

Hawai'i's 2011 Civil Unions Bill (FAQs)

What You Need to Know About the Bill and the New Rights and Obligations It Will Create for Unmarried Partners

February 2, 2011

1. WHAT IS SB232?

It is a bill introduced for consideration by the Hawai'i Legislature in early 2011 to allow unmarried partners to enter a civil union. The Senate approved SB232 on January 28, 2011 and sent it to the House, which amended and passed it on February 11, 2011. Now, the Senate has accepted those amendments and sent it to Governor Abercrombie for his signature, which completes the lawmaking process. If it receives that final approval, the new law will take effect on January 1, 2012.

2. WHAT WILL THE BILL DO?

SB232 will allow both same-sex and different-sex couples to enter into a "civil union" with all of the obligations, protections and legal rights under state law that Hawai'i provides to heterosexual couples when they marry.

3. WHO WILL BE ABLE TO ENTER A CIVIL UNION WHEN THIS BILL BECOMES LAW?

Any two adults who are not married, in a civil union with anyone else, or registered as reciprocal beneficiaries, and who are not so closely related by blood or marriage as to be prohibited from marrying under Hawai'i law, can be joined as civil union partners. If either adult is under the care of a conservator, the conservator will have to give consent.

4. WON'T THESE BILLS ALLOW THOSE WHO ARE NOT LESBIAN OR GAY BUT WHO WANT THE BENEFITS PROVIDED BY THIS BILL TO TAKE ADVANTAGE OF THOSE RIGHTS?

Yes, and that is a good thing for those couples, any children they may have, and for Hawai'i in general. When two adults live together and intend to take care of each other, it is useful when the law can protect them in times of health or other life

crisis, including if the relationship ends, and can help them honor their promises to each other.

5. HOW WILL A COUPLE ENTER A CIVIL UNION?

The couple will apply for and receive a license from the Hawai'i Department of Health upon paying a fee and will arrange with an authorized person to solemnize their union. Then that person will file paperwork with the state confirming that the solemnization has been completed.

6. WILL A JUSTICE OF THE PEACE PERFORM CIVIL UNION CEREMONIES?

Like marriages, civil unions will be solemnized by judges and clergy of any religious denomination.

7. WON'T CLERGY AND CHURCHES WHO DISAPPROVE OF HOMOSEXUALITY AND REFUSE TO SOLEMNIZE CIVIL UNIONS BE AT RISK FOR PENALTIES INCLUDING LOSS OF THEIR TAX-EXEMPT STATUS?

No. SB232 is explicit that no one authorized to solemnize civil unions can be fined or penalized in any way for refusing to do so. The protection for clergy makes explicit what the Hawai'i and U.S. Constitutions already provide in their strong protections for religious freedom. The bill goes further in stating that judges authorized to solemnize marriages and civil unions cannot be compelled to solemnize civil unions if they do not wish to.

8. DOES THE BILL ALLOW LESBIAN AND GAY COUPLES TO MARRY?

No. Under Hawai'i law, only heterosexual couples are allowed to marry. Civil unions are a different legal status that will be open to all couples, regardless of sex and sexual orientation. Although the rights and obligations will be the same as those that come with marriage, the civil union status

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will not involve a marriage ceremony and will be distinct from the civil and religious traditions of marriage. For many people, the traditions, rituals and language of marriage have deep personal and/or religious meaning. The shared social understanding of marriage makes the institution unique as a means of connecting families and marking creation of a new family. Civil unions will be a new legal status in Hawai'i that entails important obligations and protections without sharing in the traditions, rituals and social meaning of marriage.

9. WHY WOULD A HETEROSEXUAL COUPLE CHOOSE A CIVIL UNION OVER MARRIAGE?

Some heterosexual senior couples choose not to marry because marriage can cause a reduction in essential Social Security benefits; accordingly, some states, such as California and Washington, allow all unmarried senior couples to register as domestic partners so they have greater ability to take care of each other without either partner worrying about losing any Social Security rights. And some people who have had a prior marriage end through death of a spouse or separation believe for religious or other reasons that one should marry only once in a lifetime, and yet they may have found a new partner and may wish to safeguard that person with civil union protections. Also, some heterosexual couples disagree with marriage for personal or religious reasons, or do not want to participate in an institution that discriminates against lesbian and gay couples; they may find that a civil union will allow them to protect each other legally (and to protect better any children they may have), while still honoring their views about marriage.

10. WHAT IS THE DIFFERENCE BETWEEN CIVIL UNIONS AND "GAY MARRIAGE"?

Lesbian and gay couples understand civil unions and marriage to be distinct legal and social institutions, just as heterosexuals do. In states like Vermont, New Hampshire and Connecticut, civil unions provided essential legal protections to same-sex couples while making clear that those couples were different from and not equal to married heterosexual couples. Over time, those states decided to open marriage to gay couples so government would be treating everyone equally.

Even when domestic partnership and civil unions are available, gay couples often wish to marry for the same reasons heterosexual couples do: to express their commitment to each other and their hopes for their shared future using language and customs everyone understands; to honor their religious values; to weave their families together into a network of intergenerational family relationships as their parents, grandparents and siblings have done. Civil unions allow couples to declare their devotion to each other and their wish to be treated legally as a family unit; but civil unions are *not* marriage and do not have the same legal or social meaning as marriage.

11. AS THERE IS "COMMON LAW MARRIAGE," WILL THERE BE "COMMON LAW CIVIL UNIONS"?

No. Hawai'i actually does not have common law marriage and SB232 will not change that; instead, the bill sets requirements for creating a civil union, and will not allow for common law civil unions.

12. WHAT WILL SB232 MEAN FOR SAME-SEX COUPLES WHO ARE IN A CIVIL UNION OR REGISTERED PARTNERSHIP FROM ANOTHER STATE OR COUNTRY, OR WHO GOT MARRIED OUTSIDE HAWAII?

Out-of-state civil unions and registered domestic partnerships will be honored under SB232, and will be treated like civil unions entered in Hawai'i. Gay and lesbian couples who married in another state or country will be treated under Hawai'i law as civil union partners.

13. WHAT WILL THE RIGHTS AND OBLIGATIONS OF CIVIL UNION PARTNERS BE UNDER THESE BILLS?

Civil union partners will have all have the rights and responsibilities that state law confers on heterosexual spouses. This complex web of rights, protections and duties includes, for example:

- rights relating to emergency medical decisions and hospital visitation
- economic protections upon death of a partner, such as inheritance rights
- rights regarding a partner's burial, autopsy and disposition of remains
- rights to bring wrongful death and other kinds of claims that depend upon a state-conferred status
- rights to receive workers' compensation benefits if a partner dies in the workplace
- health insurance and pension benefits for partners of public employees
- the right to own property together in ways that provide some protection against creditors
- entitlement to file a joint state income tax return and to take certain state income tax deductions
- access to court and the legal systems for managing the end of a relationship, any duties to pay support to each other and responsibilities regarding any children of the relationship.

Don't forget that state-law benefits come with legal responsibilities, such as liability for each other's debts, limitations on one's freedom to make decisions about property and inheritance, and potential duties to provide financial support both during the relationship and after a breakup.

14. WHAT DOES SB232 OFFER THAT HAWAII LAW DOES NOT ALREADY OFFER TO LESBIAN AND GAY COUPLES?

Same-sex couples now can register as reciprocal beneficiaries, which allows them, among other things, to

make medical decisions for each other, to visit in the hospital, and to inherit automatically. But that status does not entail, as just a few examples, mutual obligations concerning financial support, shared responsibility for children born into the relationship, or access to family court if the relationship should fail. Because the reciprocal beneficiary status offers only an incomplete patchwork of legal protections, it has proven grossly inadequate to meet the needs of Hawai'i's same-sex couples and their families.

15. WILL CIVIL UNIONS ENTITLE EMPLOYEES TO HEALTH INSURANCE AND OTHER BENEFITS FOR A CIVIL UNION PARTNER?

SB232 is unlikely to cause much change regarding employment benefits. Under existing Hawai'i law, *public* sector employees with a reciprocal beneficiary *already* are entitled to employment benefits equal to those their co-workers receive for a heterosexual spouse. These benefits usually include spousal health insurance, eligibility for continued health insurance after the employee or retiree dies, death benefits and the right to take leave to care for an ill partner or child. Creation of civil unions thus will not cause much change in workplace benefits for public employees.

Because of Hawai'i's Prepaid Health Care Act, most *private* sector employees *already* have health insurance. But for most couples in which one unmarried partner has employer-provided health insurance and the other does not, a civil union will be unlikely to help. Due to a federal law that limits states' power to affect *private* sector employee health insurance and pension plans (the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1144 & §1144(a), called "ERISA"), Hawai'i law usually cannot insist that private employers offer their legally partnered gay employees family health insurance and surviving spouse pensions equal to the benefits offered to married heterosexual employees.

Private employers, of course, can *choose* to offer equal health insurance for the partners and spouses of their lesbian and gay employees, and usually can offer comparable pension benefits, too. Many private employers recognize that providing equal family benefits is an important part of valuing their employees and honoring their promises not to discriminate based on sexual orientation or marital status. For information about advocating for equal employment benefits, see Lambda Legal's "Out at Work" tool kit (www.lambdalegal.org/take-action/tool-kits/out-at-work).

If you do receive partner health insurance from your employer, be aware that your employer must report the value of that benefit as additional income to you that will be taxable by the federal government unless your partner qualifies as a dependent under federal tax law. If you are considering enrolling for partner benefits, think about asking your employer to tell you the value of the benefits and whether your partner will qualify as a dependent under federal law so you know how much you would have to pay in income tax.

16. WHAT WILL BE THE LIKELY ECONOMIC IMPACTS OF CIVIL UNIONS FOR HAWAII?

When states make it easier for couples to act as an economic unit and take responsibility for each other, they can expect a reduction in income-based public benefits claims because some benefits recipients become ineligible when their partner's assets are counted with their own. Similarly, creditors usually benefit when two people become jointly responsible for either one's debts. Likewise, when the law presumes both adult partners are responsible for any children born into a legal relationship such as a civil union, those duties towards children enhance children's well-being while reducing claims on public programs. Lastly, when a civil unions law authorizes the Family Courts to hear the disputes that arise when same-sex and other unmarried couples break up, it places those conflicts in the proper legal hands, rather than in the circuit courts that treat such cases as quarrels between business partners, which often last longer and are more expensive because business disputes are decided using different legal rules. Having domestic disputes heard in the wrong courts wastes judicial and family resources, without reaching fair results.

17. WILL THE CIVIL UNIONS LAW ENCOURAGE GAY PEOPLE FROM OTHER PARTS OF THE COUNTRY TO MOVE TO HAWAII? IF SO, WHAT WILL THE LIKELY ECONOMIC AND SOCIAL EFFECTS OF SUCH MIGRATIONS BE?

Years ago, when it appeared that Hawai'i might be the first state to allow gay couples to marry, many thought the state would see a large influx of same-sex couples. Today, five other states and the District of Columbia allow lesbian and gay couples to marry; New Jersey offers civil unions and Illinois will as well as of June 1, 2011; California, Nevada, Oregon and Washington offer comprehensive domestic partnership with analogous legal rights as these bills propose for civil union partners; and other states are moving in that direction. While civil unions might inspire some same-sex couples to remain in Hawai'i or to come from the mainland, the existence of better legal options in other states means any migration of gay people caused by the availability of civil unions in Hawai'i is unlikely to be significant.

18. WILL FUTURE LAWS CONCERNING MARRIAGE AUTOMATICALLY APPLY TO CIVIL UNIONS, OR WILL FUTURE LAWS NEED TO IDENTIFY BOTH CIVIL UNIONS AND MARRIAGE SPECIFICALLY?

SB232 provides that legal obligations, rights and protections that apply to heterosexual spouses will apply similarly to civil union partners; this means the Legislature will not need to add "civil union" language to existing or future laws to make state laws and rules governing spouses apply the same way to partners joined in a civil union.

19. WHAT WILL BEING IN A CIVIL UNION MEAN FOR FEDERAL RIGHTS AND PROTECTIONS?

Nothing. The federal government does not presently respect same-sex couples' marriages, civil unions or reciprocal beneficiary relationships for purposes of federal benefits, protections, and obligations tied to marriage. These include income and estate taxation, spousal immigration, Social Security benefits, bankruptcy protections, and many others.

For example, as above, for employees with a civil union partner or reciprocal beneficiary, the value of employer-provided partner health insurance is counted as income to the employee on which federal income tax must be paid. In contrast, for married heterosexual employees, the value of spousal health insurance is not taxable income.

Likewise, where U.S. citizens and permanent residents can adjust the immigration status of a foreign-national partner based on a heterosexual marriage, reciprocal beneficiaries may not and it would not be possible for civil union partners.

Also, entering a civil union would disqualify some people from income-based assistance programs administered jointly under federal and state law, because the partner's assets probably would be counted with the applicant's without the special federal protections for heterosexual spouses.

As long as federal law discriminates, there will be unfair and confusing legal and financial effects for many same-sex couples. It is wise to get both financial and legal advice about the likely implications before entering into a civil union (or registering as reciprocal beneficiaries).

20. WILL BEING IN A CIVIL UNION CHANGE THE FILING STATUS FOR LESBIAN AND GAY COUPLES ON FEDERAL AND STATE TAX RETURNS?

No and yes. Entering a civil union will allow both gay and straight civil union partners to file joint *state* income tax returns, and will *not* affect the federal rules that allow joint income tax filings only by heterosexual married couples, and not by any civil union partners regardless of sexual orientation. This means civil union partners likely will have to file their federal and state income tax returns using different filing statuses, which will make their tax obligations more complicated. This situation will be confusing for many couples but is unavoidable until federal law comes to respect the diversity of state family law rules.

21. WHAT OTHER UNCERTAINTIES DO COUPLES FACE THAT MIGHT AFFECT WHETHER TO ENTER INTO A CIVIL UNION?

In addition to the fact that civil union partners are not treated as family by the federal government, the fact that many states refuse to respect any legal relationship other than heterosexual marriage poses additional challenges, especially for same-sex couples who may not marry in Hawai'i and many other states. For example, when unmarried couples travel or move to a state that does not

respect their relationship, it often is uncertain how they will be treated in a crisis. Also, many states that deny legal recognition to same-sex couples do not allow partnered or registered lesbian and gay couples to file a court action for divorce or dissolution if the relationship ends—as happens with roughly half of all heterosexual marriages.

For some gay people, there are other special issues to consider before entering a civil union:

- The U.S. military's discriminatory "Don't Ask, Don't Tell" policy appears headed for repeal. Until that process is concluded, however, the military may view entering a civil union (or registering as reciprocal beneficiaries) with a same-sex partner as grounds for discharge.
- If one member of a couple lacks legal status in this country, entering a civil union (or registering as reciprocal beneficiaries) could pose problems. For more information, consult an immigration attorney or Immigration Equality at immigrationequality.org.
- If a person or couple wishes to adopt a child, it is important to note that some states and countries allow adoptions by unmarried heterosexual individuals but not unmarried couples (regardless of sexual orientation and whether or not in a formalized relationship) or by lesbian or gay individuals. Depending on where an individual or couple hopes to adopt, civil union or reciprocal beneficiary registration could complicate matters.

22. SHOULD SAME-SEX COUPLES GET MARRIED OUTSIDE HAWAII, OR ENTER A CIVIL UNION OR REGISTER AS RECIPROCAL BENEFICIARIES IN HAWAII?

In many ways, the answer is the same as it is for different-sex couples deciding whether to marry or enter a civil union: such serious decisions are up to the couple. Both marriage and civil unions are important commitments entailing state-law rights, protections and responsibilities that affect a great many aspects of a couple's life. Same-sex couples who enter a civil union or marry in another state are treated in Hawai'i as civil union partners, with all the same rights and duties as heterosexual spouses under Hawai'i law. A civil union and an out-of-state marriage both require a court proceeding (like a divorce) to dissolve the status.

Registering as reciprocal beneficiaries, in contrast, is easy to do and easy to dissolve, but brings incomplete rights and protections. Before formalizing a relationship with any legal status, a couple should consider the implications and make an informed decision that is right for both of them.

23. SHOULD UNMARRIED COUPLES WITH A SECURE LEGAL STATUS LIKE A CIVIL UNION TAKE OTHER PRECAUTIONS?

Yes. This is a rapidly evolving area of law with much uncertainty. While some states now respect couples' legal relationships other than marriage, the federal government and many other states do not yet do so. It is especially

important to consider whether you have taken sensible steps to have legal protections when you are traveling. You should consult an attorney, if possible, about steps you can take to provide more security to your family—in addition to being in a civil union if that step is wise for you. Legal documents like wills, health care proxies or advance directives, and powers of attorney provide additional protection. Married heterosexual couples often prepare these documents to obtain greater security for their families. Such documents are even more important for couples whose relationships are respected in some states but not others. More details are in Lambda Legal’s life-planning publication *Take the Power* (www.lambdalegal.org/publications/take-the-power).

24. DIDN'T HAWAII ALREADY VOTE TO LIMIT MARRIAGE TO A MAN AND A WOMAN?

Hawai`i voters changed the Hawai`i Constitution in 1998 to allow the Legislature to restrict marriage to heterosexual couples only. That means lesbian and gay couples cannot bring a lawsuit in the Hawai`i courts for the right to marry. The 1998 constitutional amendment said nothing about civil unions or reciprocal beneficiaries, and there has never been a popular vote on the subject; however, public opinion polling shows strong support in Hawai`i for legal protections for same-sex couples other than marriage, which is consistent with nationwide polling on the subject.

25. COULD A CIVIL UNIONS LAW BE CHALLENGED EVEN IF THE GOVERNOR APPROVES IT?

Yes, state laws always can be challenged in court on the grounds that they supposedly violate the constitution. However, because SB232 treats all people in Hawai`i equally—regardless of sex and sexual orientation—and because it explicitly respects the religious rights of clergy who may not wish to solemnize civil unions, legal analysts believe the bill is sound and would withstand any legal challenges.

26. HOW WILL IT BENEFIT HAWAII WHEN SB232 BECOMES LAW?

Civil unions will provide important protections to many Hawai`i families, together with legal duties, that will allow more couples to care effectively for each other and any children they have. Civil unions also will reinforce partners’ duties to pay debts to third parties and will reduce eligibility for public benefits by recognizing the family assets of a household, while offering corresponding, fair protections against unequal taxes.

27. WHY WERE SOME PARENTS AFRAID LAST YEAR THAT THEIR CHILDREN WOULD BECOME ‘CONFUSED’ IF HAWAII ALLOWS CIVIL UNIONS?

There was, and is, no reason for anyone to fear that civil unions will have any negative effects on children or anyone else. The fact is that lesbian and gay people of all ages exist in Hawai`i, as everywhere, and they are

harmed when treated unfairly and denied the ability to protect their loved ones. Some same-sex couples have children, and those children are harmed when their families do not have strong legal protection. **Heterosexual children do not become gay by hearing about gay people; but children who are gay or who have gay parents are hurt when gay people as a class are treated as shameful and are denied legal protections.** We do not know what processes shape each person’s sexual orientation, but scientists have determined that this trait is deeply rooted, usually fixed at an early age, and not readily subject to change. No one should be treated as a second-class citizen because they happen to be gay rather than heterosexual.

28. DOES SUPPORTING CIVIL UNIONS MEAN ENCOURAGING HOMOSEXUAL RATHER THAN HETEROSEXUAL BEHAVIOR?

No. Supporting civil unions simply means agreeing that all Hawai`i families should be treated fairly under law, with the ability to protect family members in a crisis and the corresponding obligations of mutual financial support, responsibility for children, duties to pay debts to third parties, and equal tax burdens. Everyone should have the same freedom to build their own relationships, protect their loved ones under the law, and have their family privacy respected by their government.

29. DOES SUPPORTING CIVIL UNIONS IMPINGE ON THE RIGHTS OF MARRIED PEOPLE?

No. The fact that unmarried couples will be able to take on legal obligations and have protections through a status other than marriage will not change the institution of marriage or the rights of married people in any way.

30. WHEN SB232 BECOMES LAW WILL THAT MEAN HETEROSEXUALS WILL NO LONGER HAVE OR BE ABLE TO HAVE A “TRADITIONAL” MARRIAGE?

No. As above, SB232 does not change Hawai`i’s marriage laws at all, or the right of heterosexual couples to marry either in a civil ceremony or according to their religious traditions.

31. WHY ARE CIVIL UNIONS IMPORTANT TO HETEROSEXUALS?

Civil unions are important to everyone because they will offer legal protection to more Hawai`i families in ways that strengthen Hawai`i society generally, without impinging on anyone’s religious beliefs or views about marriage.

32. WON'T HAVING CIVIL UNIONS MAKE SCHOOLS TEACH THAT GAY RELATIONSHIPS ARE THE SAME AS HETEROSEXUAL RELATIONSHIPS?

No. SB232 is not about gay versus heterosexual relationships; rather, it will allow all unmarried couples to assume responsibilities for each other and to have stronger legal protections regardless of their sexual orientation. **These bills have nothing to do with education.** In Hawai'i, school curriculums are governed by state standards and local school boards. While state law already forbids discrimination based on anyone's sexual orientation, ethnicity, religion and other traits, it does **not** require teaching about particular kinds of relationships or families. SB232 will not change this.

33. WHAT IF SOMEONE REFUSES TO HONOR THE RIGHTS OF CIVIL UNION PARTNERS?

Lambda Legal is concerned that, even after the civil unions legislation becomes law, civil union partners and lesbian and gay couples who got married outside Hawai'i still may encounter discrimination—contrary to SB232 and Hawai'i's longstanding antidiscrimination laws—just as we have seen reciprocal beneficiary rights and protections too often disregarded. We always encourage anyone whose family status is disrespected or who experiences discrimination based on sexual orientation or marital status to contact Lambda Legal for more information about how to protect themselves and their loved ones.

Lambda Legal is the oldest and largest nonprofit legal organization advocating nationally for full recognition of the civil rights of lesbian, gay, bisexual and transgender (“LGBT”) people and those living with HIV through impact litigation, education and public policy work. Since 1973, Lambda Legal has appeared as counsel or friend-of-the-court in hundreds of cases in state and federal courts on behalf of LGBT people who have suffered discrimination because of their sexual orientation or gender identity, including a great many cases seeking to protect and find remedies for same-sex couples and their children who have suffered severe, needless harms because their family relationships are not respected as heterosexual couples' relationships are. With co-counsel at the ACLU of Hawai'i and the Honolulu law firm Alston Hunt Floyd & Ing, Lambda Legal attorneys represented six same-sex couples seeking a comprehensive state-law status (such as civil unions) under Hawai'i law through litigation filed in the First Circuit Court in Honolulu.

Lambda Legal attorneys also provide technical consultation nationally to local, state and federal policymakers concerning the legal needs of same-sex couples and their families, and the serious harms inflicted by our country's continuing, unjust discrimination against them. Lambda Legal provided technical consultation to members of the Hawai'i Legislature and to the legislative counsel who drafted civil unions legislation introduced into the 2011 Hawai'i legislative session.

FOR MORE INFORMATION CONTACT:



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Western Region Help Desk: 213-382-7600 ext. 330
By email: lambdalegal.org/help
Website: www.lambdalegal.org

También se habla español.

For an overview of legal protections for LGBT people in Hawai'i, visit:
www.lambdalegal.org/states-regions/hawaii.html

To learn more about registering as reciprocal beneficiaries, visit:
http://data.lambdalegal.org/publications/downloads/fs_registering-as-reciprocal-beneficiaries.pdf

In California, Lambda Legal attorneys drafted AB 205, that state's broad domestic partnership rights and responsibilities law enacted in 2003, and later legislation that further expanded and clarified the rights and responsibilities of registered domestic partners in that state. This legislation was the model for similar laws enacted by other Western states. Lambda Legal attorneys also provided extensive assistance to the lawmakers who framed the civil unions law recently enacted in Illinois.

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