



GOV. MSG. NO. 39

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

October 22, 2013

The Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
State Capitol
Honolulu, Hawaii 96813

Dear President Kim:

In anticipation of the upcoming special session of the Legislature, a proposed draft of the marriage equity bill is attached for your consideration.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Neil Abercrombie".

NEIL ABERCROMBIE
Governor, State of Hawaii

Attachment

cc: Honorable Clayton Hee

13 OCT 25 11 58

OFFICE OF THE GOVERNOR
STATE
RECORDS

A BILL FOR AN ACT

RELATING TO EQUAL RIGHTS.

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

1 SECTION 1. This Act shall be known as the Hawaii Marriage
2 Equality Act of 2013.

3 The legislature acknowledges the recent decision of the
4 United States Supreme Court in United States v. Windsor, 133 S.
5 Ct. 2675 (2013), which held that Section 3 of the Defense of
6 Marriage Act, Public Law 104-199, unlawfully discriminated
7 against married same-sex couples by prohibiting the federal
8 government from recognizing those marriages and by denying
9 federal rights, benefits, protections, and responsibilities to
10 those couples. The legislature has already extended to same-sex
11 couples the right to enter into civil unions that provide the
12 same rights, benefits, protections, and responsibilities under
13 state law as afforded to opposite-sex couples who marry.
14 However, these civil unions are not recognized by federal law
15 and will not be treated equally to a marriage under federal law.

16 Therefore, it is the intent of the legislature:

17 (1) To ensure that same-sex couples are able to take full
18 advantage of federal rights, benefits, protections,

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1 and responsibilities granted to married opposite-sex
2 couples by allowing same-sex couples to marry under
3 the laws of this State;

4 (2) To ensure that there be no legal distinction between
5 same-sex married couples and opposite-sex married
6 couples with respect to marriage under the laws of
7 this State by applying all provisions of law regarding
8 marriage equally to same-sex couples and opposite-sex
9 couples, regardless of whether this Act does or does
10 not amend any particular provision of law; and

11 (3) To protect religious freedom and liberty by:

12 (A) Ensuring, in accordance with the Hawaii State
13 Constitution and the United States Constitution,
14 that no clergy or other officer of any religious
15 organization will be required to solemnize any
16 marriage; and

17 (B) Clarifying that a religious organization that
18 does not need to make its facilities or grounds
19 available for marriage solemnization if the
20 religious organization uses its facilities or
21 grounds for religious purposes, limits the use of
22 its facilities or grounds for marriages to its
23 members or affiliated persons or organizations,

1 and does not operate the religious facilities or
2 grounds as a for-profit business.

3 Accordingly, the purpose of this Act is to recognize
4 marriages between individuals of the same sex in the State of
5 Hawaii.

6 SECTION 2. Chapter 572, Hawaii Revised Statutes, is
7 amended by adding six new sections to be appropriately
8 designated and to read as follows:

9 "§572-A Continuity of rights; civil union and reciprocal
10 beneficiary relationships. (a) Two individuals who are civil
11 union partners or reciprocal beneficiaries with each other and
12 who seek to marry each other shall be permitted to apply for a
13 marriage license under section 572-6 and to marry each other
14 under this chapter without first terminating their civil union
15 or reciprocal beneficiary relationship; provided that the two
16 individuals are otherwise eligible to marry under this chapter.

17 (b) The couple's civil union or reciprocal beneficiary
18 relationship shall continue uninterrupted until the
19 solemnization of the marriage consistent with this chapter, and
20 the solemnization of the couple's marriage shall automatically
21 terminate the couple's civil union or reciprocal beneficiary
22 relationship.

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1 (c) The act of seeking a license for or entering into a
2 marriage under this chapter shall not diminish any of the
3 rights, benefits, protections, and responsibilities that existed
4 previously due to the couple's earlier status as civil union
5 partners or reciprocal beneficiaries.

6 (d) The rights, benefits, protections, and
7 responsibilities created by the civil union or reciprocal
8 beneficiary relationship shall be continuous through the
9 marriage and deemed to have accrued as of the first date these
10 rights existed under the civil union or reciprocal beneficiary
11 relationship; provided that the civil union or reciprocal
12 beneficiary relationship was in effect at the time of the
13 solemnization of the couple's marriage to each other.

14 (e) Any rights, benefits, protections, and
15 responsibilities created by the solemnization of a marriage that
16 were not included within the reciprocal beneficiary relationship
17 shall be recognized as of the date the marriage was solemnized.

18 (f) Property held by the couple in tenancy by the entirety
19 shall be subject to section 509-3.

20 **§572-B Interpretation of terminology to be gender neutral.**

21 When necessary to implement the rights, benefits, protections,
22 and responsibilities of spouses under the laws of this State,
23 all gender-specific terminology, such as "husband", "wife",

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1 "widow", "widower", or similar terms, shall be construed in a
2 gender-neutral manner. This interpretation shall apply to all
3 sources of law, including statutes, administrative rules, court
4 decisions, common law, or any other source of law.

5 §572-C Right of parents. Parentage rights, benefits,
6 protections, and responsibilities based on marriage shall be the
7 same for all married spouses regardless of the gender of the
8 spouses. These rights, benefits, protections, and
9 responsibilities shall include paternity, maternity, and
10 parentage presumptions based on marriage.

11 §572-D Reliance on federal law. Any law of this State
12 that refers to, adopts, or relies upon federal law shall apply
13 to all marriages recognized under the laws of this State as if
14 federal law recognized such marriages in the same manner as the
15 laws of this State, so that all marriages receive equal
16 treatment.

17 §572-E Refusal to solemnize a marriage. Nothing in this
18 chapter shall be construed to require any clergy, minister,
19 priest, rabbi, officer of any religious denomination or society,
20 or religious society not having clergy but providing
21 solemnizations that is authorized to perform solemnizations
22 pursuant to this chapter to solemnize any marriage. No such
23 person who fails or refuses for any reason to solemnize any

1 marriage under this section shall be subject to any fine,
2 penalty, injunction, administrative proceeding, or other civil
3 liability for the failure or refusal.

4 **§572-F Religious organizations and facilities; liability**
5 **exemption under certain circumstances.** (a) A religious
6 organization shall not be required to make a religious facility
7 or grounds owned or leased by the religious organization
8 available for the solemnization of a marriage; provided that:

9 (1) The religious facility or grounds are regularly used
10 by the religious organization for its religious
11 purposes;

12 (2) For solemnization of marriages pursuant to this
13 chapter, the religious organization restricts use of
14 the religious facility or grounds to marriages
15 involving its members, or affiliated persons or
16 religious organizations; and

17 (3) The religious organization does not operate the
18 religious facility or grounds primarily as a for-
19 profit business.

20 (b) A religious organization that refuses to make its
21 religious facility or grounds available for solemnization of a
22 marriage as provided in subsection (a) shall not be subject to

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1 any fine, penalty, injunction, administrative proceeding, or
2 civil liability for the refusal.

3 (c) Nothing in this section shall be interpreted to exempt
4 the owner or operator of any religious facility or grounds from
5 the requirements of chapter 489 if the religious facility or
6 grounds is a place of public accommodation as defined in section
7 489-2."

8 SECTION 3. Section 572-1, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§572-1 Requisites of valid marriage contract.** In order
11 to make valid the marriage contract, which shall be [~~only~~
12 ~~between a man and a woman,~~] permitted between two individuals
13 without regard to gender, it shall be necessary that:

14 (1) The respective parties do not stand in relation to
15 each other of ancestor and descendant of any degree
16 whatsoever, [~~brother and sister~~] two siblings of the
17 half as well as to the whole blood, uncle and niece,
18 uncle and nephew, aunt and nephew, or aunt and niece,
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;

23 (2) Each of the parties at the time of contracting the

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1 marriage is at least sixteen years of age; provided
2 that with the written approval of the family court of
3 the circuit within which the minor resides, it shall
4 be lawful for a person under the age of sixteen years,
5 but in no event under the age of fifteen years, to
6 marry, subject to section 572-2;

7 (3) ~~[The man does not at the time have any lawful wife or~~
8 ~~civil union partner living and that the woman does not~~
9 ~~at the time have any lawful husband or civil union~~
10 ~~partner living,]~~ Neither party has at the time any
11 lawful wife, husband, or civil union partner living,
12 except as provided in section 572-A;

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

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

18 (6) The ~~[man and woman]~~ parties to be married in the State
19 shall have duly obtained a license for that purpose
20 from the agent appointed to grant marriage licenses;
21 and

22 (7) The marriage ceremony be performed in the State by a

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1 person or society with a valid license to solemnize
2 marriages and the [~~man and the woman~~] parties to be
3 married and the person performing the marriage
4 ceremony be all physically present at the same place
5 and time for the marriage ceremony."

6 SECTION 4. Section 572-3, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§572-3 Contracted without the State.** Marriages between
9 [~~a man and a woman~~] two individuals regardless of gender and
10 legal [~~in the country~~] where contracted shall be held legal in
11 the courts of this State."

12 SECTION 5. Section 572-6, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§572-6 Application; license; limitations.** To secure a
15 license to marry, the persons applying for the license shall
16 appear personally before an agent authorized to grant marriage
17 licenses and shall file with the agent an application in
18 writing. The application shall be accompanied by a statement
19 signed and sworn to by each of the persons, setting forth: the
20 person's full name, date of birth, social security number,
21 residence; their relationship, if any; the full names of
22 parents; and that all prior marriages[~~r~~] or civil unions, if
23 any, other than an existing civil union between the persons

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1 applying for the marriage license, have been dissolved by death
2 or dissolution. If all prior marriages or civil unions, other
3 than an existing civil union between the persons applying for
4 the marriage license, have been dissolved by death or
5 dissolution, the statement shall also set forth the date of
6 death of the last prior spouse or the date and jurisdiction in
7 which the last decree of dissolution was entered. Any other
8 information consistent with the standard marriage certificate as
9 recommended by the Public Health Service, National Center for
10 Health Statistics, may be requested for statistical or other
11 purposes, subject to approval of and modification by the
12 department of health; provided that the information shall be
13 provided at the option of the applicant and no applicant shall
14 be denied a license for failure to provide the information. The
15 agent shall indorse on the application, over the agent's
16 signature, the date of the filing thereof and shall issue a
17 license which shall bear on its face the date of issuance.
18 Every license shall be of full force and effect for thirty days
19 commencing from and including the date of issuance. After the
20 thirty-day period, the license shall become void and no marriage
21 ceremony shall be performed thereon.

22 It shall be the duty of every person, legally authorized to
23 grant licenses to marry, to immediately report the issuance of

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1 every marriage license to the agent of the department of health
2 in the district in which the license is issued, setting forth
3 all facts required to be stated in such manner and on such form
4 as the department may prescribe."

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

7 "(a) Recordkeeping. Every person authorized to solemnize
8 marriage shall make and preserve a record of every marriage by
9 the person solemnized, comprising the names of the [~~man and~~
10 ~~woman~~] parties married, their place of residence, and the date
11 of their marriage.

12 Every person authorized to solemnize marriage, who neglects
13 to keep a record of any marriage by the person solemnized shall
14 be fined \$50.

15 (b) Marriages, reported by whom. It shall be the duty of
16 every person, legally authorized to perform the marriage
17 ceremony, to report within three business days every marriage
18 ceremony, performed by the person, to the agent of the
19 department of health in the district in which the marriage takes
20 place setting forth all facts required to be stated in a
21 standard certificate of marriage, the form and contents of which
22 shall be prescribed by the department of health[-]; provided
23 that if any person who has solemnized a marriage fails to report

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1 it to the agent of the department of health, the parties married
2 may provide the department of health with a notarized affidavit
3 attesting to the fact that they were married and stating the
4 date and place of the solemnization of the marriage. Upon the
5 receipt of that affidavit by the department of health, the
6 marriage shall be deemed to be valid as of the date of the
7 solemnization of the marriage stated in the affidavit; provided
8 that the requirements of section 572-1 are met."

9 SECTION 7. Section 572C-2, Hawaii Revised Statutes, is
10 amended to read as follows:

11 " [†] §572C-2 [†] **Findings.** [~~The legislature finds that the~~
12 ~~people of Hawaii choose to preserve the tradition of marriage as~~
13 ~~a unique social institution based upon the committed union of~~
14 ~~one man and one woman. The legislature further finds that~~
15 ~~because of its unique status, marriage provides access to a~~
16 ~~multiplicity of rights and benefits throughout our laws that are~~
17 ~~contingent upon that status. As such, marriage should be~~
18 ~~subject to restrictions such as prohibiting respective parties~~
19 ~~to a valid marriage contract from standing in relation to each~~
20 ~~other, i.e., brother and sister of the half as well as to the~~
21 ~~whole blood, uncle and niece, aunt and nephew.~~

22 ~~However, the legislature concurrently]~~ The legislature
23 acknowledges that there are many individuals who have

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1 significant personal, emotional, and economic relationships with
2 another individual yet are prohibited by [~~such~~] legal
3 restrictions from marrying. For example, two individuals who
4 are related to one another, such as a widowed mother and her
5 unmarried son [~~, or two individuals who are of the same gender~~].
6 Therefore, the legislature believes that certain rights and
7 benefits presently available only to married couples should be
8 made available to couples comprised of two individuals who are
9 legally prohibited from marrying one another."

10 SECTION 8. Section 580-1, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§580-1 Jurisdiction; hearing. (a) Exclusive original
13 jurisdiction in matters of annulment, divorce, and separation,
14 subject to section 603-37 as to change of venue, and subject
15 also to appeal according to law, is conferred upon the family
16 court of the circuit in which the applicant has been domiciled
17 or has been physically present for a continuous period of at
18 least three months next preceding the application therefor[-],
19 except as provided in subsection (b). No absolute divorce from
20 the bond of matrimony shall be granted for any cause unless
21 either party to the marriage has been domiciled or has been
22 physically present in the State for a continuous period of at
23 least six months next preceding the application therefor[-],

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1 except as provided in subsection (b). A person who may be
2 residing on any military or federal base, installation, or
3 reservation within the State or who may be present in the State
4 under military orders shall not thereby be prohibited from
5 meeting the requirements of this section. The family court of
6 each circuit shall have jurisdiction over all proceedings
7 relating to the annulment, divorce, and separation of civil
8 unions entered into in this State or unions recognized as civil
9 unions in this State in the same manner as marriages.

10 (b) An action for annulment, divorce, or separation may be
11 commenced where neither party to the marriage meets the domicile
12 or physical presence requirements of subsection (a) at the time
13 the action is commenced, if:

14 (1) The marriage was solemnized under chapter 572 in this
15 State; and

16 (2) Neither party to the marriage is able to pursue an
17 action for annulment, divorce, or separation where the
18 parties are domiciled, because both parties are
19 domiciled in a jurisdiction or jurisdictions that do
20 not recognize their marriage.

21 There shall be a rebuttable presumption that a jurisdiction will
22 not maintain an action for annulment, divorce, or separation if

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1 the jurisdiction or jurisdictions where the parties are
2 domiciled do not recognize the parties' marriage.

3 (c) Actions brought under subsection (b) shall be
4 commenced in the circuit where the marriage was solemnized and
5 the law of this State shall govern. Jurisdiction over actions
6 brought under subsection (b) shall be limited to decrees
7 granting annulment, divorce, or separation that address the
8 status or dissolution of the marriage alone; provided that if
9 both parties to the marriage consent to the family court's
10 personal jurisdiction or if jurisdiction otherwise exists by
11 law, the family court shall adjudicate child custody, spousal
12 support, child support, property division, or other matters
13 related to the annulment, divorce, or separation."

14 SECTION 9. Notwithstanding any other provision of law,
15 nothing in this Act shall invalidate any civil union or
16 reciprocal beneficiary relationship in existence before the
17 effective date of this Act. Any such civil union or reciprocal
18 beneficiary relationship shall continue until terminated in
19 accordance with applicable law.

20 SECTION 10. The department of health may, in its
21 discretion, make any changes that it deems necessary to internal
22 procedures or forms, to aid in the implementation of this Act.

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1 SECTION 11. If any provision of this Act, or the
2 application thereof to any person or circumstance, is held
3 invalid, the invalidity does not affect other provisions or
4 applications of the Act that can be given effect without the
5 invalid provision or application, and to this end the provisions
6 of this Act are severable.

7 SECTION 12. In codifying the new sections added by section
8 2 of this Act, the revisor of statutes shall substitute
9 appropriate section numbers for the letters used in designating
10 the new sections in this Act.

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

13 SECTION 14. This Act shall take effect on November 18,
14 2013.

15

16 INTRODUCED BY: _____

17 BY REQUEST

18

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Report Title:

Marriage Equality

Description:

Recognizes marriages between individuals of the same sex. Extends to same-sex couples the same rights, benefits, protections, and responsibilities of marriage that opposite-sex couples receive. Effective November 18, 2013.

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