

JAN 25 2012

A BILL FOR AN ACT

RELATING TO CIVIL UNIONS.

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

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

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

- (1) The respective parties do not stand in relation to each other of ancestor and descendant of any degree whatsoever, brother and sister of the half as well as to the whole blood, uncle and niece, aunt and nephew, whether the relationship is the result of the issue of parents married or not married to each other [↯] or parents who are partners to a civil union or not partners to a civil union;
- (2) Each of the parties at the time of contracting the marriage is at least sixteen years of age; provided that with the written approval of the family court of the circuit within which the minor resides, it shall be lawful for a person under the age of sixteen years,

but in no event under the age of fifteen years, to marry, subject to section 572-2;

- (3) The man does not at the time have any lawful wife or civil union partner living and that the woman does not at the time have any lawful husband or civil union partner living;
- (4) Consent of neither party to the marriage has been obtained by force, duress, or fraud;
- (5) Neither of the parties is a person afflicted with any loathsome disease concealed from, and unknown to, the other party;
- (6) The man and woman to be married in the State shall have duly obtained a license for that purpose from the agent appointed to grant marriage licenses; and
- (7) The marriage ceremony be performed in the State by a person or society with a valid license to solemnize marriages and the man and the woman to be married and the person performing the marriage ceremony be all physically present at the same place and time for the marriage ceremony."

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

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

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

SECTION 3. Section 572B-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any judge or retired judge, including a federal judge or judge of another state who may legally join persons in chapter 572 or a civil union, may solemnize a civil union. Any ~~[ordained or licensed member of the clergy]~~ minister, priest, or officer of any religious denomination or society who has been ordained or is authorized to solemnize civil unions according to the usages of such denomination or society, or any religious society not having clergy but providing solemnization in accordance with the rules and customs of that society, may solemnize a civil union. Solemnization may be entirely secular or may be performed according to the forms and usages of any religious denomination in this State. ~~[Nothing in this section shall be construed to require any person authorized to perform~~

~~solemnizations of marriages or civil unions to perform a solemnization of a civil union, and no such authorized person who fails or refuses for any reason to join persons in a civil union shall be subject to any fine or other penalty for the failure or refusal.] "~~

SECTION 4. Section 572B-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

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

SECTION 5. Section 572B-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The fee for a license to enter into a civil union shall be an amount equal to the amount prescribed in section 572-5, and all amounts collected by the agent or the department

of health as application fees under this chapter shall be retained or remitted and apportioned in the same manner as prescribed in section 572-5."

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

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

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

SECTION 7. Section 572B-10, Hawaii Revised Statutes, is amended to read as follows:

"[+] §572B-10 [+] **Civil unions performed in other jurisdictions.** All unions entered into in other jurisdictions between two individuals not recognized under section 572-3 shall be recognized as civil unions; provided that the relationship meets the eligibility requirements of this chapter, has been entered into in accordance with the laws of that jurisdiction, and can be documented[-]; and provided further that, if either individual is a party to an existing reciprocal beneficiary relationship pursuant to chapter 572C, the union shall not be recognized as a civil union under this section until the reciprocal beneficiary relationship is terminated."

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

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

- (1) Each of the parties be at least eighteen years old;
- (2) Neither of the parties be married [~~nor~~], a party to another reciprocal beneficiary relationship[+], or a partner in a civil union;
- (3) The parties be legally prohibited from marrying one another under chapter 572;

- (4) Consent of either party to the reciprocal beneficiary relationship has not been obtained by force, duress, or fraud; and
- (5) Each of the parties sign a declaration of reciprocal beneficiary relationship as provided in section 572C-5."

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

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

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

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

"§574-1 **Married persons~~[-]~~; civil union partners**. Upon marriage or civil union, each of the parties to a marriage or partners to a civil union shall declare the middle and last names each will use as a married person~~[-]~~ or civil union partner. The last name or names chosen may be any middle or

last name legally used at any time, past or present, by either spouse[~~7~~] or partner, or any combination of such names, which may, but need not, be separated by a hyphen. The middle name or names chosen may be any middle or last name legally used at any time, past or present, by either spouse[~~7~~] or partner, or any combination of such names, which may, but need not, be separated by a hyphen."

SECTION 11. Section 574-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

- (1) Upon an order of the lieutenant governor;
- (2) By a final order, decree, or judgment of the family court issued as follows:
 - (A) When in an adoption proceeding a change of name of the person to be adopted is requested and the court includes the change of name in the adoption decree;
 - (B) When in a divorce proceeding either party to the proceeding requests to resume the middle name or names and the last name used by the party prior to the marriage or civil union or a middle name or names and last name declared and used during any prior marriage or civil union and the court

includes the change of names in the divorce decree; or

- (C) When in a proceeding for a change of name of a legitimate or legitimated minor initiated by one parent, the family court, upon proof that the parent initiating the name change has made all reasonable efforts to locate and notify the other parent of the name change proceeding but has not been able to locate, notify, or elicit a response from the other parent, and after an appropriate hearing, orders a change of name determined to be in the best interests of the minor; provided that the family court may waive the notice requirement to the noninitiating, noncustodial parent where the court finds that the waiver is necessary for the protection of the minor;
- (3) Upon marriage or civil union pursuant to section 574-1;
- (4) Upon legitimation pursuant to section 338-21; or
- (5) By an order or decree of any court of competent jurisdiction within any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United

States, changing the name of a person born in this State.

Any law to the contrary notwithstanding, no person who is a covered offender subject to the registration requirements of section 846E-2 may obtain a name change, other than as provided in paragraph (2), (3), (4), or (5), unless a court determines that it is in the best interest of justice to grant the petition and that doing so will not adversely affect the public safety."

SECTION 12. Section 580-1, Hawaii Revised Statutes, is amended to read as follows:

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

thereby be prohibited from meeting the requirements of this section. The family court of each circuit shall have jurisdiction over all proceedings relating to the annulment, divorce, and separation of civil unions entered into in this State or unions recognized as civil unions in this State in the same manner as marriages."

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect upon its approval.

INTRODUCED BY: 

BY REQUEST

Report Title:

Civil Unions; Eligibility; Procedures; Divorce

Description:

Amends various statutory provisions related to civil unions and conforming amendments to recognize civil unions; deletes the eligibility requirement for a civil union requiring termination of an existing reciprocal beneficiary relationship, except for out-of-state unions recognized in the State as civil unions; authorizes any licensing agent statewide to issue a civil union license; authorizes the Department of Health to collect fees for civil union licenses to allow for application online; conforms the information collected by civil union solemnizers to the information collected by marriage solemnizers; makes a reciprocal beneficiary relationship automatically terminate upon either party entering into a civil union; authorizes civil union partners to change their names on the certificate of civil union; and confirms that the family court has jurisdiction over the divorce, annulment, and separation of partners to a union that is recognized as a civil union in this State.

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

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO CIVIL UNIONS.

PURPOSE: To amend various statutory provisions related to civil unions (CU) and conforming amendments to recognize civil unions.

MEANS: Amend sections 572-1, 572B-2, 572B-4(b), 572-5(a), 572B-6(b), 572B-8(a) and (b), 572B-10, 572C-4, 572C-7(c) and (d), 574-1, 574-5(a), and 580-1, Hawaii Revised Statutes (HRS).

JUSTIFICATION: In 2011, the Hawaii State Legislature passed S.B. No. 232, S.D. 1, H.D. 1, statutorily establishing civil unions in the State of Hawaii. On January 1, 2012, CUs will become effectuated in the State (Act 1, Session Laws of Hawaii 2011). House Concurrent Resolution No. 205 was also adopted by the Hawaii State Legislature in 2011, requesting the Department of Health (DOH) to establish a task force to address the implementation of Act 1, as well as to provide proposed legislation to address concerns in Act 1, identified through the task force process.

Accordingly, the following statutory amendments are proposed:

- 1. Amend section 572-1, HRS, to add that a person in an existing civil union is not eligible to enter into a marriage.**
This is a housekeeping amendment to assure that a couple has only one status (e.g., a marriage, civil union, or reciprocal beneficiary relationship). Additionally, this amendment assures that a person only has one spouse/partner/reciprocal beneficiary at one time.
- 2. Remove from section 572B-2, HRS, the civil union eligibility requirement that any existing reciprocal beneficiary relationship**

of which either proposed party is a member be terminated.

This amendment is one of several amendments that address the problem of the "gap" between terminating a reciprocal beneficiary relationship and entering into a civil union. The gap affects couples transitioning from reciprocal beneficiary relationships to civil unions, which gap could be several weeks. Among other things, the gap may create problems with insurance, real property rights, inheritance, etc. This amendment, together with other amendments, will terminate a reciprocal beneficiary relationship upon marriage or entering into a civil union. These amendments are proposed to avoid potential complications and to address potential equal protection issues.

3. Amend section 572B-4, HRS, to conform the description of clergy eligible to solemnize a civil union to the description of clergy eligible to solemnize a marriage and to remove duplicative language repeated elsewhere in section 572B-4.

This amendment expands the group of clergy eligible to solemnize a civil union, in order to encompass the same group as those eligible to solemnize a marriage. This amendment is proposed to avoid confusion as to who may solemnize which event and to address potential equal protection issues.

4. Amend section 572B-5, HRS, to remove the requirement that a license for a civil union be issued by only certain licensing agents located in specified areas, so that any licensing agent in the State may issue a civil union license.

This amendment is intended to address a difference between the procedures for marriage and civil unions that could cause unintended consequences. Potential partners may not realize that only certain agents may issue a civil union license, which depends on where the civil union will occur and where the potential partners reside. Choosing the wrong agent could result in the

potential partners not being able to solemnize their civil union. Additionally, there appears to be no advantage in placing geographic limits on which licensing agent is authorized to issue a license.

5. Amend section 572B-6, HRS, to clarify that the Department of Health may also collect application fees for civil union licenses, and not just licensing agents. The Department of Health has implemented an on-line pre-application procedure for prospective civil union partners that requires payment on-line. This amendment clarifies that payment for application fees may be made to the Department of Health, making clear that the on-line payment is authorized.

6. Amend section 572B-8, HRS, to conform the description of the type of information that a solemnizer must fill in on a civil union certificate to the type of information to be filled in on a marriage certificate and to clarify that the certificate must be returned to the Department of Health and not a licensing agent.

These amendments are housekeeping amendments intended to conform the procedures for solemnizers of civil unions to those procedures required for solemnizers of marriages.

7. Amend section 572B-10, HRS, to state that, in order for a union performed out-of-state to be recognized as a civil union in Hawaii, any existing reciprocal beneficiary relationship that either proposed partner is a member of must first be terminated.

This amendment applies to couples who are in an existing reciprocal beneficiary relationship as of January 1, 2012, and entered into a union in another jurisdiction that will be recognized as a civil union under Act 1. Due to the amendment removing the eligibility requirement that any existing reciprocal beneficiary relationship be terminated before issuance of a civil union license, a couple with an out-of-state union would have more than one status if

this amendment is not made. This could result in confusion for employers, insurers, etc.

Additionally, treating out-of-state unions like civil unions entered into in this State by automatically terminating the reciprocal beneficiary relationship is not necessarily a good alternative. If the out-of-state union required fewer obligations for the couple, the couple may not want to automatically "upgrade" the relationship under Act 1. This amendment is intended to assure that the couple has only one status, while allowing a couple that has entered into a union out-of-state to choose whether to continue the level of rights and obligations under a reciprocal beneficiary relationship.

8. Amend section 572C-4, HRS, to add that a person in an existing civil union is not eligible to enter into a reciprocal beneficiary relationship.

This is a housekeeping amendment intended to conform the eligibility requirements of reciprocal beneficiary relationships to recognize civil unions.

9. Amend section 572C-7, HRS, to provide that, upon issuance of a civil union license to a person, any existing reciprocal beneficiary relationship in which that person is a member shall automatically terminate.

This amendment is intended to address the "gap" issue by providing that a marriage and an existing reciprocal beneficiary relationship will automatically terminate when either beneficiary enters into a civil union. This will also correct an inconsistency in the reciprocal beneficiary law regarding the timing of when the reciprocal beneficiary relationship is terminated.

10. Amend section 574-1, HRS, to specify that, upon entering into a civil union, the partners may change their names.

This is a housekeeping amendment intended to conform the name-change process to recognize civil unions.

11. Amend section 574-5, HRS, to specify that a person whose name has been adopted or conferred under chapter 574, HRS, may change their name when entering into a civil union or through a divorce proceeding that terminates a civil union.

This is a housekeeping amendment intended to conform the name-change process to recognize civil unions.

12. Amend section 580-1, HRS, to add that the family court has jurisdiction over divorce, annulment, or separation proceedings of unions that are recognized as civil unions in this State.

This amendment is intended to clarify that the family court has jurisdiction with respect divorce, annulment, or separation proceedings for unions that are recognized as civil unions in the State. While Act 1 amended the family court jurisdictional statute to specify jurisdiction for civil unions entered into in this State, there is no specific provision for these types of proceedings for unions performed out-of-state. Without this amendment, it could be argued that there is no way under state law to terminate unions performed out-of-state.

Impact on the public: This measure will ensure that persons seeking to enter a civil union will be able to do with greater ease.

Impact on the department and other agencies: The proposed amendments will allow for improved, effective implementation of the civil union law by the department of health, the Office of the Lieutenant Governor, and the Judiciary.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM

DESIGNATION:

OTHER AFFECTED
AGENCIES:

Office of the Lieutenant Governor;
Judiciary.

EFFECTIVE DATE:

Upon approval.