



A M E R I C A N
A S S O C I A T I O N F O R
S I N G L E P E O P L E

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Hawaii Materials:

Legislative Actions in
Sessions 1994 to 1999

Special Report to the Vermont Legislature

Presented to the
House Judiciary Committee
January 27, 2000

Special Report No. V-4

Hawaii Materials:

Legislative Actions in Sessions 1994 to 1999

In 1993, the Supreme Court of Hawaii issued an opinion in *Baehr v. Lewin* declaring that the refusal of the state to issue marriage licenses to same-sex couples constituted sex discrimination in violation of the state Constitution and therefore created a presumption of unconstitutionality. However, the court did not issue an injunction against the state. Rather, it remanded the case to the trial court with directions to conduct a trial at which the state would have the burden of proving that it had compelling interests to limit marriage to opposite-sex couples.

The trial court postponed the trial to give the Legislature an opportunity to address the issue in the 1994 legislative session. The Legislature responded that year by passing a two-part bill. Part one reaffirmed that marriage is limited to a relationship between one man and one woman. Part two created a Commission on Sexual Orientation and the Law to study and recommend what actions, if any, the Legislature should take to eliminate discrimination against same-sex couples.

The trial court again postponed the trial to give the Commission an opportunity to conduct its study. The Commission began its work in 1994 but has to disband after a federal judge ruled that the structure of the group violated the constitutional requirement of separation of church and state. The Legislature had specified that particular religious denominations would have representation on the Commission. The court found such a designation to be a violation of the First Amendment.

In 1995, the Legislature passed a bill to create a new Commission on Sexual Orientation and the Law. With staff assistance from Pamela Martin in the Legislative Reference Bureau, the Commission conducted a three-part study. First, it analyzed the benefits and protections afforded to opposite-sex married couples under Hawaii law. Second, it analyzed arguments as to whether or not such protections should be given to same-sex couples. Finally, it studied options the Legislature might consider to remove any unjust discrimination from the law. The Commission issued its final report to the Legislature in December 1995. It recommended that the Legislature either legalize same-sex marriage or enact a comprehensive domestic partnership law open to same-sex and opposite-sex unmarried couples.

In 1996, the Legislature received communications from various sources recommending the passage of a domestic partnership act. For example, the American Association for Personal Privacy sent a memo to each member of the Legislature entitled "Ten Reasons for Creating an Institution of Domestic Partnership as a Coordinate to Marriage." Attorney James Baird, an openly gay man and long-time Republican also wrote to legislators, urging them to enact a domestic partnership law. At the invitation of the Senate Judiciary Committee, attorney Thomas F. Coleman testified as an expert witness at an informational briefing for senators on the subject of domestic partnership.

A bill was introduced into the 1996 Legislature (SB 3113) proposing a comprehensive domestic partnership act. An amended version of the bill passed the Senate. Leaders in the House of Representatives refused to bring SB 3113 up for a vote on the House floor. They insisted that the appropriate move for the Legislature was to place a proposed constitutional amendment on the ballot limiting marriage to opposite-sex couples. Senate leaders refused to bring the proposed constitutional amendment up for a vote on the Senate floor. As a result, the 1996 session ended in a stalemate.

An interesting proposal was introduced in the 1996 session but was not voted on due to opposition by House leaders. Representative Quentin Kawananakoa (R-Honolulu) introduced HB 4030, a bill relating to "family partnerships." The measure was virtually identical to the comprehensive domestic partnership act (SB 3113) with the following exceptions. First, the label was changed to make it appear more inclusive. Second, the blood-relative exclusion common to many domestic partnership laws and programs was removed. By allowing any two unmarried adults, including blood relatives to register and participate, HB 4030 removed any presumption that "family partnerships" involved sexual conduct. Third, additional legislative findings were included in the bill to enhance the chances of it passing constitutional scrutiny by the court. The inclusion of blood relatives would presage future events, such as the passage of a reciprocal beneficiary bill the next year, and subsequent adoption of domestic partnership legislation in Los Angeles and Seattle which does not exclude unmarried blood relatives from their provisions.

A trial was then conducted in the *Baehr* case after the legislative session ended in 1996. The trial court issued a ruling in December 1996 concluding that the state had failed to rebut the presumption of unconstitutionality found by the Supreme Court in its 1993 ruling. The court ordered the state to issue marriage licenses to same-sex couples who might seek them. The state appealed the decision to the Supreme Court. The trial court then postponed the effect of its ruling until after the appeal was final.

Pressure mounted for the Legislature to take some action during its 1997 session. Another comprehensive domestic partnership act was introduced in the Senate but leaders in the House indicated that they would not support it. Instead, they insisted that a constitutional amendment be placed on the ballot to be voted on in the November 1998 election. Senate leaders began to indicate some willingness to consider placing the issue on the ballot, but refused to do so unless companion legislation was enacted to give many of the benefits and protections of marriage to same-sex couples.

Five separate bills were introduced in 1997, each being supported by a different faction in the Legislature. Some were comprehensive in scope, others were more limited. Some were limited to same-sex couples, while others included opposite-sex couples as well. One was limited to same-sex couples and blood relatives, excluding unmarried heterosexual partners. The Legislature was split.

A compromise was finally reached by both houses of the Hawaii Legislature before the 1997 session ended. A constitutional amendment was authorized to be placed on the ballot. It did not prohibit same-sex marriage but instead merely reaffirmed the authority of the Legislature to limit marriage to opposite-sex couples if it so desired. A partial-benefits bill was also passed. However, House leaders insisted on several limitations and eventually got their way. They refused to call the measure "domestic partnership." Instead, a new term of "reciprocal beneficiaries" was created. They

demanded that the law not consider RB's as "family members" or in any way confer legitimacy on these relationships. The new law reflected these wishes. They also insisted that blood relatives be included along with same-sex couples. That also occurred. Finally, they insisted that only a limited number of benefits and protections be granted to RB's. Out of the 300 or so protections identified by the Commission in its report, only about 50 were extended to RB's in this new legislation.

Under this new statute, any two unmarried adults could register as reciprocal beneficiaries with the state so long as they were blood relatives or same-sex couples. Unrelated opposite-sex partners were excluded. The two parties did not have to live together. They did not have to assume any obligations to each other. After they registered, they received a few dozen benefits. However, the law did not deem them to be "family members" or "domestic partners." Neither did the law impose any obligations on the parties as a result of registering as reciprocal beneficiaries. In effect, the new law threw a few benefits at registered beneficiaries, no strings attached. This strange law has not been replicated by any other state or any municipality in the nation.

No action was taken by the Legislature in 1998. However, voters approved a constitutional amendment in November 1998. The amendment affirmed that the Legislature had authority to define marriage as a relationship between one man and one woman.

In 1999, the House Majority Leader introduced a bill (HB 884) to establish a comprehensive domestic partnership act. The bill would have applied equally to same-sex and unmarried heterosexual couples, giving them all benefits and obligations normally given to "spouses," "family members," and "dependents." The President of the Senate introduced a bill (SB 1315) to amend the reciprocal beneficiary law to limit it to same-sex couples and to make blood relatives ineligible to participate. Know that the constitutional amendment would preventing the Supreme Court from legalizing same-sex marriage, legislators had no incentive for any legislation action this session and therefore neither of these bills made any headway.

Having had the case under submission for over two years, the Hawaii Supreme Court issued its decision in *Baehr v. Miike* in November 1999. In view of the passage of the constitutional amendment, the court dismissed the case as moot. Same-sex marriage would not be legalized in Hawaii by the judiciary.

The eyes of the nation and world then turned to Vermont where a same-sex marriage case was pending. That court issued its decision in *Baker v. State* on December 20, 1999. The court ruled that it was unconstitutional to deny same-sex couples the benefits and protections of marriage. It gave the Legislature a reasonable amount of time to devise a remedy to cure the constitutional defect. The court suggested that a comprehensive domestic partnership act, such as that originally proposed by the Hawaii Commission on Sexual Orientation and the Law, might be an adequate remedy.

Some of the materials presented to the Hawaii Legislature, particularly those dealing with domestic partnership, are contained in this booklet. The Vermont Legislature may find them useful as it considers various legislative options in response to the decision in *Baker*.

TEN REASONS FOR CREATING AN INSTITUTION OF DOMESTIC PARTNERSHIP AS A COORDINATE OF MARRIAGE

1. **Federalism.** Domestic partnership makes use of a time-honored feature of our constitutional system -- federalism -- and uses it in the public interest as well as for the benefit of both same-gender and opposite-gender relationships. And it does this while meeting all the requirements of the Hawaii Constitution.

2. **Intergovernmental Conflicts.** Domestic partnership ends the threat of serious interstate and state/national conflicts by providing a "laboratory" for the nation, which will enable it to determine in an orderly manner over time whether the legalization of same-gender unions will remain an isolated experiment in one state only -- as has been the case with Nebraska's unicameral legislature -- or whether the Hawaii example can serve to develop a national consensus, which could eventually lead to the enactment of domestic partnership laws throughout the nation. This is the way legal and social change has always been effected in the American federal system.

3. **Legislative flexibility.** Domestic partnership gives future Hawaii legislatures the ability to assess the legalization of same-gender relationships on its own distinctive merits and enables them to make any necessary changes. Most important, it allows legislators to reach the ultimate decision as to whether the separate system of domestic partnerships should be continued as an independent institution or melded into marriage.

4. **A new jurisprudence.** Domestic partnership provides an opportunity for the courts to fashion a jurisprudence peculiarly adapted to same-gender unions untrammelled by opposite-gender marriage precedents, and, in so doing, prevents the possibility of distorting the existing jurisprudence of marriage which is based entirely on opposite-gender couples. The legalization of same-gender marriage involves much more than the mere inclusion of a new class of couples within the institution of matrimony. It represents the addition of two new classes -- same-gender male couples and same-gender female couples. Each of these two new classes differs greatly from opposite-gender couples, and even more so from each other.

5. **Refusal to consummate.** Refusal or inability to consummate a marriage is a common ground for annulment throughout the Anglo-American legal world. It remains a ground for annulment in Hawaii. The courts have taken centuries to define what particular sexual act on the part of each spouse constitutes consummation, so that only the refusal or inability to engage in that specific sexual act creates the ground for annulment. But what specific sexual act will constitute ground for annulment in the case of a same-gender male relationship? And of what value would such a definition have for same-gender female relationships? Here the absurdity of attempting to force same-gender unions into the procrustean bed of marriage becomes manifest. Problems such as these can never arise within a system of domestic partnership because the statute creating it would contain a specific provision that, in developing a body of jurisprudence for domestic partnership relationships, courts would not have to apply marriage-law precedents if doing so would create absurd results or produce inequitable consequences.

6. **Legal age for marriage.** The Hawaii Commission on Sexual Orientation and the Law recommended a minimum age of eighteen for entering into a domestic partnership relationship.¹ By contrast, existing Hawaii marriage law permits persons as young as fifteen to marry. By passing a comprehensive domestic partnership statute, the legislature can avoid the serious public policy issues resulting from the legal recognition of same-gender teen-age couples as young as fifteen, some of whom might even be visitors from other states.

(continued over leaf)

¹ Commission on Sexual Orientation and the Law, *Draft Report* (Honolulu, 27 November 1995), Appendix E, p. E-3.

7. **All deliberate speed.** A domestic partnership system will enable the Hawaii legislature and judiciary to act in accordance with the well-established principle of "all deliberate speed" without foreclosing any of their ultimate options. "All deliberate speed" was specifically crafted for judicial rulings which demand social or political changes that run drastically counter to the weight of inherited custom or current public opinion. It provides the mechanism for immediate compliance with the constitutional mandates stemming from *Baehr v. Lewin*, while simultaneously handling the social and political eruption created by that decision "with all deliberate speed."

8. **An institution for Hawaiians.** Domestic partnership enables the legislature to structure an institution fitted for the needs of Hawaiians in Hawaii without having continually to "look over their shoulders" to consider the effects of their actions on other states or foreign countries. This will further its ability to evaluate the effects of legalizing same-gender relationships within the state of Hawaii and defuse the political climate by eliminating the possibility of being confronted by outsiders who might wish to capitalize on the idea of same-gender marriages as a tourist attraction or as a means to instigate political confrontation on the mainland.

9. **A completely secular institution.** The current Hawaii marriage law has never been completely desacralized. In its use of terms such as "solemnized", "rite", and "celebration" it has never fully divested itself from its religious/Christian roots. It is noteworthy that representatives of the Mormon Church and from evangelical and fundamentalist Christian bodies testified before the Commission on Sexual Orientation and the Law against legalization of same-gender marriage so as to retain the Christian character of the current law. Much of their testimony maintained that "same-gender relations were against God's will and therefore should be banned."² Buddhists, however, who represent the second largest religious denomination in Hawaii, do not believe in God. They testified before the same commission that legal recognition should be given to "stable relationships between loving people regardless of whether those loving people are of the same gender."³ Clearly, the existing Hawaii marriage statute reflects aspects of the Christian belief system. Whether or not these violate the constitutional divide between church and state entrenched in both the Hawaii and federal constitutions need not be addressed here. What is evident is that the law is not reflective of the diverse religious character of the Hawaiian people, and, as such, it does not meet contemporary standards of governmental neutrality toward all religions. Legalization of same-gender relationships within the existing Hawaii marriage law will not cure this defect, even though it would meet all of the constitutional requirements of *Baehr v. Lewin*. A domestic partnership system will not only comply with that decision, but will create a thoroughly secular institution, free from sectarian residues.

10. **Civil rights leadership.** Domestic partnership involves a process in keeping with Hawaii's recognized position in the van of the American civil rights movement, yet avoids the pitfalls which follow from precipit and abrupt efforts at social change. In so doing it would enable Hawaii to capitalize on its religious, racial and ethnic pluralism, and further its stature as a leader in the nascent world movement for civil rights.

Princeton, New Jersey
29 December 1995

Dr. Arthur C. Warner, Director
American Association
for Personal Privacy

² *Draft Report*, p. 33 & note 120.

³ *Ibid.*

**AMERICAN ASSOCIATION
FOR
PERSONAL PRIVACY
18 Ober Road
Princeton, New Jersey 08540
(609) 924-1950**

29 December 1995

Representative Terry Yoshinaga
State Capitol
Honolulu, HI 96813

Dear Representative Yoshinaga:

For the past year, this association has been studying the constitutional and public policy debate associated with the decision of the Hawaii Supreme Court in *Baehr v. Lewin*. We have analyzed the rationale of the Supreme Court, have examined the positions of the parties to the case as they prepare for the upcoming trial, and have thoroughly reviewed the recent report of the Commission on Sexual Orientation and the Law.

The Commission recommended that the Legislature should legalize same-sex marriage, or, alternatively, should enact a comprehensive domestic partnership act. It is our conclusion that the latter would be the most prudent course of action. The enclosed list of ten reasons for creating an institution of domestic partnership as a coordinate of marriage explains the basis for this conclusion. We have decided to share this information with you, hoping that you may find it helpful as you deliberate over these issues in your upcoming legislative session.

The American Association for Personal Privacy is a "think tank" comprised of scholars and practitioners whose members, over the years, have represented a variety of fields, including law, sociology, psychology, theology, and history. Through research and education, we seek to protect the personal privacy rights of consenting adults and to eliminate sexual orientation and marital status discrimination from public policies and societal institutions.

Thank you in advance for considering our views. Please let me know if we can be of any further assistance.

Very sincerely yours,

Dr. Arthur C. Warner
Director

NORMAN MIZUGUCHI
PRESIDENT
MIKE MCCARTNEY
VICE PRESIDENT
ROSALYN BAKER
MAJORITY LEADER
LES HARA, JR.
MAJORITY FLOOR LEADER
BRIAN TANIGUCHI II
MAJORITY WHIP
CALVIN KAWAMOTO
MAJORITY CAUCUS LEADER
MICHAEL M. F. LIU
MINORITY LEADER

The Senate
The Eighteenth Legislature
of the
State of Hawaii

STATE CAPITOL
HONOLULU, HAWAII 96813



January 17, 1996

FIRST DISTRICT
MALAMA SOLOMON
SECOND DISTRICT
RICHARD M. MATSUURA
THIRD DISTRICT
ANDREW LEVIN
FOURTH DISTRICT
ROSALYN BAKER
FIFTH DISTRICT
JOE TANAKA
SIXTH DISTRICT
AVERY CHUMBLEY
SEVENTH DISTRICT
LENUA FERNANDES SALLING
EIGHTH DISTRICT
DONNA R. WEDA
NINTH DISTRICT
MATT MATSUHAGA
TENTH DISTRICT
LES HARA, JR.
ELEVENTH DISTRICT
BRIAN TANIGUCHI
TWELFTH DISTRICT
CAROL FURUKAGA
THIRTEENTH DISTRICT
ROD TAM
FOURTEENTH DISTRICT
MILTON HOLT
FIFTEENTH DISTRICT
NORMAN MIZUGUCHI
SIXTEENTH DISTRICT
REY ORALTY
SEVENTEENTH DISTRICT
DAVID ICE
EIGHTEENTH DISTRICT
RANDY WASE
NINETEENTH DISTRICT
CALVIN KAWAMOTO
TWENTIETH DISTRICT
BRIAN KAKIO
TWENTY-FIRST DISTRICT
JAMES AIO
TWENTY-SECOND DISTRICT
ROBERT BUNDA
TWENTY-THIRD DISTRICT
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TWENTY-FOURTH DISTRICT
MICHAEL M. F. LIU
TWENTY-FIFTH DISTRICT
WHITNEY T. ANDERSON
CHIEF CLERK
T. DAVID WOO, JR.

Dr. Arthur C. Warner, Director
American Association For Personal Privacy
18 Ober Road
Princeton, New Jersey 08540

Dear Dr. Warner:

Thank you for your letter, dated December 29th, and your comments on the issue of same-sex marriage.

I find your arguments quite persuasive, and I hope they will receive the full attention they deserve. I think you have added much to the debate, and hopefully the Legislature will be paying some attention.

I appreciate your taking the time to share the work of AAPP with my colleagues and me.

Very truly yours,


ANDREW LEVIN
Senator, Third District

AL:ck

JAMES R. BAIRD, JR.
ATTORNEY AT LAW
2791 LA CASTANA DRIVE
LOS ANGELES, CALIFORNIA 90046-1330
(213) 874-3442 FAX (213) 876-7699

January 24, 1996

Via Facsimile to the following Hawaii State legislators:

Senator Whitney Andwerson
Senator Michael Liu
Representative Eve Anderson
Representative Chris Halford
Representative Quentin Kawanakoa
Representative Barbara Marumoto

Let me introduce myself. I am an attorney and have been an member of the California Bar since 1954. I am also a long-time active Republican and an openly gay man. I view myself - and my peers view me - as a political conservative on almost every issue.

Leaving aside moral, economic, religious and historical reasons- for opposing or supporting the legalization of same-sex marriages, I am extremely concerned about the political consequences which seem almost inevitable to occur if and when "gay marriages" are legally recognized in Hawaii.

Unless the Hawaii legislature takes action in the immediate future, the scenario I see unfolding if events take their likely course is as follows:

As you all are aware, the trial court in Hawaii will commence the trial of Baehr v. Lewin in July of 1996. The trial court most likely again will find that the State has no compelling interest in prohibiting same gender marriage. The State will appeal. As it now stands, the Supreme Court of Hawaii will uphold the validity of such marriages.

Many of the legislatures in the rest of the 49 states will immediately commence legal steps to (a) attempt to deny full faith and credit to gay marriages performed under a valid Hawaiian law, and/or (b) adopt such legislation and/or constitutional measures to embed in the laws of the respective states a permanent ban on same-sex marriage. In fact, some states have already commenced the process of denying recognition to such unions. Additionally, the Federal government will become embroiled in the issue on a myriad of legal problems, including the implications on income tax, Social Security, housing, Medicare, state grants - the list is endless.

Facsimile - January 24, 1996
Hawaii Legislators
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There is a conservative, realistic and practical solution to this dilemma. It is: The enactment of a comprehensive domestic partnership law in the State of Hawaii.

If, prior to the decision in Baehr v. Lewin in the Hawaii Supreme Court, the Hawaii legislature adopts a comprehensive domestic partnership law which provides almost all of the rights and obligations of marriage, it would appear that there may no longer be a "compelling interest" for the Hawaii Supreme Court to interpret existing Hawaii marriage law as requiring the recognition of same-sex marriage. Hopefully, such a meaningful and comprehensive domestic partnership law could become a model for other states to follow. At the very least, it will give to the Attorney General of Hawaii some legal "ammunition" - something sorely lacking at this moment.

Perhaps more importantly, a comprehensive domestic partnership law in Hawaii could forestall the national political and religious firestorm which inevitably will follow the legalization of same-sex marriages in Hawaii.

Thus, I urge you as legislative leaders to take the only conservative path available at this moment, and guide Hawaii into the position of championing and enacting a comprehensive domestic partnership statute.

Sincerely,



Law Office of Thomas F. Coleman

Post Office Box 65756, Los Angeles, CA 90065
(213) 258-5831 / Fax 258-8099

January 26, 1996

Honorable Rey Gaulty, Chair
and Members of the Judiciary Committee
Hawaii State Senate
Honolulu, HI 96813

Re: Written testimony on the Report of the
Commission on Sexual Orientation and the Law
Hearing date: January 27, 1996

Dear Senators:

I would like to commend the members of the Commission for the excellent work they have done. The methodology of the Commission was not only responsive to their legislative mandate, but it was open and fair. Due to the impressive leadership of the Commission's chairperson, Thomas Gill, and due to the diligence and competence of its staff attorney, Pamela Martin, the Commission's report was thorough and, unlike many government agencies, was finished on time.

Now that the research phase is complete, the Legislature should pass an appropriate bill in response to the challenge presented by the Supreme Court in *Baehr v. Lewin*. The Commission has suggested two possible legislative actions: either pass a statute legalizing same-sex marriage, or alternatively, enact a comprehensive domestic partnership act. I believe that a domestic partnership act would be the better approach at this time.

In October, 1995, I testified before the Commission and explained why domestic partnership is a better approach. In December, 1995, I sent each member of the Legislature a 17-page memorandum entitled "The Hawaii Legislature Has Compelling Reasons to Adopt a Comprehensive Domestic Partnership Act." That memo not only discussed the policy reasons for domestic partnership rather than gay marriage, it also explained the effects that such an act would have on the pending litigation in *Baehr*.

After having worked in the field of marital status and sexual orientation discrimination for more than 20 years -- both as a researcher, a professor, an advocate, and a litigator -- and after having studied the political and legal situation in Hawaii in the aftermath of the Supreme Court's decision in *Baehr*, I have come to the following conclusions:

THOMAS F. COLEMAN

Testimony to the Judiciary Committee
for the Hearing on January 27, 1996
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- Under current law, the Attorney General will not be able to convince the Supreme Court that the state has compelling interests to treat same-sex couples who live in long-term committed family relationships as if they were strangers with virtually no legally recognized rights.
- If current law does not change, the Supreme Court will ultimately mandate that marriage licenses be issued to same-sex couples.
- There are only three measures the Legislature could pass that might stop the Supreme Court from legalizing same-sex marriage: (1) put a constitutional amendment on the ballot to prohibit same-sex marriage; (2) amend the marriage statute to permit same-sex marriages; and (3) enact a comprehensive domestic partnership act that would give same-sex and opposite-sex couples who function as an immediate family the same obligations and benefits as married couples now enjoy.
- There are not sufficient votes in the Legislature to put a constitutional measure on the ballot (two-thirds of the members do not support such a divisive approach). Nor are there sufficient votes to legalize same-sex marriage by statute (a large majority of legislators, like a large majority of voters, oppose same-sex marriage).
- The most prudent, and conservative, course of action would be for the Legislature to pass a comprehensive domestic partnership law to amend current statutes so that such partners are recognized as having primary family relationships and are afforded equal status with spousal family relationships *under state law*. The Governor and many Senators favor this approach.
- The House of Representatives will not take a leadership role in resolving this dispute with the Supreme Court. However, if the Senate passes a comprehensive domestic partnership act, members of the House may eventually approve the measure. Once they realize that domestic partnership is the only way to avoid court-mandated gay marriage, a majority of representatives may ultimately follow the Senate's lead.
- Passage of Senate Bill 2419 (Graulty-Baker-Tanaka) would adopt one of the Commission's primary recommendations. It would show respect for family diversity and eliminate discrimination under state law. It may also satisfy the constitutional concerns of the Supreme Court.

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Other states are already reacting negatively to the prospect of gay marriage being legalized in Hawaii, especially since it is anticipated that thousands of gay couples will fly to Hawaii for a marriage ceremony and will return to the mainland demanding that their marriages be legally recognized in every state.

In anticipation of this scenario, the Assembly Judiciary Committee of the California Legislature only this week passed a bill that, if enacted, would refuse to recognize same-sex marriages performed out of state. (See attached article.) Similar measures are pending in Washington, South Dakota, Virginia, and Alaska. Utah already enacted such a law.

If same-sex marriage is legalized in Hawaii by court order, Hawaii can expect a negative reaction from virtually every other state in the nation. Some of this reaction may necessitate that Hawaii expend funds as it is entangled in litigation involving interstate compacts to which it is a signatory. Multi state corporations may sue the state arguing that Hawaii marriage law is preempted by federal law which, they will argue, does not require them to recognize same-sex marriages performed in Hawaii when their employees return to work in other states.

No one seriously expects Congress to accept Hawaii same-sex marriages as valid marriages under federal law. If necessary, a bill to clarify that federal law contemplates only opposite-sex relationships would sweep through Congress with lightning speed. It is unlikely that President Clinton would veto such a measure, since he has already indicated that he does not support federal recognition of same-sex marriages. It is very possible that Congress will use the budget as a way to limit the effect of Hawaii same-sex marriage law. Through block grants or otherwise, Congress may very well restrict the use of federal funds that pertain to marriage and require that such funds be applied only to opposite-sex relationships.

Again, these problems can be avoided by adopting the Commission's recommendation to pass a comprehensive domestic partnership act.

I am aware that many people feel very strongly that domestic partnership is not an adequate substitute for same-sex marriage. They want full rights under state and federal law and they want those rights now. Their feelings are understandable. However, with public opinion running two-to-one against same-sex marriage, with expected resistance from other states and the federal government, and with not even one other nation on earth recognizing same-sex marriages (some have passed registered partnership laws, but not same-sex marriage laws), it would be reasonable for the Hawaii Legislature to pass a domestic partnership law as a major step forward. Such a law would put Hawaii ahead of all other states and every other nation. That would be a civil rights achievement for the Aloha state.

THOMAS F. COLEMAN

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In closing, I would like to commend the Commission for its excellent work. I hope that the Judiciary Committee will follow up by passing on to the full Senate, with its approval, a comprehensive domestic partnership act such as S.B. 2419.

If I can be of any assistance to any Senator, please let me know. I am willing to discuss any of these matters on the telephone or in person. When S.B. 2419 is set for a hearing, I would be most willing to return to Hawaii to testify before this Committee. However, I would appreciate at least one week's notice in advance so that I can arrange my travel plans.

Very truly yours,

THOMAS F. COLEMAN

Encl.

Office of the President
The Senate
State of Hawaii
State Capitol
Honolulu, Hawaii



January 31, 1996

Mr. Thomas F. Coleman
P.O. Box 65756
Los Angeles, California 90065

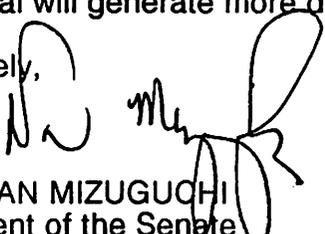
Dear Mr. Coleman:

Thank you for your insightful letter regarding domestic partnership legislation. I appreciate the investment in time your attendance at the hearing entails.

I am sure you recognize the controversy this issue prompts. Given the strength of the opposition, I am reluctant to predict passage of a domestic partnership bill this session.

That is not to gainsay our interest in the issue, however. I anticipate that the proposal will generate more debate than perhaps any other this session.

Sincerely,


NORMAN MIZUGUCHI
President of the Senate

THE SENATE
THE EIGHTEENTH LEGISLATURE
REGULAR SESSION OF 1996

COMMITTEE ON JUDICIARY
Senator Rey Graulty, Chair
Senator Mike McCartney, Vice Chair

NOTICE OF INFORMATIONAL HEARING

DATE: Friday, February 2, 1996
TIME: 9:00 a.m.
PLACE: Conference Room 229
State Capitol
415 South Beretania Street

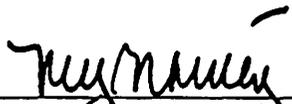
A G E N D A
LEGAL AND ECONOMIC IMPLICATIONS OF A DOMESTIC PARTNERSHIP LAW

Participants:

Professor Jon Van Dyke	Professor on Constitutional Law William S. Richardson School of Law
Chris Pablo	Manager of Public, Government and Community Affairs, Kaiser Permanente
Thomas F. Coleman	Executive Director, Spectrum Institute-Family Diversity Project

If you require special assistance or auxiliary aids or services to participate in the public hearing process (i.e., sign language interpreter, wheelchair accessibility, or parking designated for the disabled), please contact the committee clerk 24 hours prior to the hearing so arrangements can be made.

FOR FURTHER INFORMATION, PLEASE CALL THE COMMITTEE CLERK AT 586-6916.



Senator Rey Graulty
Chair

TO: Representative Quentin Kawananakoa
FROM: Thomas F. Coleman
RE: Reintroducing H.B. No. 4030 as an alternative to *domestic* partnership
DATE: December 20, 1996

I have given a great deal of thought to the current predicament facing the Hawaii Legislature in the wake of the trial court's ruling on same-sex marriage. The most politically viable solution to this problem may already exist -- a bill you introduced in January 1996 -- H.B. 4030 relating to family partnerships.

The Commission on Sexual Orientation and the Law recommended that the Legislature enact a comprehensive domestic partnership act to give domestic partners the same rights, and impose the same obligations, as those conferred by marriage. It recommended that wherever the terms "spouse," "family," "dependent," and "household" are used in Hawaii law, that "domestic partnership" would also apply. This was not marriage-based, but family-based legislation that recognized domestic partners as a primary *family* unit, but not as a married couple. Under the Commission's proposal, registration as domestic partners would have been available to any two adults regardless of gender. In other words, two adults of the opposite-sex or two adults of the same-sex could have registered. The proposal was discriminatory, however, because it would not have allowed blood relatives to have registered as domestic partners.

The bill that passed the Senate last year (S.B. 3113), started off consistent with the Commission's proposal. However, it was altered by the Judiciary Committee so that it basically became a gay bill. The amended bill would have allowed only two adults of the same sex to register. It also contained a provision that would not have allowed blood relatives to register. Senator Anderson objected to these exclusions, arguing that there are some citizens of Hawaiian ancestry who are blood related and who live together on a long-term basis and who should be allowed to register in order to gain the same family benefits. No one really addressed Senator Anderson's concern. It was just swept under the rug.

Last year, you introduced a bill (H.B. 4030) that would have solved many of the political problems now facing the Legislature. Your bill was inclusive. Registration was available to two persons of the opposite sex or two persons of the same sex. Registration was also available to blood relatives. Since "domestic partnership" has often been associated by the public as a gay relationship, you appropriately changed the name to "*family* partnership." The bill was comprehensive in the rights and obligations it conferred. This could satisfy the equal protection clause of the state constitution -- a prerequisite to passing muster with the Hawaii Supreme Court when the *Baehr* case returns to that forum. Your bill also contained legislative findings that would have increased the chances of the Supreme Court's accepting it as a constitutionally-viable alternative to same-sex marriage. With the passage of the Defense of Marriage Act, and with some 16 states having passed laws against recognition of out-of-state gay marriages, those findings are even more significant today. In contrast, the findings in S.B. 3113 were very weak.

Page two
memo to Rep. Kawananakoa
December 20, 1996

Much of the opposition to same-sex marriage, and to domestic partnership for that matter, comes from religious groups that do not want the state to place a stamp of approval on homosexual conduct. Your bill would take care of that problem by removing the issue of sexual conduct entirely from its scope. Under your bill, sexual conduct would have nothing to do with giving equal benefits to family partners who assume primary family obligations for each other. Thus, registration and benefits under your bill would be open to any two adults, including blood relatives. By providing benefits for any two adults who live together and who are financially and socially interdependent, your bill is pro-family, culturally sensitive, and inclusive. Such generic reform should be embraced by religious leaders of all faiths.

I suspect that many options are being considered by the leaders of both parties and by the leaders of both houses of the Legislature. They would benefit by taking a close look at the proposal you submitted in January of 1996. H.B. 4030 may be the answer to a very thorny problem that has thus far escaped a political solution.

cc: Speaker Joe Souki
President Norman Mizuguchi
Senator Mike McCartney
Senator Avery Chumbley
Senator Whitney Anderson

1 The legislature finds and declares that:

2 (1) According to the Hawaii supreme court, opposite-sex
3 couples have a fundamental right to marry under both
4 the federal and state constitutions but same-sex
5 couples do not possess such a fundamental right under
6 either constitution. Nonetheless, the equal protection
7 clause of the Hawaii Constitution may be violated if
8 Hawaii law confers on opposite-sex married couples
9 various rights and obligations but denies those same
10 rights and obligations to same-sex couples who are
11 living together in long-term committed relationships.

12 (2) Hawaii has a strong public policy to promote respect
13 for human diversity. Such diversity is reflected in
14 the composition of family structures, which include
15 traditional nuclear families, married couples with and
16 without children, dual-wage-earner families, single-
17 parent families, stepfamilies, foster families,
18 extended families, hanai relationships, guardianship
19 families, and family partnership families.

20 (3) The health and welfare of the State are best served by
21 promoting stability in family relationships, regardless
22 of their structural variations. Many family
23 partnership relationships involve persons living

1 together in long-term committed relationships. Basic
2 fairness requires the State to treat family partners as
3 members of each other's immediate family rather than as
4 strangers to each other.

5 (4) No state government has legalized marriages between
6 persons of the same sex. The federal government does
7 not recognize same-sex marriages. It is the consensus
8 of nations that marriage is limited to opposite-sex
9 couples. However, some nations and some state
10 governments have recognized family partnerships and
11 have conferred various rights and obligations on such
12 relationships. Many municipalities and private-sector
13 employers throughout the nation have also recognized
14 family partnerships as legitimate family relationships
15 that deserve to be treated with respect and fairness.

16 (5) Amending chapter 572, Hawaii Revised Statutes, to
17 provide for marriages between persons of the same sex
18 would create unprecedented disruption in the public
19 business of the State. This disruption would be
20 particularly severe in the field of intergovernmental
21 relations, both state and federal. It would create a
22 substantial risk of confrontations with the federal
23 Congress. It could produce extended administrative and

1 judicial disputes with other states through the full
2 faith and credit clause of the federal constitution.
3 It might require a restructuring of Hawaii's
4 obligations and responsibilities under various
5 interstate compacts of which Hawaii is a signatory, and
6 under numerous uniform state laws which Hawaii has
7 adopted. It also would create a significant
8 possibility of foreign nations refusing to recognize
9 marriages contracted in Hawaii.

10 (6) Because of the historical relationship between the
11 institution of marriage and longstanding religious
12 traditions, amending chapter 572, Hawaii Revised
13 Statutes, to allow marriages between persons of the
14 same sex could convey the appearance of the State
15 taking sides in a divisive religious dispute, thereby
16 creating the appearance of crossing the federal
17 constitutional boundary between church and state.

18 (7) For the foregoing reasons, the creation of an entirely
19 new statute, coordinated with chapter 572, Hawaii
20 Revised Statutes, in terms of rights and obligations
21 under Hawaii law, but with entirely different
22 nomenclature, is hereby enacted in order to satisfy the
23 requirements of the Hawaii Constitution and to insure

1 the uninterrupted conduct of public business.

2 § -3 Definitions. For the purposes of this chapter:

3 "Basic living expenses" means basic food and shelter. It
4 includes any other cost, such as medical care, if some or all of
5 the cost is paid as a benefit to one or both partners because
6 they have registered as family partners under this section.

7 "Declaration of family partnership" means a statement in a
8 form issued by the director that declares the intent of two
9 people to enter into a valid family partnership contract. By
10 signing it, two people swear under penalty of perjury that they
11 meet the requirements for a valid family partnership contract. "D
12 irector" means the director of health.

13 "Family partners" means two adults who are parties to a
14 valid family partnership contract and meet the requisites for a
15 valid family partnership contract as defined in section -4.

16 "Joint responsibility" means that each partner agrees to
17 provide for the other's basic living expenses while the family
18 partnership is in effect if the partner is unable to provide for
19 himself or herself. It does not mean that the partners need
20 contribute equally or jointly to basic living expenses. Anyone
21 to whom these expenses are owed can enforce the responsibility
22 established by this chapter.

23 "Live together" means that two people share the same place

1 to live. It is not necessary that the legal right to possess the
2 place be in both of their names. Two people may live together
3 even if one or both have additional places to live. Family
4 partners do not cease to live together if one leaves the shared
5 place but intends to return.

6 **§ -4 Requisites of a valid family partnership contract.**

7 In order to make a valid family partnership contract it shall be
8 necessary that the parties:

- 9 (1) Live together;
- 10 (2) Consider themselves to be members of each other's
11 immediate family;
- 12 (3) Agree to be jointly responsible for each other's basic
13 living expenses;
- 14 (4) Neither be married nor a member of another family
15 partnership;
- 16 (5) Meet a one year (1) residency requirement by at least
17 one partner;
- 18 (6) Each be at least eighteen years old;
- 19 (7) Each be competent to enter into a contract; and
- 20 (8) Each sign a declaration of family partnership as
21 provided for in section -5.

22 **§ -5 Establishing a family partnership.** Two persons, who
23 meet the criteria set out in section -4, may establish a

1 family partnership by presenting a signed notarized declaration
2 of family partnership to the director, who shall file it and give
3 the partners a certificate of family partnership showing that the
4 declaration was filed in the names of the parties who shall be
5 known as "family partners".

6 § -6 **Rights and obligations.** Upon the issuance of a
7 certificate of family partnership by the director, the parties
8 named in the certificate shall have the same rights and
9 obligations under the law that are conferred on spouses in a
10 marriage relationship under chapter 572. A "family partner"
11 shall be included in any definition or use of the terms "spouse",
12 "family", "immediate family", or "dependent" as those terms are
13 used throughout the law.

14 § -7 **Dissolution of family partnerships.** The family
15 court shall have jurisdiction over the dissolution of family
16 partnerships. The dissolution of family partnerships shall
17 follow the same procedures and be subject to the same substantive
18 rights and obligations that are involved in the dissolution of
19 marriage under chapter 572.

20 § -8 **Records and fees.** The director shall keep a record
21 of all declarations. The director shall set the amount of the
22 filing fee for declarations, but in no case shall the fee be
23 higher than the fee for a marriage license. The fees charged

1 shall cover the State's costs of administering this section.

2 § -9 Preemption. This chapter shall supersede any state
3 law or political subdivision ordinance to the contrary.

4 § -10 Private solemnization not required. Nothing in
5 this chapter shall be construed to require any religious
6 organization to solemnize a family partnership that does not
7 recognize a family partner relationship within their ideology;
8 provided that any rights and obligations of family partners are
9 not obstructed or violated."

10 SECTION 2. Section 368-1, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "§368-1 Purpose and intent. The legislature finds and
13 declares that the practice of discrimination because of race,
14 color, religion, age, sex, sexual orientation, marital status,
15 including family partnership, national origin, ancestry, or
16 disability in employment, housing, public accommodations, or
17 access to services receiving state financial assistance is
18 against public policy. It is the purpose of this chapter to
19 provide a mechanism which provides for a uniform procedure for
20 the enforcement of the State's discrimination laws. It is the
21 legislature's intent to preserve all existing rights and remedies
22 under such laws."

23 SECTION 3. If any provision of this Act, or the application

Speaker
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Vice Speaker
PAUL T. OSHIRO
Majority Leader
TOM OKAMURA
Majority Floor Leader
MARCUS R. OSHIRO
Majority Whip
NESTOR R. GARCIA

HOUSE OF REPRESENTATIVES
THE NINETEENTH LEGISLATURE

STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813



DISTRICT REPRESENTATIVES

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2nd — JERRY L. CHANG
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45th — ALEXANDER C. SANTIAGO
46th — COLLEEN MEYER
47th — TERRANCE W.H. TOM
48th — KEN ITO
49th — CYNTHIA HENRY THIELEN††
50th — DAVID A. PENDLETON
51st — KENNY GOODENOW

February 6, 1997

Thomas F. Coleman, Esq.
PO Box 65756
Los Angeles, Ca. 90065

Dear Thomas,

Thank you for the valuable information that our office received via fax.

It is very encouraging to know that you are involved and extremely well educated in regards to legislative matters and process.

I have read and value the literature you have sent and it will be at my disposal on file here at the Capitol.

Again, thank you for the information and your concerns.

Aloha,

Representative Quentin K. Kawananakoa

†Minority Leader

††Minority Floor Leader

Law Office of Thomas F. Coleman

Post Office Box 65756, Los Angeles, CA 90065

(213) 258-5831 / Fax 258-8099

January 29, 1997

Honorable Les Ihara, Jr.
Senate Majority Leader

Fax transmission: 5 pages

* Cover letter on public policy (*pages 1-2*)

* Chart comparing partnership bills (*page 3*)

* Constitutional commentary (*pages 4-5*)

Re: Analysis of SB 1800, SB 795, HB 117, HB 118

Judiciary Committee Hearing: February 3, 1997

Dear Senator Ihara:

I am writing to you so that you will have ample time to consider these bills, since all Senators will be called upon to vote on one or more of them a few days after the Judiciary Committee hearing.

Attached to this covering letter which deals with public policy issues, you will find a constitutional commentary on the bills to be considered in your committee on February 3, 1997. Also attached is a chart comparing various domestic partnership proposals made in the past two years.

Although the constitutionality of these bills should be of major concern, there also are several policy issues that deserve attention. The most important of these is whether an inclusive measure should be enacted or whether reform should focus only on the needs of a special interest group.

Exclusion of blood relatives. It is interesting to note that it was a Republican legislator's proposal (HB 4030) which was the most inclusive (in terms of people who could participate) and the most comprehensive (in terms of benefits conferred). By permitting blood relatives to register as domestic partners, that bill effectively removed the presumption of sexual conduct from the concept of domestic partnership. Since this is a totally new secular institution that is being created, it would seem appropriate to allow two adults who do not have a sexual relationship -- but who are living together in a family relationship -- to register as domestic partners. Although it confers too few benefits, the Souki proposal (HB 118) would allow blood relatives to participate in its registration program. Excluding blood relatives is patently discriminatory. While it is appropriate to assume that people who get married will be involved in an ongoing sexual relationship -- and most people view marriage in this way -- such an assumption is misplaced in terms of a family partnership. As an historical note, it was the exclusion of blood relatives that caused then-mayor Diane Feinstein to veto the first domestic partnership law that was passed by the San Francisco Board of Supervisors in 1981.

Senator Ihara

SB 1800, SB 795, HB 117, HB 118

January 29, 1997

Page 2

Exclusion of opposite-sex partners. The Commission on Sexual Orientation originally proposed that domestic partnership be open to any two unrelated adults regardless of gender. As it was introduced last year, SB 3113 was open and inclusive. Then an amendment was made which turned SB 3113-SD1 into special interest legislation by limiting registration to same-sex couples. The argument was made that opposite-sex couples can get married if they want to. There are several objections to that argument.

First, there are some couples who want and need legal recognition under state law but who, for economic reasons, can not get married. They fear a loss of pension survivor benefits, a federal "marriage penalty" tax, or a loss or reduction in federal SSI or other benefits. This group includes seniors, pensioners, and people with disabilities.

Second, there are persons who have taken a personal or religious vow to marry only once in their lifetime -- a vow to which they may adhere even though their spouse has died or even though they have been divorced against their wishes. Domestic partnership would allow them to be true to their principles and yet participate in a secular institution which confers family benefits.

Third, many feminists view marriage as an institution that historically has oppressed women; they would prefer to participate in a new secular institution as an alternative.

Next, there are people who are not religious and who justifiably see marriage as essentially a religious institution and therefore they do not want to participate in it for that reason. The current "civil" marriage laws do not provide a truly secular option since "marriage" is intertwined with religious rules. For example, the so-called civil marriage statute uses terms often associated with religious rituals, e.g. solemnization, ceremony, rite. The religious nature of marriage is further underscored by the fact that the only private individuals and private-sector organizations that are authorized to perform marriages are ministers ordained by religious organizations.

Hawaii could join the trend of inclusiveness. Most of the hundreds of public and private employers in the nation that offer domestic partnership benefits do allow opposite-sex couples to participate. This group includes the State of New York and the State of Vermont.

Separation of Church and State. In keeping with the principle of separation of church and state, it would be appropriate to create a totally new, and truly secular, institution that is open to any two adults, regardless of gender or blood relationship. While the exclusion of opposite-sex partners and blood relatives may cast doubt on the constitutionality of the bills currently under

THOMAS F. COLEMAN

Senator Ihara
SB 1800, SB 795, HB 117, HB 118
January 29, 1997
Page 3

consideration, the question to be faced by legislators is, in the first instance, a political one: Should not public policy favor solutions that help the greatest number of people rather than focusing only a select group?

I hope that these observations, and the attached chart and related commentary, are helpful to legislators as political decisions are made that will have national ramifications for years to come.

Yours truly,

THOMAS F. COLEMAN

DOMESTIC PARTNERSHIP PROPOSALS IN HAWAII: COMPARATIVE CHANCES OF PASSING CONSTITUTIONAL SCRUTINY

Bill/Author/Year	Title	open to blood relatives	open to opposite sex partners	open to same sex partners	comprehensive in rights and benefits	state benefits the same as marriage	only limited state benefits granted	one-year residence required	child custody excluded	dissolution same as for marriage	chance of passing current equal protection test	meets equality mandate of SB 1800 (D)
Commission on Sexual Orientation (1995)	DP	no	yes	yes	yes	yes	no	no	no	yes	good	yes
SB 3113 (1996) Mizuguchi (D)	DP	no	yes	yes	yes	yes	no	no	no	yes	good	yes
SB 3113-SD1 Mizuguchi as amended (1996)	DP	no	no	yes	mostly	mostly	no	yes	yes	no	fair	no
HB 4030 (1996) Kawananakoa (R)	FP	yes	yes	yes	yes	yes	no	no	no	yes	good	yes
HB 118 (1997) Souki (D)	RB	yes	no	yes	no	no	yes	no	yes	no	very poor	no
SB 795 (1997) McCartney (D)	DP	no	no	yes	mostly	mostly	no	yes	yes	no	fair	no
HB 1396 (1997) Case/Thielen (B) and six others	DP	no	yes	yes	yes	yes	no	no	no	yes	good	yes

Legend: DP = Domestic Partnership FP = Family Partnership RB = Reciprocal Beneficiary
(D) = Democratic proposal (R) = Republican proposal (B) = Bipartisan proposal

Notes: SB 1800 would amend the constitution to keep marriage as male/female, but also would require non-discrimination in rights or benefits on the basis of sex.
HB 118 would grant only four limited benefits and would deny dozens of others that state law confers on spouses.
The chance of a proposal passing the current equal protection test is based on testimony and comments made by constitutional law experts, as well as on the factual findings made by the trial court in *Baehr v. Miike*.

Thomas F. Coleman
January 29, 1997

DOMESTIC PARTNERSHIP PROPOSALS IN HAWAII: COMPARATIVE CHANCES OF PASSING CONSTITUTIONAL SCRUTINY

Commentary

As of January 29, 1997, only three domestic partnership bills are pending in the Hawaii Legislature: HB 118 (Souki), SB 795 (McCartney), and HB 1396 (Case/Thielen). The latter two bills actually use the term "domestic partnership" while the former uses the term "reciprocal beneficiaries."

The question is whether any of these bills will pass constitutional scrutiny, first when the Supreme Court decides *Baehr*, and then later in November 1998 if the voters adopt a constitutional amendment. The purpose of this commentary is to assist legislators in answering both questions.

Background: 1996 Legislative Session

Senator Norman Mizuguchi introduced SB 3113 last session. As it was originally written, that bill embodied the recommendation of the Commission on Sexual Orientation and the Law that the Legislature enact a comprehensive domestic partnership act which would be available to both same-sex and opposite-sex partners who live together as a family unit.

SB 3113 would have given registered domestic partners the same benefits and would have imposed the same burdens as state law confers on married couples. It was essentially identical to HB 4030, except that Representative Quentin Kawananakoa's bill was more inclusive because it was open to participation by blood relatives. Kawananakoa's bill died when it was not given a hearing by the House Judiciary Committee.

Mizuguchi's bill was substantially amended by the Senate Judiciary Committee. In the form it passed that committee and eventually passed the full Senate, SB 3113-SD1 contained several new restrictions:

(1) It basically became a "gay rights" bill because SB 3113-SD1 was limited to same-sex couples; (2) Even though visitors can get married in Hawaii on one day's notice, SB 3113-SD1 contained a one-year residency requirement for at least one of the domestic partners; (3) It included a longer waiting requirement for dissolution than the waiting period for a marital divorce; and (4) It also excluded any child custody rights for domestic partners.

Although SB 3113-SD1 was approved by the

full Senate, it died when a conference committee of both houses was unable to reach an agreement. House members wanted a constitutional amendment prohibiting marriage, without giving domestic partners any rights or benefits. Senate members insisted that the issue of discrimination be addressed before they would consent to putting a constitutional amendment on the ballot. This standoff ended in a legislative stalemate last session.

Constitutional Proposals: 1997 Session

This session, the House has approved a proposed constitutional amendment (HB 117) which, if approved by voters in November 1998, would allow marriage to remain limited to opposite-sex couples. HB 117, however, does not address the issue of discrimination in benefits.

Senate leaders have introduced their own version (SB 1800) of a constitutional amendment. It differs essentially from the House proposal in only one respect -- SB 1800 would require that civil rights (other than the ability to get married) may not be denied on the basis of sex. This proviso would basically require passage of a comprehensive domestic partnership bill to allow unmarried couples who are similarly situated to married couples to receive similar rights and benefits.

Short-Term Constitutional Scrutiny

It is likely that *Baehr v. Miike* will be decided by the Hawaii Supreme Court several months before any constitutional amendment is placed before the voters in November 1998. If the court grants an expedited appeal, a decision could come as early as December 1997. Under a normal schedule, a decision would be handed down in March or April of 1998.

The only evidence the Supreme Court may consider is that presented at the trial. No new evidence may be introduced on appeal. As the trial court's ruling demonstrates, the state failed miserably to meet the compelling interest test.

Therefore, the only variable now that could affect the outcome of the case is a change in statutory law. Constitutional law professor Jon Van Dyke has

repeatedly predicted that unless a *comprehensive* domestic partnership act is passed, the Supreme Court certainly will order the state to issue marriage licenses to same-sex couples.

On the other hand, Professor Van Dyke has said that he is 95% certain that the court would dismiss the *Baehr* case as moot if the Legislature grants equivalent rights and benefits to domestic partners as marriage provides to spouses. However, such a statute would have to be enacted this session -- before the Supreme Court hears oral argument in *Baehr*. In short, time is running out.

The Case/Thielen bill (HB 1396) has the best chance of satisfying the current equal protection clause under which the *Baehr* case will be decided. It grants identical rights and benefits to domestic partners as the state's marriage laws give to spouses, without exception. Also, from a political perspective, since it allows opposite-sex couples to register as domestic partners, it may be more palatable to moderate and conservative voters since it can not be labeled a "gay rights" bill.

The Souki bill (HB 118) has the least chance of being accepted by the Supreme Court as satisfying equal protection. In its first decision in *Baehr*, the court identified dozens of rights and benefits that marriage confers on spouses. Rather than curing this problem, the fact that HB 118 provides only four of these benefits actually serves to underscore the equal protection violation.

The McCartney bill (SB 795) has a fair chance of passing constitutional muster, but its deficiencies are glaring. A visiting couple can get married in Hawaii the day after they arrive. SB 795, however, has a one-year residency requirement before a couple can register as domestic partners. Also, there is a longer waiting period before domestic partners can dissolve their relationship than is required for a marital divorce. The omission of child custody rights for domestic partners -- while it may have been acceptable last year before the trial in *Baehr* occurred -- is now constitutionally suspect. The trial in *Baehr* focused heavily on child rearing by same-sex couples. The state failed to prove that such couples, as a class, are not good parents. Finally, the fact that SB 795 does not allow opposite-sex couples to register as domestic partners may concern the Supreme Court. Does the court really want to approve a new secular institution that on its face refuses to allow couples to participate solely on account of the gender of the partners?

The political stakes are high. Should the Legislature pass a comprehensive domestic partnership

bill such as HB 1396 (or a more inclusive version of SB 795) and increase the chances of the state winning the *Baehr* case? Or should legislators remain unbending by giving only limited benefits to a small class of beneficiaries, thereby increasing the chances the Court will rule for the plaintiffs? The answer depends on how important it is to prevent a several month interval in 1998 during which time same-sex marriage will be legal through court order.

Constitutional Prospects After November 1998

If the Senate's version of a constitutional amendment (SB 1800) is passed by the Legislature and approved by the voters in November 1998, new court challenges will be filed by unmarried couples, especially if a domestic partnership bill is not passed that is *inclusive* in who may register and *comprehensive* in the benefits it confers. That is because SB 1800 requires that civil rights (other than marriage itself) may not be denied on the basis of sex.

If opposite-sex couples are excluded from domestic partnership -- as SB 795 currently does -- the argument will be made that such an exclusion constitutes sex discrimination. Although most opposite-sex couples will still want to get married -- because they want their married status to be transferable to other states and because they want federal recognition of their marriage -- there are some opposite-sex couples who will feel otherwise. For example, some seniors, people with disabilities, and surviving spouses may want the benefit of registering as domestic partners under state law and not being considered married under federal law. Also, some feminists would prefer domestic partnership because marriage has had a history of oppressing women. Finally, there are couples who want legal recognition, without the religious connotations that "marriage" carries. Civil marriage in Hawaii has not been desacralized. Not only does it have its roots in religion, the civil marriage statute uses religious terms such as "rite," "ceremony," and "solemnization."

In the final analysis, either the Case/Thielen bill (HB 1396), or a more inclusive and comprehensive version of the McCartney bill (SB 795) has the best chance of passing constitutional scrutiny in the short-term as well as the long-run.

What the Legislature does now will have ramifications for years to come.

-- Thomas F. Coleman
January 29, 1997

STAND. COM. REP. NO. 11

Honolulu, Hawaii

FEB 0 4 , 1997

RE: H.B. No. 118

H.D. 1

S.D. 1

Honorable Norman Mizuguchi
President of the Senate
Nineteenth State Legislature
Regular Session of 1997
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 118, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO UNMARRIED COUPLES,"

begs leave to report as follows:

The purpose of H.B. No. 118, H.D. 1, as received by your Committee, is to establish the status of reciprocal beneficiaries and provide limited governmental benefits to those with such status.

Your Committee finds that the issue of same sex marriage has been debated in public forums through the legislative process for four years now. Your Committee further finds that the wide-range of opinions of the various members of our community have been repeatedly expressed during those four years, and, unfortunately this issue still divides our community. Thus, your Committee believes it important to acknowledge that H.B. No. 118, H.D. 1, is a heartening change from the position taken by the House of Representatives last year, when they did not want to consider providing legal status for nor extending any governmental rights to unmarried couples. Further, the extension of these governmental benefits remains contingent upon ratification of the proposed constitutional amendment suggested in H.B. No. 117, S.D. 1.

H.B. No. 118, H.D. 1, supports providing limited benefits as follows: 1) hospital visitation and health care decisions; 2)

SSCR HB118 SD1 JDC

STAND. COM. REP. NO. 11

Page 2

holding property as tenants in the entirety; 3) inheritance rights; and 4) the right to sue for wrongful death. We find these to be among the most appropriate and important governmental privileges that could be reasonably extended. Thus, as a starting point, your Committee considered the provisions of H.B. No. 118, H.D. 1, as well as the provisions contained in S.B. No. 98, Relating to Economic Benefits, a measure co-introduced by 10 of our Senate colleagues, including three members of this Committee. S.B. No. 98 includes similar provisions as H.B. No. 118, H.D. 1, and also allows parties to file a joint tax return and claim dependents.

However, your Committee cannot in all fairness find that appropriate governmental benefits should be limited to "rights after death." During our deliberations, your Committee received testimony from various organizations and individuals both in support of and in opposition to providing legal status and extending governmental benefits to unmarried couples. Thus, taking the specifically identified provisions of H.B. No. 118, H.D. 1 and S.B. No. 98 as guideposts to the types of rights that might be reasonably extended to couples legally prohibited from marriage, we have identified additional governmental rights that should be appropriately included in an expanded rights package.

Your Committee further notes, however, that these additional governmental rights do not include all spousal rights and benefits, nor does it impose all marital burdens. This is because it is the Committee's view that the extension of such rights and burdens can and should be limited when a substantial government interest would be injured by such an extension. Accordingly, this identification of additional rights has excluded from the extended benefits package those benefits which could conflict with other substantial governmental interests, such as the State's interest in preserving the traditional family, and conflicts with federal law or interstate agreements.

Your Committee further notes that the exclusion of certain rights is not because we believe that they should not or cannot be extended to reciprocal beneficiaries. Rather, we have included in this bill, certain governmental rights that we believe any fair minded citizen would agree should reasonably be extended to others. Upon further consideration by your Committee, H.B. No. 118, H.D. 1, has been amended as follows:

- (1) Imposes a residency requirement of one year for both applicants, as an additional qualification for reciprocal beneficiary status;

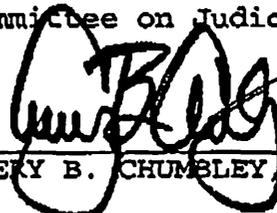
SSCR HB118 SD1 JDC

STAND. COM. REP. NO. 11
Page 3

- (2) Extends health care benefits to reciprocal beneficiaries of the same gender;
- (3) Extends various governmental benefits to all reciprocal beneficiary relationships including: state government retirement system benefits; state tax benefits; workers' compensation benefits; anatomical gifts and corpse disposition rights; criminal victims rights; inheritance of public leases; family leave benefits; mental health notifications and authority; certain criminal and collection defenses; partnership exemptions; tort standing; and criminal enforcement of certain domestic violence and youthful offender statutes;
- (4) Adds an exception to Part IV of Chapter 23, Hawaii Revised Statutes, related to mandated health benefits;
- (5) Adds a severability clause;
- (6) Amends the effective date to upon ratification of the constitutional amendment contained in H.B. No. 117, S.D. 1; and
- (7) Makes technical, non-substantive changes for the purposes of clarity and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 118, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 118, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on behalf of the members of the Committee on Judiciary,



 AVERY B. CHUMBLEY, Co-Chair



 MATTHEW M. MATSUNAGA, Co-Chair

**STATEMENT OF SENATOR MATTHEW M. MATSUNAGA
CO-CHAIR SENATE JUDICIARY COMMITTEE
REGARDING H.B. NO. 118, H.D. 1
A BILL FOR AN ACT RELATED TO UNMARRIED COUPLES**

On behalf of co-chair Chumbley and myself, we recommend that House Bill No. 118, H.D. 1, be amended by substituting the provisions of the proposed Senate Draft 1 that has been distributed to the members of this Committee.

H.B. No. 118, H.D.1, as received from the House of Representatives creates the legal status of "reciprocal beneficiaries" to permit couples that are legally prohibited from marrying to participate in certain appropriate benefits that are currently reserved to married couples. It further identifies and qualifies reciprocal beneficiaries for four such benefits.

This bill passed the House Judiciary Committee and was approved by the House 47-4. This is a remarkable and heartening change from the position taken by the House last year, when they did not want to consider or acknowledge the extension of any marital rights to unmarried couples. The chairs would like to very sincerely extend its respect to the House for evolving its position.

Our proposed S.D.1 incorporates the form and substance of the bill as received from the House. Adult couples who are prohibited by law from marriage and who are not already married will be able to register as "reciprocal beneficiaries" with the Department of Health. Upon doing so they will qualify for certain governmental benefits that are expressly provided for in our laws. As an additional qualification for reciprocal beneficiary status, the Senate draft imposes a residency requirement of one year for both applicants. This is intended to address the expressed concern by some that our State might become a "marriage mill" for same sex couples.

Our proposed draft incorporates all of the benefits provided by the House version of the bill. These include: 1) hospital visitation and health care decisions; 2) holding property as tenants in the entirety; 3) inheritance rights, and 4) the right to sue for wrongful death. We find these to be among the most appropriate and important governmental privileges that could be reasonably extended and again commend and compliment the House for its actions.

It is interesting to note that three of the four rights provided in H.B. No. 118, H.D. 1, apply only to persons who have died or are near death. Because we do not believe that appropriate governmental benefits should be limited to "rights after death", we have attempted to identify some more "vital" rights that should be appropriately included in this rights package

Thus, we used as our starting point S.B. No. 98, Relating to Economic Benefits, a measure co-introduced by 10 of our Senate colleagues, including three members of this Committee. The bill proposes a model similar to H.D. No. 118, H.D. 1 except that the triggering mechanism is an unregistered "Affidavit of Shared Necessities of Life".

The bill identifies four specific provisions of our law which we agree should be included in the

package. However because other related provisions were not incorporated, we have taken the specifically identified provisions of S.B. No. 98 and H.B. No. 118, H.D. 1. as guideposts to the types of rights that might be reasonably extended and done so where appropriate.

Specific areas of inclusion initiated by S.B. No. 98 and H.B. No. 118, H.D. 1 include:

1. **State Government Retirement System Benefits.** S.B. No. 98 permits the health benefits and death benefits of public employees to accrue to their identified life partner. Our proposed amendment includes these benefits and, in the absence of any reason to the contrary, all other similar rights and benefits accruing to government employees.
2. **State Tax Benefits.** S.B. No. 98 permits identified life partners to file a joint state tax return. Again, we agree that this is reasonable, but we could find no reason to extend only this privilege. Accordingly, other relevant provisions of the State Tax Code have been incorporated into this bill.
3. **Wrongful Death Actions.** Both the House Bill and S.B. No. 98 provide for wrongful death standing. Again we agree. And we believe that the principle of providing equivalent standing and inheritance in the case of death and serious injury should be applied to other areas. These include: workers compensation benefits, anatomical gifts and corpse disposition rights, criminal victims rights, and inheritance or public leases.
4. **Hospital Visitation and Health Care Decisions.** The most striking acknowledgment of the real needs of living partners in the House Bill is its inclusion of hospital visitation and health care decisions. Accordingly the House appears to acknowledge that matters of health are certainly among the most significant in any lite partnership. The proposed draft incorporates this principle by including rights relating to insurance (including pre-paid medical insurance), family leave, and mental health notifications and authority.
5. **Tenancy in the Entirety.** H.B. No. 118, H.D.1, in including tenancy in the entirety privileges, appears to acknowledge that the legitimate pooling of resources is deserving of appropriate protection. In accordance with this principle, the Senate draft includes relevant statutory provisions acknowledging the shared interest in resources. These include; certain criminal and collection defenses, partnership exemptions, and tort standing. As a corollary to these rights, the draft also includes reciprocal beneficiaries as among those who may be subject to Criminal enforcement or notification under our domestic violence and youthful offender statutes.

Despite the Senate draft's breadth, it does not include all rights and benefits, nor does it impose all burdens. This is because it is the Committee's view that the extension of such rights and burdens can and should be limited when a substantial government interest would be injured by such an extension.

Accordingly, the Senate draft has excluded from the extended rights and benefits those which arguably conflict with other substantial governmental interests. Included among such arguable interests and consequent exclusions are:

1. **The State's interest in preserving the traditional family.** As manifested in both H.B. No. 117 and

the Committee's proposed S.D.1, the citizens of our State may choose to limit marriage to couples of the opposite sex. If they do so, we would be logically obliged to limit benefits and burdens that explicitly relate to the institution of marriage to such couples.

Thus, the proposed Senate draft (which would go into effect only upon the ratification of the constitutional amendment proposed in S.B. No. 117, S.D.1) does not include any rights, benefits or burdens imposed or granted by our laws explicitly relating to marriage (Ch. 572, 576D-n), divorce (Chapter 580), parentage and adoption (Chs. 578, 584, 571 Pts. IV-V), premarital agreements (Ch. 572), mutual support and community property (572-3, 575-2, ch. 51), dower and curtesy (ch. 533), evidentiary spousal privileges (oh. 626) and wiretap exceptions (803-46). Additionally, the proposed draft excludes certain very specific twaiy use exceptions. These include: harbor fishing (188-34); Kane' ohe bay recreation Permits (200-39); nehu and iao fishing (188-45); and Agriculture regulation exceptions (ch. 141-168).

2. The State's interest in avoiding federal and interstate conflicts. With the passage of the federal Defense of Marriage Act, the federal government seems to have signaled an unwillingness to support or acknowledge the extension of marital benefits to couples other than those in traditional marriages. Similarly, a number of other states have statutorily indicated some discomfort with potential extension of marital benefits. It is a legitimate and substantial State interest to avoid conflict with other states and to acknowledge the power of the federal government within their proper jurisdiction.

Thus, the proposed draft excludes those programs which are substantially funded or regulated by the federal government including social Service benefits (Ch. 346), government housing programs (Ch. 359), airport and urban redevelopment and relocation (Chs. 111,261), veterans burial benefits (ch. 363), certain resident military benefits (e.g. 288-107(g)), state health family assistance (ch. 321), unemployment insurance definitions (Ch. 383), certain banking exceptions (Chs. 412-417) and Hawai'ian homelands inheritance (HHCA 209). Additionally, we have excluded relevant interstate compacts so as not to imply or impose an express burden of recognition on other states. Relevant compacts include those relating to probation and parole (353-81), mental health (ch. 335), adoption assistance (Ch. 350c), and reciprocal enforcement of support (ch. 576).

The exclusion of these rights is not because we believe that they should not or cannot be extended to reciprocal beneficiaries. Rather, we have, in this iteration of the bill attempted to avoid predictable legal niggling or unwarranted expressions of fear. The rights that we have included are those which we believe that virtually any fair minded citizen would agree should reasonably be extended to others.

We intend to reserve the excluded rights for further study and debate. Even if this bill becomes law in its proposed form, such study is not precluded since the effective date of the Act is directly linked to the ratification of the constitutional amendment proposed in H.B. 117, S.D. 1. Since such ratification cannot occur until November 1998, some time exists for a reasoned and dispassionate examination of these issues. It that is possible, it is the intention of the Co-Chairs to fully participate in such an examination.

[Statement made on February 3, 1997, in the Senate Judiciary Committee]

Subject: *M*: HONOLULU STAR-BULLETIN, February 4, 1997

Date: Tue, 04 Feb 1997 14:37:48 -1000

From: lambda@ALOHA.NET (Martin Rice)

To: queerlaw@abacus.oxy.edu, marriage@abacus.oxy.edu, queerpolitics@abacus.oxy.edu, queerplanet@abacus.oxy.edu, submit@qrd.org

Aloha awakea kakou.

Again, for whatever reasons, this article and a letter to the editor are not included in the online edition of the Star-Bulletin. I feel this is more accurate than the Advertiser story posted this morning.

Also, I've just been informed that the text of the new bills is being received at my friend's fax down the hill. I'll pick it and post today/tonight. I'm told the one bill is some 30 pages long, but I suspect that it is identical, with a few exceptions, to SB 1800, which is already archived.

HONOLULU STAR-BULLETIN
P.O. Box 3080
Honolulu, Hawai'i 96802
editor@starbulletin.com

February 4, 1997

BILLS GIVE GAY COUPLES TAX, INSURANCE BENEFITS
Star-Bulletin Staff

Gay and Lesbian couples could be allowed to file state tax returns jointly and take advantage of their partner's health insurance plans under bills approved by the Senate Judiciary Committee.

The two marital benefits are among a package of some 200 that the committee voted yesterday to confer on same-sex couples if a proposed constitutional amendment allowing the state to limit marriage to heterosexuals is ratified by voters next year.

"The rights that we have included are those which we believe that virtually any fair-minded citizen would agree should be reasonably extended to others," said Committee Co-Chairman Matt Matsunaga (D, Wai'alaie-Palolo).

A 1995 commission report identified about 350 state marital benefits, but Matsunaga said some were dropped "to avoid predictable legal niggling or unwarranted expressions of fear."

He added, though, that the committee intends to study and debate the excluded ones further.

The committee's position, if approved by the full Senate, would set the stage for a conference debate with House counterparts over the extent of benefits same-gender couples should be given.

The House last month approved measures granting just four benefits--including inheritance rights and the right to sue for wrongful death--if voters passed its version of a constitutional amendment.

House Judiciary Chairman Terrance Tom (D, Kahalu'u-Kane'ohe) said he is open to talks, but expressed concern about the practicality and cost of the Senate plan.

DOMESTIC PARTNERSHIP PROPOSALS IN HAWAII: COMPARATIVE CHANCES OF PASSING CONSTITUTIONAL SCRUTINY

Bill/Author/Year	Title	open to blood relatives	open to opposite sex partners	open to same sex partners	comprehensive in rights and benefits	state benefits the same as marriage	only very limited state benefits granted	one-year residence required	child custody excluded	dissolution same as for marriage	chance of passing current equal protection test	meets equality mandate of HB 117, SD1 (D)
Commission on Sexual Orientation (1995)	DP	no	yes	yes	yes	yes	no	no	no	yes	good	yes
SB 3113 (1996) Mizuguchi (D)	DP	no	yes	yes	yes	yes	no	no	no	yes	good	yes
SB 3113-SD1 Mizuguchi as amended (1996)	DP	no	no	yes	mostly	mostly	no	yes	yes	no	fair	no
HB 4030 (1996) Kawananakoa (R)	FP	yes	yes	yes	yes	yes	no	no	no	yes	good	yes
HB 118 HD1 (1997) Souki (D)	RB	yes	no	yes	no	no	yes	no	yes	no	very poor	no
HB 118 HD1, SD1 (1997) Senate Judiciary	RB	yes	no	yes	no	no, many benefits withheld	no	yes	yes	no	unknown, needs more analysis	no
SB 795 (1997) McCartney (D)	DP	no	no	yes	mostly	mostly	no	yes	yes	no	fair	no
SB 98 (1997) Iwase + 9 (B)	SNL	yes	yes	yes	no	no	yes	no	yes	no	poor	no
HB 1396 (1997) Case/Thielen (B) and 7 others	DP	no	yes	yes	yes	yes	no	no	no	yes	good	yes

Legend: DP = Domestic Partnership FP = Family Partnership RB = Reciprocal Beneficiary SNL = Shared Necessities of Life
(D) = Democratic proposal (R) = Republican proposal (B) = Bipartisan proposal

Notes: HB 117, SD1 would amend the constitution to keep marriage as male/female, but also would require no discrimination in benefits on the basis of sex.
 HB 118 HD1 and SB 98 would grant only a few benefits and would deny dozens of others that state law confers on spouses.
 HB 118, HD1, SD1 merged the benefits of SB 98 into HB 117 HB1, and then added a few more benefits.
 The chance of a proposal passing the current equal protection test is based on testimony and comments made by constitutional law experts, at various legislative committee hearings, as well as on the factual findings made by the trial court in *Baehr v. Miike*.

By: Thomas F. Coleman, Esq.
(amended on February 6, 1997)

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1999 HI S.B. 1315

THE 20TH STATE LEGISLATURE

SENATE BILL 1315

1999 Bill Tracking HI S.B. 1315

DATE-INTRO: JANUARY 26, 1999

LAST-ACTION: AUGUST 3, 1999; The 20th State Legislature Adjourned - 05/04/1999 - Carried Over to The 20th State Legislature.

SYNOPSIS: Redefines **reciprocal beneficiaries** to be persons who are not related by blood and who cannot marry; gives couples who have established a **reciprocal beneficiary** relationship as provided by law most of the legal rights that accrue to married couples.

STATUS:

- 01/26/1999 INTRODUCED.
- 02/03/1999 To SENATE Committee on JUDICIARY.
- 08/03/1999 The 20th State Legislature Adjourned -
05/04/1999 - Carried Over to The 20th State
Legislature.

SUBJECT: LAW AND JUSTICE, FAMILY LAW, LABOR AND EMPLOYMENT, PUBLIC EMPLOYEES, Healthcare Benefits Public Sector, Marriage, Separation, Divorce

SPONSOR: Mizuguchi

SUBJECT: PUBLIC SECTOR (86%);

LOAD-DATE: August 5, 1999

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1999 HI H.B. 1107

HAWAII THE 20TH STATE LEGISLATURE

HOUSE BILL 1107

HOUSE OF REPRESENTATIVES H.B. NO. 1107
TWENTIETH LEGISLATURE, 1999
STATE OF HAWAII

BILL TRACKING REPORT: ♦ 1999 Bill Tracking HI H.B. 1107

1999 Bill Text HI H.B. 1107

VERSION: Introduced

VERSION-DATE: January 27, 1999

SYNOPSIS:

A BILL FOR AN ACT

RELATING TO **RECIPROCAL BENEFICIARIES.**

NOTICE:

[A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED [D> Text within these symbols is deleted

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

SECTION 1. The purpose of this bill is to redefine **reciprocal beneficiaries** to be persons who are not related by blood and who cannot marry and to give couples who have established a **reciprocal beneficiary** relationship as provided by law most of the legal rights that accrue to married couples. Such things as adoption or other parental rights are excluded. Act 383, Session Laws of Hawaii 1997 allowed persons who could not legally be married to enter into a relationship as **reciprocal beneficiaries** and gave to such persons certain legal rights, including rights to pensions, workers compensation benefits, and insurance benefits. Many of the laws that deal with married couples, however, were not amended by Act 383 to include **reciprocal beneficiaries**. This bill would amend

the Hawaii Revised Statutes to treat **reciprocal beneficiaries** and married persons as similarly as possible in both their rights and duties under the law with certain limitations while reserving the institution of marriage to a man and a woman.

SECTION 2. Section 11-14.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) If a life threatening circumstance exists to:

(1) A law enforcement person;

(2) The law enforcement person's family; or

(3) Persons otherwise determined by the clerk of the county in which the person is registered, that person may apply to the county clerk in writing to keep confidential the information relating to the residence address and telephone number contained in the affidavit of registration of that person, or any list or register prepared therefrom. For purposes of this section, [A> A LAW ENFORCEMENT PERSON'S FAMILY INCLUDES A **RECIPROCAL BENEFICIARY OF THE LAW ENFORCEMENT PERSON. THE RECIPROCAL BENEFICIARY OF, , RECIPROCAL BENEFICIARY,**

(b) In connection with the security and protection of a witness, a potential witness, or an immediate family member [A> , **RECIPROCAL BENEFICIARY,**

SECTION 4. Section 76-44, Hawaii Revised Statutes, is amended to read as follows:

"Section 76-44 Racial, sex, age, religious, color, ancestry, martial status, [A> **RECIPROCAL BENEFICIARY STATUS, OR RECIPROCAL BENEFICIARY**

SECTION 5. Section 76-103, Hawaii Revised Statutes, is amended to read as follows:

"Section 76-103 Veteran's preference. The extent to which veteran's preference shall be given to veterans, to disabled veterans, to spouses [A> **OR RECIPROCAL BENEFICIARIES** and AND TO SURVIVING **RECIPROCAL BENEFICIARIES** OF DECEASED SERVICEMEN WHO HAVE NOT ENTERED INTO A SUBSEQUENT **RECIPROCAL BENEFICIARY** RELATIONSHIP

SECTION 6. Section 90-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) No person shall on the basis of sex, age, race, color, ancestry, religion, national origin, marital status, [A> STATUS AS A **RECIPROCAL BENEFICIARY,**

SECTION 7. Section 90-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every person regardless of his present economic condition, race, color, ancestry, political affiliation, religious affiliation, sex, age, physical or mental handicap, [D> or , OR STATUS AS A **RECIPROCAL BENEFICIARY**

SECTION 8. Section 231-1, Hawaii Revised Statutes, is amended by adding a new definition of "**reciprocal beneficiary**" to be appropriately inserted and to read as follows:

"**Reciprocal beneficiary**" means a **reciprocal beneficiary** as defined in section 572C-3. The terms "husband and wife", "spouse", and "head of household" shall include persons who are **reciprocal beneficiaries**, as the context allows, and the terms "marriage" and "marital status" shall include **reciprocal beneficiary** relationships, as the context allows."

SECTION 9. Section 235-2.4, Hawaii Revised Statutes, is amended:

1. By amending subsection (a) to read as follows:

"(a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that the standard deduction amount in section 63(c) of the Internal Revenue Code shall instead mean:

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HAWAII THE 20TH STATE LEGISLATURE

HOUSE BILL 884

HOUSE OF REPRESENTATIVES H.B. NO. 884
TWENTIETH LEGISLATURE, 1999
STATE OF HAWAIIBILL TRACKING REPORT: ♦ 1999 Bill Tracking HI H.B. 884

1999 Bill Text HI H.B. 884

VERSION: Introduced

VERSION-DATE: January 27, 1999

SYNOPSIS:

A BILL FOR AN ACT

RELATING TO **DOMESTIC PARTNERS.****NOTICE:**

[A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED

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

SECTION 1. **Domestic partners** live together in the context of a committed family relationship. However, they do not enjoy public and private sector rights and benefits that are comparable to those in comparable relationships. The legislature finds that **domestic partners** comprise a significant percentage of households within this jurisdiction. The legislature further finds as a matter of public policy that society should accord to such partners rights and benefits that are comparable to those in comparable relationships. The purpose of this Act is to recognize the right of certain such people to identify the partners with whom they share their lives as members of each other's immediate family and to accord them such rights and benefits.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER DOMESTIC PARTNERSHIPS Section -1 Definitions. For the purposes of this chapter:

"Basic living expenses" means basic food and shelter. It H.B. NO. includes any other cost, such as medical care, if some or all of the cost is paid as a benefit to one or both partners because they have registered as **domestic partners** under this chapter.

"Declaration of domestic partnership" means a statement in a form issued by the director of health that declares the intent of two people to enter into a valid domestic partnership contract. By signing it, two people swear under penalty of perjury that they meet the requirements for a valid domestic partnership contract.

"Director" means the director of health.

"**Domestic partners**" means two adults who are parties to a valid domestic partnership contract and continue to meet the requisites for a valid domestic partnership contract set out in in section -2.

"Joint responsibility" means that each partner agrees to provide for the other's basic living expenses while the domestic partnership is in effect if the other is unable to provide for himself or herself. It does not mean that the partners need to contribute equally or jointly to basic living expenses. Anyone to whom these expenses are owed can enforce the responsibility established by this chapter.

"Live together" means that two people share the same place to live. It is not necessary that the legal right to possess the H.B. NO. place be in both of their names. Two people may live together even if one or both have additional places to live. **Domestic partners** do not cease to live together if one leaves the shared place but intends to return.

Section -2 Requisites of a valid domestic partnership contract. To make a valid domestic partnership contract, it shall be necessary that the parties:

- (1) Live together;
- (2) Consider themselves to be members of each other's immediate family;
- (3) Agree to be jointly responsible for each other's basic living expenses;
- (4) Neither be married nor a member of another domestic partnership;
- (5) Not be related by blood in a way that would prevent them from being married to each other under chapter 572;
- (6) Each be at least eighteen years old;
- (7) Each be competent to enter into a contract; and
- (8) Each sign a declaration of domestic partnership as provided for in section -3.

Section -3 Establishing a domestic partnership. Two persons, who meet the criteria set out in section -2, may establish a

H.B. NO. domestic partnership by presenting a signed, notarized declaration of domestic partnership to the director, who shall file it and give the partners a certificate of domestic partnership showing that the declaration was filed in the names of the parties who shall be known as "**domestic**

partners". Section -4 Rights and obligations. Upon the issuance of a certificate of domestic partnership by the director, the parties named in the certificate shall have the same rights and obligations under the law that are conferred on spouses in a marriage relationship under chapter 572. A "**domestic partner**" shall be included in any definition or use of the terms "spouse", "family", "immediate family", or "dependent" as those terms are used throughout the law.

Section -5 Dissolution of domestic partnerships. The family court shall have jurisdiction over the dissolution of domestic partnerships. The dissolution of domestic partnerships shall follow the same procedures and be subject to the same substantive rights and obligations that are involved in the dissolution of marriage under chapter 572.

Section -6 Records and fees. The director shall keep a record of all declarations. The director shall set the amount of the filing fee for declarations, but in no case shall the fee be higher than the fee for a marriage license. The fees charged

H.B. NO. shall cover the State's costs of administering this section.

Section -7 Preemption. This chapter shall supersede any state law or political subdivision ordinance to the contrary.

Section -8 Private solemnization not required. Nothing in this

chapter shall be construed to require any religious organization to solemnize a domestic partnership that does not recognize a **domestic partner** relationship within their ideology; provided that no rights and obligations of **domestic partners** are obstructed or violated."

SECTION 3. Section 368-1, Hawaii Revised Statutes, is amended to read as follows:

"Section 368-1 Purpose and intent. The legislature finds and declares that the practice of discrimination because of race, color, religion, age, sex, sexual orientation, marital status, [A> DOMESTIC PARTNERSHIP,

SECTION 4. Section 572-1, Hawaii Revised Statutes, is amended to read as follows:

H.B. NO. "Section 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, 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 of the half as well as to the whole blood, uncle and niece, aunt and nephew, whether the relationship is the result of the issue of parents married or not married to each other;

(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 [A> OR **DOMESTIC PARTNER OR DOMESTIC PARTNER**

(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 H.B. NO. loathsome disease concealed from, and unknown to, the other party;

(6) The man and woman 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 marriages and the man and the woman to be married and the person performing the