



EXECUTIVE CHAMBERS
HONOLULU


NEIL ABERCROMBIE
GOVERNOR

GOV. MSG. NO. 44

November 13, 2013

The Honorable Donna Mercado Kim,
President
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

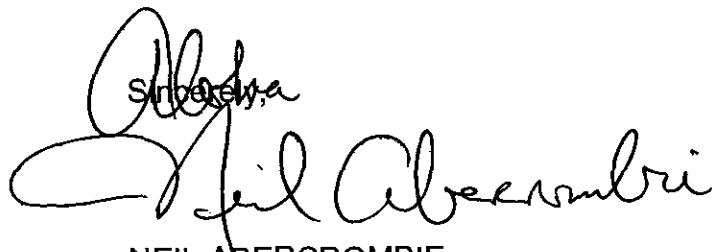
The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Seventh State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813


Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on November 13, 2013, the following bill was signed into law:

SB1 HD1

RELATING TO EQUAL RIGHTS
ACT 001


NEIL ABERCROMBIE
Governor, State of Hawaii

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 to:

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



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) 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) Protect religious freedom and liberty by:

12 (A) Ensuring that any clergy, minister, priest,
13 rabbi, officer of any religious denomination or
14 society, or religious society not having clergy
15 but providing solemnizations that is authorized
16 to perform solemnizations shall not be required
17 to solemnize any marriage or civil union that is
18 against their religious beliefs or faith, in
19 accordance with the Hawaii state constitution and
20 the United States Constitution; and

21 (B) Clarifying that a religious organization or
22 nonprofit organization operated, supervised, or



1 controlled by a religious organization shall not
2 be required to provide goods, services, or its
3 facilities or grounds for the solemnization or
4 celebration of a marriage or civil union that is
5 in violation of its religious beliefs or faith.

6 The purpose of this Act is to recognize marriages between
7 individuals of the same sex in the State of Hawaii.

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

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

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



1 terminate the couple's civil union or reciprocal beneficiary
2 relationship.

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

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

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

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



1 **§572-B Interpretation of terminology to be gender neutral.**

2 When necessary to implement the rights, benefits, protections,
3 and responsibilities of spouses under the laws of this State,
4 all gender-specific terminology, such as "husband", "wife",
5 "widow", "widower", or similar terms, shall be construed in a
6 gender-neutral manner. This interpretation shall apply to all
7 sources of law, including statutes, administrative rules, court
8 decisions, common law, or any other source of law.

9 **§572-C Reliance on federal law.** Any law of this State

10 that refers to, adopts, or relies upon federal law shall apply
11 to all marriages recognized under the laws of this State as if
12 federal law recognized such marriages in the same manner as the
13 laws of this State so that all marriages receive equal
14 treatment.

15 **§572-D Refusal to solemnize a marriage.** (a)

16 Notwithstanding any other law to the contrary, a clergy,
17 minister, priest, rabbi, officer of any religious denomination
18 or society, or religious society not having clergy but providing
19 solemnizations that is authorized to perform solemnizations
20 pursuant to this chapter shall not be required to solemnize any
21 marriage that is in violation of their religious beliefs or
22 faith.



1 (b) A clergy, minister, priest, rabbi, officer of any
2 religious denomination or society, or religious society not
3 having clergy but providing solemnizations that, pursuant to
4 this section, fails or refuses to perform the solemnization of a
5 marriage shall be immune from any fine, penalty, injunction,
6 administrative proceeding, or any other legal or administrative
7 liability for the failure or refusal.

8 §572-E Religious organizations; exemption under certain
9 circumstances. (a) Notwithstanding any other law to the
10 contrary, a religious organization or nonprofit organization
11 operated, supervised, or controlled by a religious organization
12 shall not be required to provide goods, services, or its
13 facilities or grounds for the solemnization or celebration of a
14 marriage that is in violation of its religious beliefs or
15 faith.

16 (b) A religious organization or nonprofit organization
17 operated, supervised, or controlled by a religious organization
18 that, pursuant to this section, fails or refuses to provide
19 goods, services, or its facilities or grounds for the
20 solemnization or celebration of a marriage shall be immune from
21 any fine, penalty, injunction, administrative proceeding, or any



1 other legal or administrative liability for the failure or
2 refusal."

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

5 "**§572-1 Requisites of valid marriage contract.** In order
6 to make valid the marriage contract, which shall be [~~only~~
7 ~~between a man and a woman,~~] permitted between two individuals
8 without regard to gender, it shall be necessary that:

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

18 (2) Each of the parties at the time of contracting the
19 marriage is at least sixteen years of age; provided
20 that with the written approval of the family court of
21 the circuit within which the minor resides, it shall
22 be lawful for a person under the age of sixteen years,



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

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

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]~~ parties to be married in the State
15 shall have duly obtained a license for that purpose
16 from the agent appointed to grant marriage licenses;
17 and

18 (7) The marriage ceremony be performed in the State by a
19 person or society with a valid license to solemnize
20 marriages and the ~~[man and the woman]~~ parties to be
21 married and the person performing the marriage



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

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

5 "**§572-3 Contracted without the State.** Marriages between
6 [~~a man and a woman~~] two individuals regardless of gender and
7 legal [~~in the country~~] where contracted shall be held legal in
8 the courts of this State."

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

11 "**§572-6 Application; license; limitations.** To secure a
12 license to marry, the persons applying for the license shall
13 appear personally before an agent authorized to grant marriage
14 licenses and shall file with the agent an application in
15 writing. The application shall be accompanied by a statement
16 signed and sworn to by each of the persons, setting forth: the
17 person's full name, date of birth, social security number,
18 residence; their relationship, if any; the full names of
19 parents; and that all prior marriages[~~7~~] or civil unions, if
20 any, other than an existing civil union between the persons
21 applying for the marriage license, have been dissolved by death
22 or dissolution. If all prior marriages or civil unions, other



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

20 It shall be the duty of every person, legally authorized to
21 grant licenses to marry, to immediately report the issuance of
22 every marriage license to the agent of the department of health



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

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

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

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

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



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 572B-4, Hawaii Revised Statutes, is
 10 amended to read as follows:

11 **"§572B-4 Solemnization; license to perform; refusal to**
 12 **join persons in a civil union.** (a) A civil union shall become
 13 valid only upon completion of a solemnization by a person
 14 licensed in accordance with this section.

15 (b) Any judge or retired judge, including a federal judge
 16 or judge of another state who may legally join persons in
 17 chapter 572 or a civil union, may solemnize a civil union. Any
 18 clergy, minister, priest, rabbi, or officer of any religious
 19 denomination or society who has been ordained or is authorized
 20 to solemnize civil unions according to the usages of such
 21 denomination or society, or any religious society not having

1 clergy but providing solemnization in accordance with the rules
2 and customs of that society, may solemnize a civil union.

3 (c) ~~(Nothing in this section shall be construed to require~~
4 ~~any person]~~ Notwithstanding any other law to the contrary, a
5 clergy, minister, priest, rabbi, officer of any religious
6 denomination or society, or religious society not having clergy
7 but providing solemnizations that is authorized to perform
8 solemnizations [pursuant to chapter 572 or] of civil unions
9 pursuant to this chapter [to perform a solemnization of a civil
10 union, and no such authorized person who fails or refuses for
11 any reason to join persons in a civil union shall be subject to
12 any fine, penalty, or other civil action for the failure or
13 refusal.] shall not be required to solemnize any civil union
14 that is in violation of their religious beliefs or faith.

15 (d) A clergy, minister, priest, rabbi, officer of any
16 religious denomination or society, or religious society not
17 having clergy but providing solemnizations that, pursuant to
18 this section, fails or refuses to perform the solemnization of a
19 civil union shall be immune from any fine, penalty, injunction,
20 administrative proceeding, or any other legal or administrative
21 liability for the failure or refusal.



1 ~~[(d)]~~ (e) No agent may solemnize a civil union; nor may
2 any assistant or deputy of the agent solemnize a civil union.

3 ~~[(e)]~~(f) No person shall perform the solemnization of a
4 civil union without first having obtained a license from the
5 department of health. The department of health shall issue
6 licenses to solemnize civil unions in the same manner as it
7 issues licenses pursuant to chapter 572. The department of
8 health may revoke or suspend a license to solemnize civil
9 unions. Any penalties or fines that may be levied or assessed
10 by the department of health for violation of chapter 572 shall
11 apply equally to a person licensed to solemnize civil unions."

12 SECTION 8. Section 572B-9.5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "~~[(f)]§572B-9.5[] Religious organizations and facilities,~~
15 ~~liability exemption under certain circumstances. (a) A~~
16 ~~religious organization shall not be required to make a religious~~
17 ~~facility owned or leased by the religious organization available~~
18 ~~for solemnization of a civil union; provided that:~~

19 ~~(1) The religious facility is regularly used by the~~
20 ~~religious organization for its religious purposes;~~



1 ~~(2) For solemnization of marriages pursuant to chapter~~
2 ~~572, the religious organization restricts use of the~~
3 ~~religious facility to its members; and~~

4 ~~(3) The religious organization does not operate the~~
5 ~~religious facility as a for profit business.~~

6 ~~(b) A religious organization that refuses to make a~~
7 ~~religious facility available for solemnization of a civil union~~
8 ~~under subsection (a) shall not be subject to any fine, penalty,~~
9 ~~or civil liability for the refusal.~~

10 ~~(c) Nothing in this section shall be interpreted to exempt~~
11 ~~the owner or operator of any religious facility from the~~
12 ~~requirements of chapter 489 if the religious facility is a place~~
13 ~~of public accommodation as defined in section 489-2.] **Religious**~~

14 ~~**organizations; exemption under certain circumstances.** (a)~~
15 ~~Notwithstanding any other law to the contrary, a religious~~
16 ~~organization or nonprofit organization operated, supervised, or~~
17 ~~controlled by a religious organization shall not be required to~~
18 ~~provide goods, services, or its facilities or grounds for the~~
19 ~~solemnization or celebration of a civil union that is in~~
20 ~~violation of its religious beliefs or faith.~~

21 ~~(b) A religious organization or nonprofit organization~~
22 ~~operated, supervised, or controlled by a religious organization~~



1 that, pursuant to this section, fails or refuses to provide
2 goods, services, or its facilities or grounds for the
3 solemnization or celebration of a civil union shall be immune
4 from any fine, penalty, injunction, administrative proceeding,
5 or any other legal or administrative liability for the failure
6 or refusal."

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

9 "[~~§~~572C-2~~§~~] **Findings.** [~~The legislature finds that the~~
10 ~~people of Hawaii choose to preserve the tradition of marriage as~~
11 ~~a unique social institution based upon the committed union of~~
12 ~~one man and one woman. The legislature further finds that~~
13 ~~because of its unique status, marriage provides access to a~~
14 ~~multiplicity of rights and benefits throughout our laws that are~~
15 ~~contingent upon that status. As such, marriage should be~~
16 ~~subject to restrictions such as prohibiting respective parties~~
17 ~~to a valid marriage contract from standing in relation to each~~
18 ~~other, i.e., brother and sister of the half as well as to the~~
19 ~~whole blood, uncle and niece, aunt and nephew.~~

20 ~~However, the legislature concurrently]~~ The legislature
21 acknowledges that there are many individuals who have
22 significant personal, emotional, and economic relationships with



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

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

11 "**§580-1 Jurisdiction; hearing.** (a) Exclusive original
 12 jurisdiction in matters of annulment, divorce, and separation,
 13 subject to section 603-37 as to change of venue, and subject
 14 also to appeal according to law, is conferred upon the family
 15 court of the circuit in which the applicant has been domiciled
 16 or has been physically present for a continuous period of at
 17 least three months next preceding the application therefor[-],
 18 except as provided in subsection (b). No absolute divorce from
 19 the bond of matrimony shall be granted for any cause unless
 20 either party to the marriage has been domiciled or has been
 21 physically present in the State for a continuous period of at
 22 least six months next preceding the application therefor[-],



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



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 11. 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 unions or reciprocal
18 beneficiary relationships shall continue until terminated in
19 accordance with applicable law.

20 SECTION 12. 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.

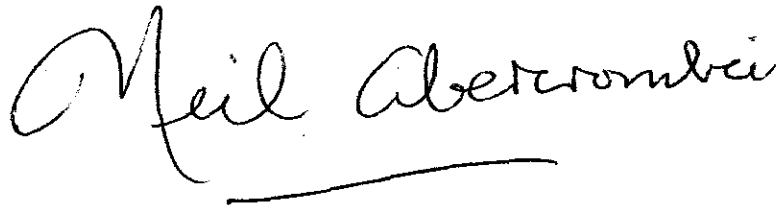


1 SECTION 13. If any provision of this Act, or the
2 application thereof to any person or circumstance, is held
3 invalid, the invalidity does not affect other provisions or
4 applications of the Act that can be given effect without the
5 invalid provision or application, and to this end the provisions
6 of this Act are severable.

7 SECTION 14. 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 15. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 16. This Act shall take effect on December 2,
14 2013.



APPROVED this 13 day of NOV, 2013