
A BILL FOR AN ACT

RELATING TO CIVIL UNIONS.

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

1 SECTION 1. Act 1, Session Laws of Hawaii 2011, gave civil
2 union partners all the same rights, benefits, protections, and
3 responsibilities under law as given to those who contract,
4 obtain a license, and are solemnized pursuant to chapter 572,
5 Hawaii Revised Statutes. During the months of preparation to
6 implement Act 1 and in the time since Act 1 became effective on
7 January 1, 2012, however, it is clear that certain provisions of
8 the civil unions law would benefit from additional clarification
9 to minimize confusion and aid in the proper implementation of
10 Act 1. Therefore, in making these amendments with this Act, it
11 is the legislature's intent to reconfirm and clarify the
12 provisions of chapter 572B, Hawaii Revised Statutes, as enacted
13 by Act 1, Session Laws of Hawaii 2011. Nothing in this Act
14 shall be interpreted to weaken, lessen, expand, or enlarge any
15 of the protections, obligations, rights, and responsibilities
16 governed by any provision of Act 1.

17 In addition, there is a case pending before the United
18 States District Court for the District of Hawaii, *Jackson v.*



1 *Abercrombie*, Civil No. 11-00734 ACK KSC, in which the plaintiffs
 2 have alleged that the marriage law and the "marriage amendment"
 3 to the Hawaii state constitution are unconstitutional. Not only
 4 has no court thus far found Hawaii's marriage law to be
 5 unconstitutional, a majority of states currently have similar
 6 laws. Despite this, Governor Abercrombie has publicly declined
 7 to defend it, although his administration is defending the law.

8 The legislature finds that the administration introduced
 9 this Act. By virtue of introducing this Act concerning civil
 10 unions, it is an implied acknowledgement by the administration
 11 that it is the legislature, under article III, section 1, of the
 12 Hawaii state constitution, that determines the benefits and
 13 responsibilities between couples. This was affirmed in the
 14 constitutional amendment that resulted in article I, section 23,
 15 of the Hawaii state constitution, which confers the power to the
 16 legislature to define marriage and establish the parties who may
 17 enter into a marriage under section 572-1.

18 The legislature maintains the authority to determine
 19 whether marriage should be reserved to opposite sex couples and
 20 therefore also maintains the power to adopt any amendments to
 21 the marriage and civil union laws. As such, any amendments to



1 these laws are done so under the authority given to the
2 legislature by the Hawaii state constitution.

3 SECTION 2. Chapter 489, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§489- Exception; religious organizations. (a)

7 Notwithstanding any law to the contrary, a religious
8 organization, association, or society, or any nonprofit
9 institution or organization operated, supervised, or controlled
10 by or in conjunction with a religious organization, association,
11 or society shall not be required to provide services,
12 accommodations, advantages, facilities, goods, or privileges to
13 an individual if the request for such services, accommodation,
14 advantages, facilities, goods, or privileges is related to the
15 solemnization of a civil union. Any refusal to provide
16 services, accommodations, advantages, facilities, goods, or
17 privileges in accordance with this section shall not create any
18 civil claim or cause of action. This section shall not be
19 construed to limit a religious organization, association, or
20 society, or any nonprofit institution or organization operated,
21 supervised, or controlled by or in conjunction with a religious
22 organization from selectively providing services,



1 accommodations, advantages, facilities, goods, or privileges to
2 some individuals with respect to the solemnization or
3 celebration of a civil union but not to others.

4 (b) For the purposes of this section, "facilities"
5 includes facilities owned or leased by a religious organization
6 that are regularly used for worship or ministry activities in
7 the religious work of the organization."

8 SECTION 3. Chapter 572B, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 **"§572B- Transition from reciprocal beneficiary**
12 **relationship to civil union; uninterrupted rights.** (a) Two
13 persons who terminate their reciprocal beneficiary relationship
14 and enter into a civil union solemnized thereafter within a
15 period of six months, or two persons who entered into a
16 reciprocal beneficiary relationship and entered into a union
17 outside the State who are recognized under law as partners to a
18 civil union in the State, shall suffer no loss or interruption
19 of any rights, benefits, protections, or obligations derived
20 from their reciprocal beneficiary relationship; provided that
21 these rights, benefits, protections, or obligations are also



1 accorded to partners in a civil union pursuant to section 572B-
2 9.

3 (b) For purposes of this section, holding title to real or
4 personal property as tenants by the entirety shall be included
5 among the rights or benefits deemed continuous and
6 uninterrupted, and the termination of a reciprocal beneficiary
7 relationship in accordance with this section shall not operate
8 to terminate a tenancy by the entirety or to convert such a
9 tenancy into a tenancy in common."

10 SECTION 4. Section 572-1, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§572-1 Requisites of valid marriage contract.** In order
13 to make valid the marriage contract, which shall be only between
14 a man and a woman, it shall be necessary that:

15 (1) The respective parties do not stand in relation to
16 each other of ancestor and descendant of any degree
17 whatsoever, brother and sister of the half as well as
18 to the whole blood, uncle and niece, aunt and nephew,
19 whether the relationship is the result of the issue of
20 parents married or not married to each other[+] or
21 parents who are partners in a civil union or not
22 partners in a civil union;



- 1 (2) Each of the parties at the time of contracting the
2 marriage is at least sixteen years of age; provided
3 that with the written approval of the family court of
4 the circuit within which the minor resides, it shall
5 be lawful for a person under the age of sixteen years,
6 but in no event under the age of fifteen years, to
7 marry, subject to section 572-2;
- 8 (3) The man does not at the time have any lawful wife or
9 civil union partner living and that the woman does not
10 at the time have any lawful husband or civil union
11 partner living;
- 12 (4) Consent of neither party to the marriage has been
13 obtained by force, duress, or fraud;
- 14 (5) Neither of the parties is a person afflicted with any
15 loathsome disease concealed from, and unknown to, the
16 other party;
- 17 (6) The man and woman to be married in the State shall
18 have duly obtained a license for that purpose from the
19 agent appointed to grant marriage licenses; and
- 20 (7) The marriage ceremony be performed in the State by a
21 person or society with a valid license to solemnize
22 marriages and the man and the woman to be married and



1 the person performing the marriage ceremony be all
2 physically present at the same place and time for the
3 marriage ceremony."

4 SECTION 5. Section 572B-2, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[f]§572B-2[+] Eligibility to enter into a civil union. A
7 person shall be eligible to enter into a civil union only if the
8 person is:

- 9 (1) Not a partner in another civil union[,-] or a spouse in
10 a marriage[,-] ~~or a party to a reciprocal beneficiary~~
11 ~~relationship pursuant to chapter 572C];~~
- 12 (2) At least eighteen years of age; and
- 13 (3) Not related to the other proposed partner in the civil
14 union, as provided in section 572B-3."

15 SECTION 6. Section 572B-4, Hawaii Revised Statutes, is
16 amended by amending subsections (b) and (c) to read as follows:

17 "(b) Any judge or retired judge, including a federal judge
18 or judge of another state who may legally join persons in
19 chapter 572 or a civil union, may solemnize a civil union. Any
20 ~~[ordained or licensed member of the clergy]~~ minister, priest, or
21 officer of any religious denomination or society who has been
22 ordained or is authorized to solemnize civil unions according to



1 the usages of such denomination or society, or any religious
2 society not having clergy but providing solemnization in
3 accordance with the rules and customs of that society, may
4 solemnize a civil union. [~~Solemnization may be entirely secular~~
5 ~~or may be performed according to the forms and usages of any~~
6 ~~religious denomination in this State. Nothing in this section~~
7 ~~shall be construed to require any person authorized to perform~~
8 ~~solemnizations of marriages or civil unions to perform a~~
9 ~~solemnization of a civil union, and no such authorized person~~
10 ~~who fails or refuses for any reason to join persons in a civil~~
11 ~~union shall be subject to any fine or other penalty for the~~
12 ~~failure or refusal.~~]

13 (c) Nothing in this section shall be construed to require
14 any person authorized to perform solemnizations pursuant to
15 chapter 572 or civil unions pursuant to this chapter to perform
16 a solemnization of a civil union, and no such authorized person
17 who fails or refuses for any reason to join persons in a civil
18 union shall be subject to any fine [~~or other~~], penalty, or other
19 civil action for the failure or refusal."

20 SECTION 7. Section 572B-5, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) No persons may be joined in a civil union in this
2 State unless both partners have:

- 3 (1) Met the requirements of section 572B-2;
4 (2) Complied with section 572B-6 and, if applicable,
5 section 572B-7; and
6 (3) Been issued a license by an agent [~~in the judicial~~
7 ~~circuit in which a civil union is to be solemnized or~~
8 ~~in which either person resides~~], which license shall
9 bear the certification of the agent that the persons
10 named therein have met the requirements of section
11 572B-2 and have complied with section 572B-6 and, if
12 applicable, section 572B-7."

13 SECTION 8. Section 572B-6, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) The fee for a license to enter into a civil union
16 shall be an amount equal to the amount prescribed in section
17 572-5, and all amounts collected [~~by the agent~~] pursuant to
18 section 321-1(g) as application fees under this chapter shall be
19 retained or remitted and apportioned in the same manner as
20 prescribed in section 572-5."

21 SECTION 9. Section 572B-8, Hawaii Revised Statutes, is
22 amended by amending subsections (a) and (b) to read as follows:



1 " (a) Each person who solemnizes a civil union shall
2 certify upon the civil union license certificate [~~the fact,~~
3 ~~time, and place of the solemnization of the civil union]~~ all the
4 facts required to be stated in a standard certificate of civil
5 union, the form and contents of which shall be prescribed by the
6 department of health, and return the certificate to the [~~agent]~~
7 department of health within three business days following the
8 solemnization of the civil union, or as may otherwise be
9 prescribed by the department of health.

10 (b) If any person who has solemnized a civil union fails
11 to return the certificate to the [~~agent]~~ department of health as
12 required under subsection (a), the partners joined in a civil
13 union may provide the [~~agent]~~ department of health with a
14 notarized affidavit attesting to the fact that they were joined
15 in a civil union and stating the date and place of the
16 solemnization of the civil union. Upon the receipt of that
17 affidavit by the [~~agent,~~] department of health, the civil union
18 of the partners shall be deemed to be valid as of the date of
19 the solemnization of the civil union stated in the affidavit."

20 SECTION 10. Section 572B-10, Hawaii Revised Statutes, is
21 amended to read as follows:



1 " ~~[+]§572B-10[+] **Civil unions**~~ **Unions** performed in other
2 **jurisdictions.** ~~[All unions entered into in other jurisdictional~~
3 ~~between two individuals not recognized under section 572-3 shall~~
4 ~~be recognized as civil unions,]~~ A legal union of two persons
5 that is not a marriage under chapter 572, which was validly
6 formed in another jurisdiction, and which is substantially
7 equivalent to a civil union under this chapter, shall be
8 recognized as a valid civil union in this State and shall be
9 treated the same as a civil union entered into in this State
10 regardless of whether it bears the name civil union; provided
11 that the relationship meets the eligibility requirements of this
12 chapter, has been entered into in accordance with the laws of
13 that jurisdiction, and can be documented."

14 SECTION 11. Section 572C-4, Hawaii Revised Statutes, is
15 amended to read as follows:

16 " ~~[+]§572C-4[+] **Requisites of a valid reciprocal**~~
17 **beneficiary relationship.** In order to enter into a valid
18 reciprocal beneficiary relationship, it shall be necessary that:

- 19 (1) Each of the parties be at least eighteen years old;
- 20 (2) Neither of the parties be married ~~[nor]~~, a party to
21 another reciprocal beneficiary relationship~~[,]~~, or a
22 partner in a civil union;



- 1 (3) The parties be legally prohibited from marrying one
2 another under chapter 572;
- 3 (4) Consent of either party to the reciprocal beneficiary
4 relationship has not been obtained by force, duress,
5 or fraud; and
- 6 (5) Each of the parties sign a declaration of reciprocal
7 beneficiary relationship as provided in section 572C-
8 5."

9 SECTION 12. Section 572C-7, Hawaii Revised Statutes, is
10 amended by amending subsections (c) and (d) to read as follows:

11 "(c) [~~Any marriage license subsequently issued by the~~
12 ~~department to any individual registered as a]~~ A reciprocal
13 beneficiary relationship shall automatically terminate [~~the~~
14 ~~individual's existing reciprocal beneficiary relationship.]~~
15 when:

- 16 (1) Either party to the reciprocal beneficiary
17 relationship enters into a marriage or civil union
18 solemnized by a person licensed by the department of
19 health; or
- 20 (2) Either party to the reciprocal beneficiary
21 relationship enters into a union outside the State



1 that is recognized by law as a marriage or civil union
2 in the State.

3 (d) If either party to a reciprocal beneficiary
4 relationship enters into a legal marriage[~~7~~] or civil union, the
5 parties shall no longer have a reciprocal beneficiary
6 relationship and shall no longer be entitled to the rights and
7 benefits of reciprocal beneficiaries[~~7~~], except as provided in
8 section 572B- ."

9 SECTION 13. Section 574-1, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§574-1 Married persons[~~7~~]; civil union partners.** Upon
12 marriage or civil union, each of the parties to a marriage or
13 partners in a civil union shall declare the middle and last
14 names each will use as a married person[~~7~~] or civil union
15 partner. The last name or names chosen may be any middle or
16 last name legally used at any time, past or present, by either
17 spouse[~~7~~] or partner, or any combination of such names, which
18 may, but need not, be separated by a hyphen. The middle name or
19 names chosen may be any middle or last name legally used at any
20 time, past or present, by either spouse[~~7~~] or partner, or any
21 combination of such names, which may, but need not, be separated
22 by a hyphen."



1 SECTION 14. Section 574-5, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) It shall be unlawful to change any name adopted or
4 conferred under this chapter, except:

5 (1) Upon an order of the lieutenant governor;

6 (2) By a final order, decree, or judgment of the family
7 court issued as follows:

8 (A) When in an adoption proceeding a change of name
9 of the person to be adopted is requested and the
10 court includes the change of name in the adoption
11 decree;

12 (B) When in a divorce proceeding either party to the
13 proceeding requests to resume the middle name or
14 names and the last name used by the party prior
15 to the marriage or civil union or a middle name
16 or names and last name declared and used during
17 any prior marriage or civil union and the court
18 includes the change of names in the divorce
19 decree; or

20 (C) When in a proceeding for a change of name of a
21 legitimate or legitimated minor initiated by one
22 parent, the family court, upon proof that the



1 parent initiating the name change has made all
 2 reasonable efforts to locate and notify the other
 3 parent of the name change proceeding but has not
 4 been able to locate, notify, or elicit a response
 5 from the other parent, and after an appropriate
 6 hearing, orders a change of name determined to be
 7 in the best interests of the minor; provided that
 8 the family court may waive the notice requirement
 9 to the noninitiating, noncustodial parent where
 10 the court finds that the waiver is necessary for
 11 the protection of the minor;

12 (3) Upon marriage or civil union pursuant to section 574-
 13 1;

14 (4) Upon legitimation pursuant to section 338-21; or

15 (5) By an order or decree of any court of competent
 16 jurisdiction within any state of the United States,
 17 the District of Columbia, the Commonwealth of Puerto
 18 Rico, or any territory or possession of the United
 19 States, changing the name of a person born in this
 20 State.

21 [~~Any~~] Notwithstanding any law to the contrary [~~notwithstanding~~],

22 no person who is a covered offender subject to the registration



1 requirements of section 846E-2 may obtain a name change, other
2 than as provided in paragraph (2), (3), (4), or (5), unless a
3 court determines that it is in the best interest of justice to
4 grant the petition and that doing so will not adversely affect
5 the public safety."

6 SECTION 15. Section 580-1, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§580-1 Jurisdiction; hearing.** Exclusive original
9 jurisdiction in matters of annulment, divorce, and separation,
10 subject to section 603-37 as to change of venue, and subject
11 also to appeal according to law, is conferred upon the family
12 court of the circuit in which the applicant has been domiciled
13 or has been physically present for a continuous period of at
14 least three months next preceding the application therefor. No
15 absolute divorce from the bond of matrimony shall be granted for
16 any cause unless either party to the marriage has been domiciled
17 or has been physically present in the State for a continuous
18 period of at least six months next preceding the application
19 therefor. A person who may be residing on any military or
20 federal base, installation, or reservation within the State or
21 who may be present in the State under military orders shall not
22 thereby be prohibited from meeting the requirements of this



1 section. The family court of each circuit shall have
2 jurisdiction over all proceedings relating to the annulment,
3 divorce, and separation of civil unions entered into in this
4 State or unions recognized as civil unions in this State in the
5 same manner as marriages."

6 SECTION 16. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 17. This Act shall take effect retroactive to
9 January 1, 2012.



Report Title:

Civil Unions; Reciprocal Beneficiary Relationship; Religious Organizations

Description:

Amends various statutory provisions related to civil unions for clarity and conformity. Deletes the eligibility requirement for a civil union requiring termination of an existing reciprocal beneficiary relationship. Authorizes any licensing agent statewide to issue a civil union license. Makes a reciprocal beneficiary relationship automatically terminate upon either party entering into a civil union or marriage that is solemnized both in Hawaii and in other jurisdictions. Authorizes name change on the certificate of civil union. Confirms the family court has jurisdiction over the divorce, annulment, and separation of a union that is recognized as a civil union in this State. Effective retroactive to January 1, 2012. (HB2569 HD2)

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

