

OCT 28 2013

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,



S.B. NO. 1

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

17 (B) Clarifying that unless a religious organization
18 allows use of its facilities or grounds by the
19 general public for weddings for a profit, such
20 organization shall not be required to make its
21 facilities or grounds available for solemnization
22 of any marriage celebration.



S.B. NO. 1

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

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

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

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

20 (c) The act of seeking a license for or entering into a
21 marriage under this chapter shall not diminish any of the
22 rights, benefits, protections, and responsibilities that existed



1 previously due to the couple's earlier status as civil union
2 partners or reciprocal beneficiaries.

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

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

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

18 **§572-B Interpretation of terminology to be gender neutral.**

19 When necessary to implement the rights, benefits, protections,
20 and responsibilities of spouses under the laws of this State,
21 all gender-specific terminology, such as "husband", "wife",
22 "widow", "widower", or similar terms, shall be construed in a



1 gender-neutral manner. This interpretation shall apply to all
2 sources of law, including statutes, administrative rules, court
3 decisions, common law, or any other source of law.

4 §572-C Right of parents. Parentage rights, benefits,
5 protections, and responsibilities based on marriage shall be the
6 same for all married spouses regardless of the gender of the
7 spouses. These rights, benefits, protections, and
8 responsibilities shall include paternity, maternity, and
9 parentage presumptions based on marriage.

10 §572-D Reliance on federal law. Any law of this State
11 that refers to, adopts, or relies upon federal law shall apply
12 to all marriages recognized under the laws of this State as if
13 federal law recognized such marriages in the same manner as the
14 laws of this State so that all marriages receive equal
15 treatment.

16 §572-E Refusal to solemnize a marriage. Nothing in this
17 chapter shall be construed to require any clergy, minister,
18 priest, rabbi, officer of any religious denomination or society,
19 or religious society not having clergy but providing
20 solemnizations that is authorized to perform solemnizations
21 pursuant to this chapter to solemnize any marriage. No such
22 person who fails or refuses to solemnize any marriage under this



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

4 §572-F Religious organizations and facilities; liability
5 exemption under certain circumstances. Notwithstanding any
6 other law to the contrary, no religious organization shall be
7 subject to any fine, penalty, injunction, administrative
8 proceeding, or civil liability for refusing to make its
9 facilities or grounds available for solemnization of any
10 marriage celebration under this chapter; provided that the
11 religious organization does not make its facilities or grounds
12 available to the general public for solemnization of any
13 marriage celebration for a profit.

14 For purposes of this section, a religious organization
15 accepting donations from the public, providing religious
16 services to the public, or otherwise permitting the public to
17 enter the religious organization's premises shall not constitute
18 "for a profit".

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

21 "§572-1 Requisites of valid marriage contract. In order
22 to make valid the marriage contract, which shall be [only



S.B. NO. 1

1 ~~between a man and a woman,~~ permitted between two individuals
2 without regard to gender, it shall be necessary that:

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

12 (2) Each of the parties at the time of contracting the
13 marriage is at least sixteen years of age; provided
14 that with the written approval of the family court of
15 the circuit within which the minor resides, it shall
16 be lawful for a person under the age of sixteen years,
17 but in no event under the age of fifteen years, to
18 marry, subject to section 572-2;

19 (3) [~~The man does not at the time have any lawful wife or~~
20 ~~civil union partner living and that the woman does not~~
21 ~~at the time have any lawful husband or civil union~~
22 ~~partner living;~~] Neither party has at the time any



1 lawful wife, husband, or civil union partner living,
2 except as provided in section 572-A;

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

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

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

12 (7) The marriage ceremony be performed in the State by a
13 person or society with a valid license to solemnize
14 marriages and the [~~man and the woman~~] parties to be
15 married and the person performing the marriage
16 ceremony be all physically present at the same place
17 and time for the marriage ceremony."

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

20 "**§572-3 Contracted without the State.** Marriages between
21 [~~a man and a woman~~] two individuals regardless of gender and



1 legal [~~in the country~~] where contracted shall be held legal in
2 the courts of this State."

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

5 "**§572-6 Application; license; limitations.** To secure a
6 license to marry, the persons applying for the license shall
7 appear personally before an agent authorized to grant marriage
8 licenses and shall file with the agent an application in
9 writing. The application shall be accompanied by a statement
10 signed and sworn to by each of the persons, setting forth: the
11 person's full name, date of birth, social security number,
12 residence; their relationship, if any; the full names of
13 parents; and that all prior marriages^[7] or civil unions, if
14 any, other than an existing civil union between the persons
15 applying for the marriage license, have been dissolved by death
16 or dissolution. If all prior marriages or civil unions, other
17 than an existing civil union between the persons applying for
18 the marriage license, have been dissolved by death or
19 dissolution, the statement shall also set forth the date of
20 death of the last prior spouse or the date and jurisdiction in
21 which the last decree of dissolution was entered. Any other
22 information consistent with the standard marriage certificate as



1 recommended by the Public Health Service, National Center for
2 Health Statistics, may be requested for statistical or other
3 purposes, subject to approval of and modification by the
4 department of health; provided that the information shall be
5 provided at the option of the applicant and no applicant shall
6 be denied a license for failure to provide the information. The
7 agent shall indorse on the application, over the agent's
8 signature, the date of the filing thereof and shall issue a
9 license which shall bear on its face the date of issuance.
10 Every license shall be of full force and effect for thirty days
11 commencing from and including the date of issuance. After the
12 thirty-day period, the license shall become void and no marriage
13 ceremony shall be performed thereon.

14 It shall be the duty of every person, legally authorized to
15 grant licenses to marry, to immediately report the issuance of
16 every marriage license to the agent of the department of health
17 in the district in which the license is issued, setting forth
18 all facts required to be stated in such manner and on such form
19 as the department may prescribe."

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



S.B. NO. 1

1 "(a) Recordkeeping. Every person authorized to solemnize
2 marriage shall make and preserve a record of every marriage by
3 the person solemnized, comprising the names of the [~~man~~ and
4 ~~woman~~] parties married, their place of residence, and the date
5 of their marriage.

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

9 (b) Marriages, reported by whom. It shall be the duty of
10 every person, legally authorized to perform the marriage
11 ceremony, to report within three business days every marriage
12 ceremony, performed by the person, to the agent of the
13 department of health in the district in which the marriage takes
14 place setting forth all facts required to be stated in a
15 standard certificate of marriage, the form and contents of which
16 shall be prescribed by the department of health[-]; provided
17 that if any person who has solemnized a marriage fails to report
18 it to the agent of the department of health, the parties married
19 may provide the department of health with a notarized affidavit
20 attesting to the fact that they were married and stating the
21 date and place of the solemnization of the marriage. Upon the
22 receipt of that affidavit by the department of health, the



S.B. NO. 1

1 marriage shall be deemed to be valid as of the date of the
2 solemnization of the marriage stated in the affidavit; provided
3 that the requirements of section 572-1 are met."

4 SECTION 7. Section 572B-4, Hawaii Revised Statutes, is
5 amended by amending subsection (c) to read as follows:

6 "(c) Nothing in this section shall be construed to require
7 any person authorized to perform solemnizations [~~pursuant to~~
8 ~~chapter 572-0x~~] of civil unions pursuant to this chapter to
9 perform a solemnization of a civil union, and no such authorized
10 person who fails or refuses for any reason to join persons in a
11 civil union shall be subject to any fine, penalty, or other
12 civil action for the failure or refusal."

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

15 "[~~{~~]**§572C-2**[~~}~~] **Findings.** [~~The legislature finds that the~~
16 ~~people of Hawaii choose to preserve the tradition of marriage as~~
17 ~~a unique social institution based upon the committed union of~~
18 ~~one man and one woman. The legislature further finds that~~
19 ~~because of its unique status, marriage provides access to a~~
20 ~~multiplicity of rights and benefits throughout our laws that are~~
21 ~~contingent upon that status. As such, marriage should be~~
22 ~~subject to restrictions such as prohibiting respective parties~~



1 ~~to a valid marriage contract from standing in relation to each~~
2 ~~other, i.e., brother and sister of the half as well as to the~~
3 ~~whole blood, uncle and niece, aunt and nephew.~~

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

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

17 "**§580-1 Jurisdiction; hearing.** (a) Exclusive original
18 jurisdiction in matters of annulment, divorce, and separation,
19 subject to section 603-37 as to change of venue, and subject
20 also to appeal according to law, is conferred upon the family
21 court of the circuit in which the applicant has been domiciled
22 or has been physically present for a continuous period of at



S.B. NO. 1

1 least three months next preceding the application therefor[-],
2 except as provided in subsection (b). No absolute divorce from
3 the bond of matrimony shall be granted for any cause unless
4 either party to the marriage has been domiciled or has been
5 physically present in the State for a continuous period of at
6 least six months next preceding the application therefor[-],
7 except as provided in subsection (b). A person who may be
8 residing on any military or federal base, installation, or
9 reservation within the State or who may be present in the State
10 under military orders shall not thereby be prohibited from
11 meeting the requirements of this section. The family court of
12 each circuit shall have jurisdiction over all proceedings
13 relating to the annulment, divorce, and separation of civil
14 unions entered into in this State or unions recognized as civil
15 unions in this State in the same manner as marriages.

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

20 (1) The marriage was solemnized under chapter 572 in this
21 State; and



1 (2) Neither party to the marriage is able to pursue an
2 action for annulment, divorce, or separation where the
3 parties are domiciled because both parties are
4 domiciled in a jurisdiction or jurisdictions that do
5 not recognize their marriage.

6 There shall be a rebuttable presumption that a jurisdiction will
7 not maintain an action for annulment, divorce, or separation if
8 the jurisdiction or jurisdictions where the parties are
9 domiciled do not recognize the parties' marriage.

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

21 SECTION 10. Notwithstanding any other provision of law,
22 nothing in this Act shall invalidate any civil union or



1 reciprocal beneficiary relationship in existence before the
2 effective date of this Act. Any such civil unions or reciprocal
3 beneficiary relationships shall continue until terminated in
4 accordance with applicable law.

5 SECTION 11. The department of health may, in its
6 discretion, make any changes that it deems necessary to internal
7 procedures or forms, to aid in the implementation of this Act.

8 SECTION 12. If any provision of this Act, or the
9 application thereof to any person or circumstance, is held
10 invalid, the invalidity does not affect other provisions or
11 applications of the Act that can be given effect without the
12 invalid provision or application, and to this end the provisions
13 of this Act are severable.

14 SECTION 13. In codifying the new sections added by section
15 2 of this Act, the revisor of statutes shall substitute
16 appropriate section numbers for the letters used in designating
17 the new sections in this Act.

18 SECTION 14. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20



S.B. NO. 1

1 SECTION 15. This Act shall take effect on November 18,
2 2013.

3

INTRODUCED BY: _____

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S.B. NO. 1

Report Title:

Equal Rights

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 11/18/13.

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

