

Report Title:

Civil Unions

Description:

Extends the same rights, benefits, protections, and responsibilities of spouses in a marriage to partners in a civil union. (HB444 HD1)

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

H.B. NO. 444
H.D.1

A BILL FOR AN ACT

RELATING TO CIVIL UNIONS.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER

CIVIL UNION

§ -1 Definitions. As used in this chapter, unless the context otherwise requires:

"Agent" means the person or persons appointed as agents by the department of health pursuant to section 572-5 to grant marriage licenses in the judicial circuit in which a license for a civil union is to be granted.

"Civil union" means a union between two individuals established pursuant to this chapter.

"Partner" means an individual who is a party to a civil union established pursuant to this chapter.

§ -2 Eligibility to enter into a civil union. A person shall be eligible to enter into a civil union only if the person is:

- (1) Not a partner in another civil union, a spouse in a marriage, or a party to a reciprocal beneficiary relationship pursuant to chapter 572C;
- (2) Of the same sex as the other proposed partner in the civil union;
- (3) At least eighteen years of age; and
- (4) Not related to the other proposed partner in the civil union, as provided in section -3.

§ -3 Civil unions void; when. A civil union shall be void between the following persons:

- (1) A woman and her mother, grandmother, daughter, granddaughter, sister, brother's daughter, sister's daughter, father's sister, or mother's sister; or
- (2) A man and his father, grandfather, son, grandson, brother, brother's son, sister's son, father's brother, or mother's brother.

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

(b) Any judge or retired judge, including a federal judge or judge of another state who may legally join persons in marriage or a civil union, may solemnize a civil union. Any ordained or licensed member of the clergy may solemnize a civil union. Solemnization may be entirely secular or may be performed according to the forms and usages of any religious denomination in this state. Nothing in this section shall be construed to require any person authorized to perform solemnizations of marriages or civil unions 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 or other penalty for such failure or refusal.

(c) No agent may solemnize a civil union; nor may any assistant or deputy of the agent solemnize a civil union.

(d) No person shall perform solemnization of a civil union without first having obtained a license from the department of health. The department of health shall issue licenses to solemnize civil unions in the same manner as it issues licenses to solemnize marriages pursuant to chapter 572. The department

of health may revoke or suspend a license to solemnize civil unions in the same manner as it may revoke or suspend a license to solemnize marriages pursuant to chapter 572. Any penalties or fines that may be levied or assessed by the department of health for violation of chapter 572 with respect to a person licensed to solemnize marriages shall apply equally to a person licensed to solemnize civil unions.

§ -5 Applicants for civil union; license required; limitations. (a) No persons may be joined in a civil union in this state unless both partners have:

- (1) Met the requirements of section -2;
- (2) Complied with sections -6 and, if applicable, section -7; and
- (3) Been issued a license by the agent in the judicial circuit in which a civil union is to be solemnized or in which either person resides, which license shall bear the certification of the agent that the persons named therein have met the requirements of section -2 and have complied with sections -6 and, if applicable, section -7.

(b) The license, when certified by the agent, is sufficient authority for any person authorized to perform a civil union solemnization in this state to join the persons in a civil union; provided that the solemnization is performed not

more than thirty days after the date of issuance. The license shall become void thirty days after issuance.

§ -6 Application for license for persons who wish to enter into a civil union; fee. (a) No license for a civil union may be issued by the agent until both applicants have appeared before the agent and applied for a license. The application for the license shall be completed in its entirety, dated, signed, and sworn to by each applicant and shall state each applicant's full name, date of birth, birthplace, residence, social security number, whether single, widowed, or divorced, and whether the applicant is under the supervision or control of a conservator or guardian. If the application is signed and sworn to by the applicants on different dates, the earlier date shall be deemed the date of application. The agent shall issue a copy of this chapter to any person applying for a license.

(b) The fee for a license to enter into a civil union shall be an amount equal to the amount prescribed in section 572-5, and all amounts collected by the agent as application fees under this chapter shall be retained or remitted and apportioned in the same manner as prescribed in section 572-5.

§ -7 Persons under control of conservator or guardian.

(a) No civil union license may be issued to any applicant under the supervision or control of a conservator or guardian,

appointed in accordance with chapter 560, unless the written consent of the conservator or guardian, signed and notarized, is filed with the agent.

(b) Any person who enters into a civil union without the consent provided for in subsection (a) shall acquire no rights, by that civil union, in the property of any person who was under the control or supervision of a conservator or guardian at the time the civil union was entered into.

§ -8 Record of solemnization; reported by whom; affidavit; evidentiary weight of certificate or affidavit. (a) Each person who solemnizes a civil union shall certify upon the civil union license certificate the fact, time, and place of the solemnization of the civil union and return the license to the agent within three business days following the solemnization of the civil union, or as may otherwise be prescribed by the department of health for persons authorized to perform solemnizations of marriages pursuant to chapter 572.

(b) If any person who has solemnized a civil union fails to return the certificate to the agent as required under subsection (a), the partners joined in a civil union may provide the agent with a notarized affidavit attesting to the fact that they were joined in a civil union and stating the date and place of the solemnization of the civil union. Upon the recording of that affidavit by the agent, the civil union of the partners

shall be deemed to be valid as of the date of the solemnization of the civil union stated in the affidavit.

(c) The certificate required by subsection (a) or an affidavit recorded pursuant to subsection (b) shall be prima facie evidence of the facts stated therein.

§ -9 Same benefits, protections, and responsibilities as marriage. Partners to a civil union lawfully entered into pursuant to this chapter shall have all the same rights, benefits, protections, and responsibilities under law, whether derived from statutes, administrative rules, court decisions, the common law, or any other source of civil law, as are granted to spouses in a marriage validly entered into pursuant to chapter 572.

§ -10 Civil unions performed in other jurisdictions. A civil union, domestic partnership, or marriage of two persons of the same sex that was validly performed in another jurisdiction shall be recognized as a civil union in this State regardless of whether the union bears the name "civil union".

SECTION 2. Section 572-1.6, Hawaii Revised Statutes, is repealed.

~~["§572-1.6] Private solemnization not unlawful. Nothing in this chapter shall be construed to render unlawful, or otherwise affirmatively punishable at law, the solemnization of same-sex relationships by religious organizations; provided that~~

~~nothing in this section shall be construed to confer any of the benefits, burdens, or obligations of marriage under the laws of Hawaii."]~~

SECTION 3. Except for part I of chapter 572, every reference in the Hawaii Revised Statutes to "marriage," or any aspect thereof, shall apply equally to "civil unions," including:

- (1) Every reference in the Hawaii Revised Statutes to "married" shall apply equally to the status of partners in a civil union;
- (2) Every reference to "husband," "wife," or "spouse" shall apply equally to a partner in a civil union; and
- (3) Every reference to marital status, including without limitation provisions pertaining to parties and procedures for annulment, divorce, separation, or dissolution, shall apply equally and as necessary to civil unions and to partners in a civil union.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken.

SECTION 6. This Act shall take effect on January 1, 2010.