

JAN 21 2011

A BILL FOR AN ACT

RELATING TO CIVIL UNIONS.

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

1 SECTION 1. The legislature recognizes that the State has
2 an essential duty to its people to provide equal protection
3 under the law pursuant to article I, section 5 of the Hawaii
4 State Constitution. The State did not create marriage or the
5 traditional nuclear family; rather the State, over time, has
6 woven into our laws a collection of rights and benefits to
7 support and sanction traditional marriage. This collection of
8 rights and benefits has provided substantial advantages to
9 married couples, but the duty of equal protection mandates that
10 these rights and benefits may not be exclusive or be denied to
11 similarly situated individuals in loving and committed
12 relationships who are not eligible to marry or for whom marriage
13 is not feasible.

14 Accordingly, to meet our constitutional obligation of equal
15 protection to Hawaii's people, the legislature believes that the
16 same rights, benefits, protections, and responsibilities under
17 state law, whether derived from statutes, administrative rules,
18 court decisions, the common law, or any other source of Hawaii



1 law, that are currently granted to married couples must also be
2 extended to certain other individuals in loving and committed
3 relationships. The legislature also acknowledges the
4 traditional and special role of marriage in our society and
5 seeks to protect it by establishing a new and separate status
6 for these other loving and committed relationships. In order to
7 both respect traditional marriage and provide equity to other
8 couples, it is the intent of the legislature to recognize civil
9 unions in Hawaii.

10 The purpose of this Act is to provide such equality of
11 rights, benefits, protections, and responsibilities to loving
12 and committed relationships between certain other individuals
13 who are not eligible to marry or for whom marriage is not
14 feasible by recognizing and adopting civil unions in Hawaii. By
15 establishing the status of civil unions in our State, it is not
16 the legislature's intent to revise the definition or eligibility
17 requirements of marriage under chapter 572, Hawaii Revised
18 Statutes.

19 PART I

20 CIVIL UNIONS; POLICY



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

4 "CHAPTER

5 CIVIL UNIONS

6 § -1 Definitions. As used in this chapter, unless the
7 context otherwise requires:

8 "Agent" means the person or persons appointed as an agent
9 or agents by the department pursuant to section -7.

10 "Civil union" means a union between two individuals
11 established pursuant to this chapter.

12 "Department" means the department of health.

13 "Director" means the director of health.

14 "Partner" means an individual who is a party to a civil
15 union established pursuant to this chapter.

16 § -2 Rights, benefits, protections, and
17 responsibilities. Partners to a civil union lawfully entered
18 into pursuant to this chapter shall have all of the same rights,
19 benefits, protections, and responsibilities under law, whether
20 derived from statutes, administrative rules, court decisions,
21 the common law, or any other source of Hawaii law, as are
22 granted to those who contract, obtain a license, and are



1 solemnized pursuant to chapter 572, including but not limited to
2 the rights, benefits, protections, and responsibilities
3 described in the following:

- 4 (1) Chapter 87A, relating to the Hawaii employer-union
5 health benefits trust fund;
- 6 (2) Chapter 431, the insurance code;
- 7 (3) Chapter 572D, the uniform premarital agreement act;
8 and
- 9 (4) Chapter 580, relating to annulment, divorce, and
10 separation.

11 The foregoing is not intended to constitute an exhaustive list
12 of rights, benefits, protections, and responsibilities
13 applicable to partners to a civil union.

14 **§ -3 Other jurisdictions.** All unions entered into in
15 other jurisdictions between two individuals not recognized under
16 section 572-3 shall be recognized as civil unions, provided that
17 the relationship meets the eligibility requirements of this
18 chapter, has been entered into under the laws of that
19 jurisdiction, and can be documented.

20 **§ -4 Applicability to other laws.** A party to a civil
21 union shall be included in any use of the terms "spouse",
22 "husband", "wife", "widow", "widower", "family", "immediate



1 family", "dependent", "next of kin", and other terms that denote
2 or describe the spousal or family relationship, including but
3 not limited to "married" and "marriage" and related terms, as
4 those terms are used throughout the law, unless the context
5 clearly indicates otherwise.

6 **§ -5 Eligibility to enter into a civil union.** A person
7 shall be eligible to enter into a civil union only if:

- 8 (1) The person is not a partner in another civil union or
9 a spouse in a marriage;
- 10 (2) The person is at least eighteen years of age;
- 11 (3) The person's consent has not been obtained by force,
12 duress, or fraud;
- 13 (4) The person is not afflicted with a loathsome disease
14 concealed from, and unknown to, the other proposed
15 partner in the civil union; and
- 16 (5) The person does not stand in relation to the other
17 proposed partner in the civil union as ancestor and
18 descendant of any degree whatsoever, siblings of the
19 half as well as to the whole blood, uncle and niece or
20 nephew, aunt and niece or nephew, whether the
21 relationship is the result of the issue of parents
22 married or not married to each other.



1 § -6 Persons under control of conservator or guardian.

2 (a) No civil union license may be issued to any applicant under
3 the supervision or control of a conservator or guardian,
4 appointed in accordance with chapter 560, unless the written
5 consent of the conservator or guardian, signed and notarized, is
6 filed with the agent.

7 (b) Any person who enters into a civil union without the
8 consent provided for in subsection (a) shall acquire no rights
9 by that civil union in the property of any person who was under
10 the control or supervision of a conservator or guardian at the
11 time the civil union was entered into.

12 § -7 Civil union license; agent to grant; fee. (a) The
13 department shall appoint, and at its pleasure remove, one or
14 more suitable persons as agents authorized to grant civil union
15 licenses under this chapter in each judicial circuit; provided
16 that the agent or agents appointed under section 572-5(a) shall
17 also grant licenses in accordance with this section. The agents
18 may issue licenses from any state facility when deemed necessary
19 by the director. Any agent appointed under this subsection and
20 receiving an application for a civil union license shall collect
21 from the applicant for the license \$60, of which the agent,
22 except those provided for in subsection (b), shall retain \$9 for



1 the agent's benefit and compensation and shall remit \$51 to the
2 director of health. Remittances collected under this subsection
3 shall be deposited and apportioned in the same manner as
4 prescribed in section 572-5(a).

5 (b) The department may appoint, as regular employees under
6 the civil service and classification laws, the number of
7 suitable persons as agents authorized to grant civil union
8 licenses for whom provision has been made in the general
9 appropriation act; provided that the agent or agents appointed
10 under section 572-5(b) shall also grant licenses in accordance
11 with this section. In the case of these agents, the full amount
12 collected from applicants shall be remitted to the director of
13 health. Remittances collected under this subsection shall be
14 deposited and apportioned in the same manner as prescribed in
15 section 572-5(b).

16 (c) Every agent appointed under this section shall
17 administer the oaths required by this chapter to be taken.

18 (d) The department or its authorized agents shall furnish
19 to each applicant for a civil union license a brochure
20 explaining rubella, the risks of infection with rubella during
21 pregnancy, and how to seek testing and immunization. The
22 department or its authorized agents shall also furnish to each



1 applicant for a civil union license information, to be provided
2 by the department, relating to population stabilization, family
3 planning, birth control, fetal alcohol and drug syndromes, and
4 acquired immune deficiency syndrome (AIDS), including the
5 availability of anonymous testing for human immunodeficiency
6 virus (HIV) infection at alternate test sites, provided that the
7 information is available.

8 (e) In addition to the fee prescribed under subsection
9 (a), the agent, except those provided for in subsection (b),
10 shall collect from the applicant for the license a surcharge of
11 \$5, of which the agent shall retain the full amount for the
12 agent's additional benefit and compensation.

13 **§ -8 Application; license; limitations.** (a) To secure
14 a license to enter into a civil union, the persons applying for
15 the license shall appear personally before an agent authorized
16 to grant civil union licenses and shall file with the agent an
17 application in writing. The application shall be accompanied by
18 a statement signed and sworn to by each of the persons, setting
19 forth: the person's full name, date of birth, social security
20 number, and residence; their relationship, if any; the full
21 names of parents; and that all prior marriages or civil unions,
22 if any, have been dissolved by death or dissolution. If all



1 prior marriages or civil unions have been dissolved by death or
2 dissolution, the statement shall also set forth the date of
3 death of the last prior spouse or civil union partner or the
4 date and jurisdiction in which the last decree of dissolution
5 was entered. The statement shall also contain a provision
6 attesting that each prospective partner consents to the
7 jurisdiction of the family courts of Hawaii for the purpose of
8 an action to obtain a decree of annulment, divorce, or
9 separation concerning the civil union, or any other order
10 authorized under chapter 580, or for any other proceeding
11 related to the partners' rights and obligations, even if one or
12 both partners do not reside in, or maintain a domicile in, this
13 State. Any other information consistent with the standard
14 marriage or civil union certificate as recommended by the Public
15 Health Service, National Center for Health Statistics, may be
16 requested for statistical or other purposes, subject to approval
17 of and modification by the department; provided that the
18 information shall be provided at the option of the applicant and
19 no applicant shall be denied a license for failure to provide
20 the information. The agent shall indorse on the application,
21 over the agent's signature, the date of the filing thereof and
22 shall issue a license which shall bear on its face the date of



1 issuance. Every license shall be of full force and effect for
2 thirty days commencing from and including the date of issuance.
3 After the thirty-day period, the license shall become void and
4 no civil union solemnization shall be performed thereon.

5 It shall be the duty of every person, legally authorized to
6 grant licenses to enter into a civil union, to immediately
7 report the issuance of every civil union license to the agent of
8 the department in the district in which the license is issued,
9 setting forth all facts required to be stated in the manner and
10 on a form as the department may prescribe.

11 § -9 Applicant apparently under age. If any applicant
12 for a license to enter into a civil union appears to any agent
13 to be under the age of eighteen years, the agent shall, before
14 granting a license to enter into the civil union, require the
15 production of a certificate of birth or other satisfactory proof
16 showing the age of the applicant.

17 § -10 Solemnization; license to perform; no requirement
18 to join persons in a civil union. (a) A civil union shall
19 become valid only upon completion of a solemnization by a person
20 licensed in accordance with this section.

21 (b) A license to solemnize civil unions may be issued to,
22 and the civil union rite may be performed and solemnized by any



1 minister, priest, or officer of any religious denomination or
2 society who has been ordained or is authorized to solemnize
3 civil unions according to the usages of the denomination or
4 society, or any religious society not having clergy but
5 providing solemnization in accordance with the rules and customs
6 of that society, or any justice or judge or magistrate, active
7 or retired, of a state or federal court in the State, upon
8 presentation to the person or society of a license to enter into
9 a civil union, as prescribed by this chapter. The person or
10 society may receive the price stipulated by the parties or the
11 gratuity tendered.

12 (c) Nothing in this section shall be construed to require
13 any person authorized to perform solemnizations under chapter
14 572 or civil unions under this chapter to solemnize a civil
15 union, and no authorized person who fails or refuses for any
16 reason to join persons in a civil union shall be subject to any
17 fine or other penalty for the failure or refusal.

18 (d) No agent may solemnize a civil union; nor may any
19 assistant or deputy of the agent solemnize a civil union.

20 (e) No person shall solemnize a civil union without first
21 having obtained a license from the department.



1 § -11 Record of solemnization; civil unions, reported by
2 whom; certified copies. (a) Recordkeeping. Every person
3 authorized to solemnize a civil union shall make and preserve a
4 record of every civil union solemnized by the person, comprising
5 the names of the persons entering into the civil union, their
6 place of residence, and the date of their civil union.

7 Every person authorized to solemnize a civil union, who
8 neglects to keep a record of any civil union solemnized by that
9 person shall be fined \$50.

10 (b) Civil unions, reported by whom. It shall be the duty
11 of every person who is legally authorized to perform the civil
12 union solemnization to report within three business days every
13 civil union solemnization, performed by the person, to the agent
14 of the department in the district in which the civil union takes
15 place setting forth all facts required to be stated in a
16 standard certificate of civil union, the form and contents of
17 which shall be prescribed by the department.

18 (c) Certified copies of certificate of civil union. The
19 department shall deliver one certified copy of the certificate
20 of civil union or the contents or any part thereof as provided
21 in section 338-13 to the persons who entered into the civil



1 union. The certificate shall be prima facie evidence of the
2 fact of the civil union in any proceeding in any court.

3 The department shall upon request, furnish to any applicant
4 additional certified copies of the certificate of civil union or
5 any part thereof.

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

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

11 **§ -12 Revocation or suspension of licenses to solemnize.**

12 Any license to solemnize civil unions issued pursuant to section

13 -10 may be revoked or suspended by the department, if the
14 holder of the license has failed to comply with the applicable
15 provisions of this chapter or of the rules of the department or
16 no longer qualifies to solemnize civil unions under the
17 applicable provisions of this chapter or of the rules of the
18 department.

19 **§ -13 Delivery of records to department; penalty.**

20 Whenever any agent authorized to grant civil union licenses
21 ceases to be an agent, or is directed to cease granting civil
22 union licenses by the department, or leaves the State, the agent



1 shall deliver to the department all the agent's records of civil
2 union licenses. Upon the death of the agent, the records shall
3 be delivered to the department by the agent's personal
4 representative or other legal representative.

5 Whenever any person holding a license to perform the civil
6 union solemnization is directed to do so by the department, or
7 whenever the license is canceled or otherwise terminated, or
8 upon the departure from the State of the person, the person
9 shall deliver to the department all the person's records of
10 civil unions, or upon the death of the person, the records shall
11 be delivered to the department by the person's personal
12 representative or other legal representative.

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

15 § -14 Rules and regulations. The director of health may
16 adopt rules and regulations as may be necessary or appropriate
17 to carry out the provisions of this chapter."

18 PART II

19 CONFORMING AMENDMENTS

20 SECTION 3. Chapter 231, Hawaii Revised Statutes, is
21 amended by adding a new section to be appropriately designated
22 and to read as follows:



1 "§231- Effect of civil union. Notwithstanding federal
2 law to the contrary, all provisions of the Internal Revenue Code
3 operative for the purpose of this chapter that apply to a
4 husband and wife, spouses, or person in a legal marital
5 relationship shall also apply with the same force and effect to
6 partners to a civil union as if they were "husband and wife",
7 "spouses", or other terms that describe persons in a legal
8 marital relationship."

9 SECTION 4. Chapter 235, Hawaii Revised Statutes, is
10 amended by adding a new section to be appropriately designated
11 and to read as follows:

12 "§235- Effect of civil union. Notwithstanding federal
13 law to the contrary, all provisions of the Internal Revenue Code
14 operative for the purpose of this chapter that apply to a
15 husband and wife, spouses, or person in a legal marital
16 relationship shall also apply with the same force and effect to
17 partners to a civil union as if they were "husband and wife",
18 "spouses", or other terms that describe persons in a legal
19 marital relationship."

20 SECTION 5. Chapter 236D, Hawaii Revised Statutes, is
21 amended by adding a new section to be appropriately designated
22 and to read as follows:



1 "§236D- Effect of civil union. Notwithstanding federal
2 law to the contrary, all provisions of the Internal Revenue Code
3 operative for the purpose of this chapter that apply to a
4 husband and wife, spouses, or person in a legal marital
5 relationship shall also apply with the same force and effect to
6 partners to a civil union as if they were "husband and wife",
7 "spouses", or other terms that describe persons in a legal
8 marital relationship."

9 SECTION 6. Section 572C-4, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~{}~~§572C-4~~{}~~ **Requisites of a valid reciprocal**
12 **beneficiary relationship.** In order to enter into a valid
13 reciprocal beneficiary relationship, it shall be necessary that:
14 (1) Each of the parties be at least eighteen years old;
15 (2) Neither of the parties be married, a partner in a
16 civil union, nor a party to another reciprocal
17 beneficiary relationship;
18 (3) The parties be legally prohibited from marrying one
19 another under chapter 572;
20 (4) Consent of either party to the reciprocal beneficiary
21 relationship has not been obtained by force, duress,
22 or fraud; and



1 (5) Each of the parties sign a declaration of reciprocal
2 beneficiary relationship as provided in section
3 572C-5."

4 SECTION 7. Section 572C-7, Hawaii Revised Statutes, is
5 amended as follows:

6 1. By amending its title to read:

7 "~~[-]~~ §572C-7 ~~[-]~~ Termination of reciprocal beneficiary
8 relationship; filing fees and records; termination upon
9 marriage~~[-]~~ or civil union."

10 2. By amending subsections (c) and (d) to read:

11 "(c) Any marriage or civil union license subsequently
12 issued by the department to any individual registered as a
13 reciprocal beneficiary shall automatically terminate the
14 individual's existing reciprocal beneficiary relationship.

15 (d) If either party to a reciprocal beneficiary
16 relationship enters into a legal marriage~~[-]~~ or civil union, the
17 parties shall no longer have a reciprocal beneficiary
18 relationship and shall no longer be entitled to the rights and
19 benefits of reciprocal beneficiaries."

20 SECTION 8. Chapter 584, Hawaii Revised Statutes, is
21 amended by adding a new section to be appropriately designated
22 and to read as follows:



1 "§584- Child of parents in a civil union. The rights
2 and obligations of civil union partners with respect to a child
3 of whom either partner becomes the parent during the term of the
4 civil union shall be the same as those of a married couple with
5 respect to a child of whom either spouse or partner becomes the
6 parent during the marriage, including the presumption that a
7 partner of a civil union is presumed to be the natural parent of
8 a child conceived by the other partner where the biological
9 parent and the nonbiological partner are or have been in a civil
10 union and:

11 (1) The child is born while the civil union is in effect,
12 or within three hundred days after the civil union is
13 terminated by death, annulment, declaration of
14 invalidity, or divorce, or after a decree of
15 separation is entered by a court; or

16 (2) The nonbiological partner has shown indicia of
17 commitment to be a parent to the child."

18 SECTION 9. Section 580-1, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§580-1 **Jurisdiction; hearing.** Exclusive original
21 jurisdiction in matters of annulment, divorce, and separation,
22 subject to section 603-37 as to change of venue, and subject



1 also to appeal according to law, is conferred upon the family
2 court of the circuit in which the applicant has been domiciled
3 or has been physically present for a continuous period of at
4 least three months next preceding the application therefor. No
5 absolute divorce from the bond of matrimony shall be granted for
6 any cause unless either party to the marriage has been domiciled
7 or has been physically present in the State for a continuous
8 period of at least six months next preceding the application
9 therefor. A person who may be residing on any military or
10 federal base, installation, or reservation within the State or
11 who may be present in the State under military orders shall not
12 thereby be prohibited from meeting the requirements of this
13 section. Notwithstanding the foregoing, the family court of
14 each circuit court shall have jurisdiction over all proceedings
15 relating to the annulment, divorce, and separation of a civil
16 union entered into in this State, even if neither civil union
17 partner is a resident of, or maintains a domicile in, Hawaii at
18 the time the proceedings are filed."

19 SECTION 10. Section 580-3.5, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "[+]§580-3.5[+] **Personal judgment against absent**
22 **defendant.** (a) In any proceeding in the family court, the



1 court shall have the power to render a personal judgment against
2 a party who is outside of this State and over whom jurisdiction
3 is acquired by service of process in the manner set forth in
4 section 580-3(b) or (c), if the party was personally served with
5 a copy of the summons or order to show cause and complaint or
6 other pleading upon which the judgment is based and if the party
7 was a domiciliary of this State (1) at the time that the cause
8 of action which is the subject of the proceeding arose, or (2)
9 at the time of the commencement of the proceeding, or (3) at the
10 time of service.

11 (b) Notwithstanding subsection (a), in any proceeding in
12 the family court, the court shall have the power to render a
13 personal judgment against a party who is outside of this State
14 and over whom jurisdiction is acquired by service of process in
15 the manner set forth in section 580-3(b) or (c), if the party
16 was personally served with a copy of the summons or order to
17 show cause and complaint or other pleading upon which the
18 judgment is based and if the parties to the proceeding entered
19 into a civil union in this State pursuant to chapter , which
20 civil union is the basis of the proceeding."

21 SECTION 11. Section 584-1, Hawaii Revised Statutes, is
22 amended to read as follows:



1 appropriate section numbers for the numbers used in designating
2 the new sections in this Act.

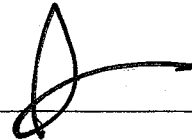
3 SECTION 14. This Act does not affect rights and duties
4 that matured, penalties that were incurred, and proceedings that
5 were begun before its effective date.

6 SECTION 15. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 16. This Act shall take effect upon its approval;
9 provided that the new sections designated as sections -2,
10 -3, -8, and -10, Hawaii Revised Statutes, as
11 established by section 2 of this Act, and sections 6, 7, and 12
12 of this Act shall take effect one hundred twenty days after the
13 date of approval of this Act; provided further that sections 3,
14 4, and 5 of this Act shall apply to taxable years beginning
15 after December 31, 2011.

16

INTRODUCED BY: _____



Report Title:

Civil Unions

Description:

Extends the same rights, benefits, protections, and responsibilities of spouses in a marriage to partners in a civil union.

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

