

OCT 28 2013

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# 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<sup>[7]</sup> 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 572-04~~] 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~~



## S.B. NO. 1

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.

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INTRODUCED BY: \_\_\_\_\_

A handwritten signature in black ink, consisting of a stylized, cursive letter 'J' followed by a horizontal line extending to the right.

# 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.*

