
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 509, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 **"§509- Tenancy by the entirety when owners change**
7 **relationship status.** (a) When two individuals who hold
8 property as tenants by the entirety enter into a different legal
9 relationship with each other that also allows them to hold
10 property as tenants by the entirety, their ownership as tenants
11 by the entirety shall be continuous:

12 (1) If the new relationship is entered into simultaneously
13 with the termination of the earlier legal
14 relationship; or

15 (2) If the new relationship is entered into within ninety
16 days after the termination of the earlier legal
17 relationship; provided that no liens were perfected
18 and attached on the property in the interim.

19 (b) The continuity of a tenancy by the entirety under this
20 section shall apply to couples married under chapter 572, civil
21 union partners under chapter 572B, and reciprocal beneficiaries
22 under chapter 572C.



1 (c) Nothing in this section precludes any individuals from
2 opting to hold their property in another manner as permitted
3 under this chapter.

4 (d) Nothing in this section shall impact liens perfected
5 and attached on the property after the earlier legal
6 relationship was terminated and before the date this Act became
7 law upon its approval."

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- Rights held by reciprocal beneficiaries who**
12 **enter into a civil union.** (a) If two reciprocal beneficiaries
13 enter into a civil union with each other, the rights, benefits,
14 protections, or responsibilities created by the reciprocal
15 beneficiary relationship shall be continuous through the civil
16 union and deemed to have accrued as of the first date these
17 rights existed under the reciprocal beneficiary relationship;
18 provided that the individuals terminated their reciprocal
19 beneficiary relationship simultaneously with their entry into a
20 civil union, or within the ninety days immediately preceding
21 their entry into a civil union.



1 (b) Any rights, benefits, protections, or responsibilities
2 created by the solemnization of a civil union that were not
3 included within a reciprocal beneficiary relationship shall be
4 recognized as of the date the civil union was solemnized.

5 (c) Property held in tenancy by the entirety shall be
6 subject to section 509- ."

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

9 **"§572-1 Requisites of valid marriage contract.** In order
10 to make valid the marriage contract, which shall be only between
11 a man and a woman, it shall be necessary that:

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

20 (2) Each of the parties at the time of contracting the
21 marriage is at least sixteen years of age; provided
22 that with the written approval of the family court of



1 the circuit within which the minor resides, it shall
2 be lawful for a person under the age of sixteen years,
3 but in no event under the age of fifteen years, to
4 marry, subject to section 572-2;

5 (3) The man does not at the time have any lawful wife or
6 civil union partner living and that the woman does not
7 at the time have any lawful husband or civil union
8 partner living;

9 (4) Consent of neither party to the marriage has been
10 obtained by force, duress, or fraud;

11 (5) Neither of the parties is a person afflicted with any
12 loathsome disease concealed from, and unknown to, the
13 other party;

14 (6) The man and woman to be married in the State shall
15 have duly obtained a license for that purpose from the
16 agent appointed to grant marriage licenses; and

17 (7) The marriage ceremony be performed in the State by a
18 person or society with a valid license to solemnize
19 marriages and the man and the woman to be married and
20 the person performing the marriage ceremony be all
21 physically present at the same place and time for the
22 marriage ceremony."



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

3 **"[~~§~~572B-2~~]~~ Eligibility to enter into a civil union.** A
4 person shall be eligible to enter into a civil union only if the
5 person is:

- 6 (1) Not a partner in another civil union~~[~~7~~]~~ or a spouse in
7 a marriage~~[~~7~~, or a party to a reciprocal beneficiary~~
8 ~~relationship pursuant to chapter 572C]~~;
- 9 (2) At least eighteen years of age; and
- 10 (3) Not related to the other proposed partner in the civil
11 union, as provided in section 572B-3."

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

14 "(b) Any judge or retired judge, including a federal judge
15 or judge of another state who may legally join persons in
16 chapter 572 or a civil union, may solemnize a civil union. Any
17 ~~[ordained or licensed member of the clergy]~~ minister, priest, or
18 officer of any religious denomination or society who has been
19 ordained or is authorized to solemnize civil unions according to
20 the usages of such denomination or society, or any religious
21 society not having clergy but providing solemnization in
22 accordance with the rules and customs of that society, may



1 solemnize a civil union. [~~Solemnization may be entirely secular~~
2 ~~or may be performed according to the forms and usages of any~~
3 ~~religious denomination in this State. Nothing in this section~~
4 ~~shall be construed to require any person authorized to perform~~
5 ~~solemnizations of marriages or civil unions to perform a~~
6 ~~solemnization of a civil union, and no such authorized person~~
7 ~~who fails or refuses for any reason to join persons in a civil~~
8 ~~union shall be subject to any fine or other penalty for the~~
9 ~~failure or refusal.]~~

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

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

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

21 (1) Met the requirements of section 572B-2;



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

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

12 "(b) The fee for a license to enter into a civil union
 13 shall be an amount equal to the amount prescribed in section
 14 572-5, and all amounts collected [~~by the agent~~] pursuant to
 15 section 321-1(g) as application fees under this chapter shall be
 16 retained or remitted and apportioned in the same manner as
 17 prescribed in section 572-5."

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

20 "(a) Each person who solemnizes a civil union shall
 21 certify upon the civil union license certificate [~~the fact,~~
 22 ~~time, and place of the solemnization of the civil union~~] all the



1 facts required to be stated in a standard certificate of civil
2 union, the form and contents of which shall be prescribed by the
3 department of health, and return the certificate to the [agent]
4 department of health within three business days following the
5 solemnization of the civil union, or as may otherwise be
6 prescribed by the department of health.

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

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

19 "~~[+]§572B-10[-] Civil unions~~ **Unions performed in other**
20 **jurisdictions.** [~~All unions entered into in other jurisdictional~~
21 ~~between two individuals not recognized under section 572-3 shall~~
22 ~~be recognized as civil unions,]~~ A legal union of two persons



1 that is not a marriage under chapter 572, which was validly
 2 formed in another jurisdiction, and which is substantially
 3 equivalent to a civil union under this chapter, shall be
 4 recognized as a valid civil union in this State and shall be
 5 treated the same as a civil union entered into in this State
 6 regardless of whether it bears the name civil union; provided
 7 that the relationship meets the eligibility requirements of this
 8 chapter, has been entered into in accordance with the laws of
 9 that jurisdiction, and can be documented."

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

12 "~~[+]~~§572C-4~~[+]~~ **Requisites of a valid reciprocal**
 13 **beneficiary relationship.** In order to enter into a valid
 14 reciprocal beneficiary relationship, it shall be necessary that:

- 15 (1) Each of the parties be at least eighteen years old;
- 16 (2) Neither of the parties be married ~~[ne]~~, a party to
 17 another reciprocal beneficiary relationship~~[+]~~, or a
 18 partner in a civil union;
- 19 (3) The parties be legally prohibited from marrying one
 20 another under chapter 572;



1 (4) Consent of either party to the reciprocal beneficiary
2 relationship has not been obtained by force, duress,
3 or fraud; and

4 (5) Each of the parties sign a declaration of reciprocal
5 beneficiary relationship as provided in section
6 572C-5."

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

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

13 when:

14 (1) Either party to the reciprocal beneficiary
15 relationship enters into a marriage or civil union
16 solemnized by a person licensed by the department of
17 health; or

18 (2) Either party to the reciprocal beneficiary
19 relationship enters into a union outside the State
20 that is recognized by law as a marriage or civil union
21 in the State.



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

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

9 **"§574-1 Married persons[]; civil union partners.** Upon
10 marriage or civil union, each of the parties to a marriage or
11 partners in a civil union shall declare the middle and last
12 names each will use as a married person[] or civil union
13 partner. The last name or names chosen may be any middle or
14 last name legally used at any time, past or present, by either
15 spouse[] or partner, or any combination of such names, which
16 may, but need not, be separated by a hyphen. The middle name or
17 names chosen may be any middle or last name legally used at any
18 time, past or present, by either spouse[] or partner, or any
19 combination of such names, which may, but need not, be separated
20 by a hyphen."

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



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

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

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

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

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

18 (C) When in a proceeding for a change of name of a
19 legitimate or legitimated minor initiated by one
20 parent, the family court, upon proof that the
21 parent initiating the name change has made all
22 reasonable efforts to locate and notify the other



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

10 (3) Upon marriage or civil union pursuant to section
 11 574-1;

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

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

19 [~~Any~~] Notwithstanding any law to the contrary [~~notwithstanding~~],
 20 no person who is a covered offender subject to the registration
 21 requirements of section 846E-2 may obtain a name change, other
 22 than as provided in paragraph (2), (3), (4), or (5), unless a



1 court determines that it is in the best interest of justice to
2 grant the petition and that doing so will not adversely affect
3 the public safety."

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

6 **"§580-1 Jurisdiction; hearing.** Exclusive original
7 jurisdiction in matters of annulment, divorce, and separation,
8 subject to section 603-37 as to change of venue, and subject
9 also to appeal according to law, is conferred upon the family
10 court of the circuit in which the applicant has been domiciled
11 or has been physically present for a continuous period of at
12 least three months next preceding the application therefor. No
13 absolute divorce from the bond of matrimony shall be granted for
14 any cause unless either party to the marriage has been domiciled
15 or has been physically present in the State for a continuous
16 period of at least six months next preceding the application
17 therefor. A person who may be residing on any military or
18 federal base, installation, or reservation within the State or
19 who may be present in the State under military orders shall not
20 thereby be prohibited from meeting the requirements of this
21 section. The family court of each circuit shall have
22 jurisdiction over all proceedings relating to the annulment,



1 divorce, and separation of civil unions entered into in this
2 State or unions recognized as civil unions in this State in the
3 same manner as marriages."

4 SECTION 16. If two individuals terminated a reciprocal
5 beneficiary relationship after October 3, 2011, but before the
6 date this Act became law upon its approval, and the two
7 individuals subsequently enter into a civil union no later than
8 ninety days after their reciprocal beneficiary relationship
9 terminated, their reciprocal beneficiary relationship shall be
10 deemed to continue uninterrupted until the civil union is
11 solemnized. The couple shall suffer no loss or interruption of
12 any rights, benefits, protections, or obligations derived from
13 their reciprocal beneficiary relationship if they meet the
14 requirements of this section.

15 For purposes of this section, holding title to property as
16 tenants by the entirety shall be included among the rights of a
17 reciprocal beneficiary relationship that shall continue
18 uninterrupted under this section; provided that no intervening
19 liens were perfected and attached on the property after the
20 reciprocal beneficiary relationship was terminated, and before
21 the date this Act became law upon its approval.



1 SECTION 17. Notwithstanding subsection 572C-7(c), Hawaii
2 Revised Statutes, if before the effective date of this section,
3 two individuals entered into a valid legal union in another
4 jurisdiction that is not a marriage recognized under chapter
5 572, Hawaii Revised Statutes, and is substantially equivalent to
6 a civil union under chapter 572B, Hawaii Revised Statutes, and
7 are also parties to a reciprocal beneficiary relationship in
8 this State, the reciprocal beneficiary relationship shall
9 terminate and their valid legal union entered into in another
10 jurisdiction shall be recognized as a civil union under section
11 572B-10, Hawaii Revised Statutes, on the voluntary termination
12 of the reciprocal beneficiary relationship under subsection
13 572C-7(a), Hawaii Revised Statutes, but no later than one year
14 after the date this Act becomes law upon its approval.

15 SECTION 18. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 19. This Act shall take effect retroactive to
18 January 1, 2012; provided that:

19 (1) Section 16 shall take effect retroactive to October 3,
20 2011; and

21 (2) Section 17 shall take effect upon its approval.



Report Title:

Civil Unions; Reciprocal Beneficiary Relationship;
Solemnization; Names

Description:

Amends various statutory provisions related to civil unions for clarity and conformity. Provides uninterrupted rights for couples holding property in tenancy by the entirety who enter into a new legal relationship simultaneously with or within ninety days after the termination of an earlier legal relationship; provided that no liens were perfected and attached on the property in the interim. Ensures that rights held by certain reciprocal beneficiaries carryover to a civil union; provided that the reciprocal beneficiaries terminated their relationship simultaneously with or within ninety days after the termination of the reciprocal beneficiary relationship. Extends rights created by the solemnization of a civil union that were not included within a reciprocal beneficiary relationship to be recognized as of the date the civil union was solemnized. Amends various statutory provisions relating to solemnizations. 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. Allows reciprocal beneficiaries who enter into a legal union in another jurisdiction that is not marriage have their legal union recognized as a civil union; effective upon approval. Effective retroactive to January 1, 2012. (SD1)

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

