S.B. NO. 1

THE SENATE
TWENTY-SEVENTH LEGISLATURE, 2013
SECOND SPECIAL SESSION
STATE OF HAWAI'I
OCT 28 2013

A BILL FOR AN ACT

RELATING TO EQUAL RIGHTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

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

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

Therefore, it is the intent of the legislature to:

(1) Ensure that same-sex couples are able to take full advantage of federal rights, benefits, protections,
and responsibilities granted to married opposite-sex couples by allowing same-sex couples to marry under the laws of this State;

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

(3) Protect religious freedom and liberty by:

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

(B) Clarifying that unless a religious organization allows use of its facilities or grounds by the general public for weddings for a profit, such organization shall not be required to make its facilities or grounds available for solemnization of any marriage celebration.
The purpose of this Act is to recognize marriages between individuals of the same sex in the State of Hawaii.

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

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

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

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

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

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

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

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

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

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

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

§572-E Refusal to solemnize a marriage. Nothing in this chapter shall be construed to require any clergy, minister, priest, rabbi, officer of any religious denomination or society, or religious society not having clergy but providing solemnizations that is authorized to perform solemnizations pursuant to this chapter to solemnize any marriage. No such person who fails or refuses to solemnize any marriage under this paragraph shall be subject to any penalty for such refusal or failure.
section for any reason shall be subject to any fine, penalty, injunction, administrative proceeding, or other civil liability for the failure or refusal.

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

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

SECTION 3. 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,] permitted between two individuals without regard to gender, 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] two siblings of the half as well as to the whole blood, uncle and niece, uncle and nephew, aunt and nephew, or aunt and niece, whether the relationship is the result of the issue of parents married or not married to each other or parents who are partners in a civil union or not partners in 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:] Neither party has at the time any
lawful wife, husband, or civil union partner living, 
except as provided in section 572-A;

(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] parties 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 
marrriages and the [man-and-the-woman] parties 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 4. Section 572-3, Hawaii Revised Statutes, is 
amended to read as follows:

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

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

"§572-6 Application; license; limitations. To secure a license to marry, the persons applying for the license shall appear personally before an agent authorized to grant marriage licenses and shall file with the agent an application in writing. The application shall be accompanied by a statement signed and sworn to by each of the persons, setting forth: the person's full name, date of birth, social security number, residence; their relationship, if any; the full names of parents; and that all prior marriages or civil unions, if any, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution. If all prior marriages or civil unions, other than an existing civil union between the persons applying for the marriage license, have been dissolved by death or dissolution, the statement shall also set forth the date of death of the last prior spouse or the date and jurisdiction in which the last decree of dissolution was entered. Any other information consistent with the standard marriage certificate as
recommended by the Public Health Service, National Center for
Health Statistics, may be requested for statistical or other
purposes, subject to approval of and modification by the
department of health; provided that the information shall be
provided at the option of the applicant and no applicant shall
be denied a license for failure to provide the information. The
agent shall indorse on the application, over the agent's
signature, the date of the filing thereof and shall issue a
license which shall bear on its face the date of issuance.
Every license shall be of full force and effect for thirty days
commencing from and including the date of issuance. After the
thirty-day period, the license shall become void and no marriage
ceremony shall be performed thereon.

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

SECTION 6. Section 572-13, Hawaii Revised Statutes, is
amended by amending subsections (a) and (b) to read as follows:
"(a) Recordkeeping. Every person authorized to solemnize marriage shall make and preserve a record of every marriage by the person solemnized, comprising the names of the [man--and woman] parties married, their place of residence, and the date of their marriage.

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

(b) Marriages, reported by whom. It shall be the duty of every person, legally authorized to perform the marriage ceremony, to report within three business days every marriage ceremony, performed by the person, to the agent of the department of health in the district in which the marriage takes place setting forth all facts required to be stated in a standard certificate of marriage, the form and contents of which shall be prescribed by the department of health[; provided that if any person who has solemnized a marriage fails to report it to the agent of the department of health, the parties married may provide the department of health with a notarized affidavit attesting to the fact that they were married and stating the date and place of the solemnization of the marriage. Upon the receipt of that affidavit by the department of health, the
marriage shall be deemed to be valid as of the date of the
solemnization of the marriage stated in the affidavit; provided
that the requirements of section 572-1 are met."

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

"(c) Nothing in this section shall be construed to require
any person authorized to perform solemnizations [pursuant to
chapter 572–O] of civil unions pursuant to this chapter 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, penalty, or other
civil action for the failure or refusal."

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

"[S]572C-2[O] Findings. [The legislature finds that the
people of Hawaii choose to preserve the tradition of marriage as
a unique social institution based upon the committed union of
one man and one woman. The legislature further finds that
because of its unique status, marriage provides access to a
multiplicity of rights and benefits throughout our laws that are
contingent upon that status. As such, marriage should be
subject to restrictions such as prohibiting respective parties

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

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

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

"§580-1 Jurisdiction; hearing. (a) 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,
except as provided in subsection (b). 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,
except as provided in subsection (b). 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.

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

(1) The marriage was solemnized under chapter 572 in this
State; and
(2) Neither party to the marriage is able to pursue an action for annulment, divorce, or separation where the parties are domiciled because both parties are domiciled in a jurisdiction or jurisdictions that do not recognize their marriage.

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

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

SECTION 10. Notwithstanding any other provision of law, nothing in this Act shall invalidate any civil union or
reciprocal beneficiary relationship in existence before the
effective date of this Act. Any such civil unions or reciprocal
beneficiary relationships shall continue until terminated in
accordance with applicable law.

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

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

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

SECTION 14. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.
SECTION 15. This Act shall take effect on November 18, 2013.

INTRODUCED BY:
**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.