
20 publicly identified with a religious organization or group,  
21 regardless of whether its activities are deemed wholly or partly  
22 religious; and no individual employed or supervised by any of



1 the foregoing organizations, while acting in the scope of that  
2 employment or supervision, shall be required to take any of the  
3 following actions if doing so would cause the organization or  
4 individual to violate their sincerely held religious beliefs:

5 (1) Provide services, accommodations, advantages,  
6 facilities, goods, benefits, or privileges for a  
7 purpose related to the solemnization or celebration of  
8 any marriage;

9 (2) Solemnize or celebrate any marriage; or

10 (3) Treat as valid any marriage;

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

16 **§489- Individuals and small businesses protected.** (a)

17 No individual, sole proprietor, or small business shall be  
18 required to take any of the following actions if doing so would  
19 cause the individual, sole proprietor, or small business to  
20 violate their sincerely held religious belief:

21 (1) Provide any facility, good, or service that assists or  
22 promotes the solemnization or celebration of any



1 marriage, or provide counseling or other services that  
2 facilitate the formation or perpetuation of any  
3 marriage;

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

5 (3) Provide housing, lodging, or similar accommodation to  
6 any couple.

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

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

11 (2) In the case of an individual who is a government  
12 employee or official, another government employee or  
13 official is not promptly available and willing to  
14 provide the requested government service without  
15 inconvenience or delay; provided that no judicial  
16 officer authorized to solemnize marriages shall be  
17 required to solemnize any marriage if to do so would  
18 violate the judicial officer's sincerely held  
19 religious beliefs.

20 (c) For purposes of this section:

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



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

3 (2) Is operated consistently with those beliefs.

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

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

18 (2) Any action by any state or county agency to penalize  
19 or withhold benefits from any protected entity or  
20 individual under any laws of this State or its  
21 political subdivisions, including but not limited to  
22 laws regarding employment discrimination, housing,



1 public accommodations, educational institutions,  
2 licensing, government contracts or grants, or tax-  
3 exempt status.

4 **§489- 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 572, 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 MARRIAGE

12 **§572- Religious freedom in marriage guaranteed.**

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

20 **§572- 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 **§572- 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           "Religious organization" means a privately held corporation  
5 or other legal entity that both:

6           (1) Holds itself out publicly as adhering to specific  
7           religious beliefs; and

8           (2) Is operated consistently with those beliefs.

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

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

13           (2) Has five or fewer employees; or

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

16           **§572- 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 laws regarding  
5           employment discrimination, housing, public  
6           accommodations, educational institutions, licensing,  
7           government contracts or grants, or tax-exempt status.

8           **§572- Construction.** This part shall be construed in  
9           favor of a broad protection of religious exercise, to the  
10          maximum extent permitted by the Constitution of the State of  
11          Hawaii and the United States Constitution."

12          SECTION 5. Section 489-2, Hawaii Revised Statutes, is  
13          amended as by amending the definition of "place of public  
14          accommodation" to read as follows:

15          "Place of public accommodation" means a business,  
16          accommodation, refreshment, entertainment, recreation, or  
17          transportation facility of any kind whose goods, services,  
18          facilities, privileges, advantages, or accommodations are  
19          extended, offered, sold, or otherwise made available to the  
20          general public as customers, clients, or visitors. By way of  
21          example, but not of limitation, place of public accommodation  
22          includes facilities of the following types:



- 1           (1) A facility providing services relating to travel or  
2           transportation;
- 3           (2) An inn, hotel, motel, or other establishment that  
4           provides lodging to transient guests;
- 5           (3) A restaurant, cafeteria, lunchroom, lunch counter,  
6           soda fountain, or other facility principally engaged  
7           in selling food for consumption on the premises of a  
8           retail establishment;
- 9           (4) A shopping center or any establishment that sells  
10          goods or services at retail;
- 11          (5) An establishment licensed under chapter 281 doing  
12          business under a class 4, 5, 7, 8, 9, 10, 11, or 12  
13          license, as defined in section 281-31;
- 14          (6) A motion picture theater, other theater, auditorium,  
15          convention center, lecture hall, concert hall, sports  
16          arena, stadium, or other place of exhibition or  
17          entertainment;
- 18          (7) A barber shop, beauty shop, bathhouse, swimming pool,  
19          gymnasium, reducing or massage salon, or other  
20          establishment conducted to serve the health,  
21          appearance, or physical condition of persons;



- 1           (8) A park, a campsite, or trailer facility, or other  
2           recreation facility;
- 3           (9) A comfort station; or a dispensary, clinic, hospital,  
4           convalescent home, or other institution for the  
5           infirm;
- 6           (10) A professional office of a health care provider, as  
7           defined in section 323D-2, or other similar service  
8           establishment;
- 9           (11) A mortuary or undertaking establishment; and
- 10          (12) An establishment that is physically located within the  
11          premises of an establishment otherwise covered by this  
12          definition, or within the premises of which is  
13          physically located a covered establishment, and which  
14          holds itself out as serving patrons of the covered  
15          establishment.

16          "Place of public accommodation" does not include the real  
17 property, buildings, or other areas owned or leased by a  
18 religious organization and regularly used for religious  
19 purposes, notwithstanding whether the religious organization  
20 permits the community to also use some or all of the real  
21 property, buildings, or other areas owned or leased by the  
22 religious organization.



1 No place of public accommodation defined in this section  
2 shall be requested to reconstruct any facility or part thereof  
3 to comply with this chapter."

4 SECTION 6. Section 489-3, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "**§489-3 Discriminatory practices prohibition.** (a) Unfair  
7 discriminatory practices that deny, or attempt to deny, a person  
8 the full and equal enjoyment of the goods, services, facilities,  
9 privileges, advantages, and accommodations of a place of public  
10 accommodation on the basis of race, sex, including gender  
11 identity or expression, sexual orientation, color, religion,  
12 ancestry, or disability are prohibited.

13 (b) Notwithstanding any other law to the contrary, and  
14 except as provided in subsection (c), no individual, sole  
15 proprietor, or small business shall be required to:

16 (1) Provide goods or services that assist or promote the  
17 solemnization or celebration of any marriage or civil  
18 union, or provide counseling or other services that  
19 directly facilitate the perpetuation of any marriage  
20 or civil union; or

21 (2) Provide housing or lodging to any couple,



1 if providing such goods, services, housing, or lodging would  
2 cause such individuals, sole proprietors, or owners of such  
3 small businesses to violate their sincerely held religious  
4 beliefs.

5 For the purpose of this subsection, "small business" means  
6 a legal entity other than a natural person that provides  
7 services that are primarily performed by an owner of the  
8 business; or a legal entity that has five or fewer employees;  
9 or in the case of a legal entity that offers housing or lodging  
10 for rent, that owns five or fewer units of housing or lodging.

11 (c) Subsection (b) shall not apply if a party to the  
12 marriage or civil union is unable to obtain any similar goods or  
13 services, or housing or lodging elsewhere, without substantial  
14 hardship.

15 (d) Notwithstanding any other provision in this chapter, no  
16 refusal to provide goods, services, facilities, privileges,  
17 advantages, or accommodations pursuant to subsection (b) shall  
18 constitute an unfair discriminatory practice and shall not  
19 result in any civil or criminal claim or cause of action  
20 challenging such refusal, nor result in any action by the State  
21 or any of its political subdivisions to penalize or withhold  
22 benefits or privileges, including but not limited to tax



1 exemptions or governmental contracts, grants, or licenses, from  
2 any protected entity or individual."

3 SECTION 7. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 8. This Act shall take effect upon its approval.

6

INTRODUCED BY:

*[Signature]*  
*[Signature]*  
*Felhi Poul*

JAN 27 2016



# H.B. NO. 276A

**Report Title:**

Religious Freedom; Public Accommodations; Marriage.

**Description:**

Provides that government should not substantially burden religious exercise without compelling justification. Establishes protections for religious freedom, including in the laws concerning public accommodations and marriage.

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

