



SENATE BILL 1 - RELATING TO MARRIAGE EQUALITY

What it is and how it will affect you

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During the 2013 Special Session, the Hawaii Legislature passed Senate Bill 1 – Relating to Marriage Equality (“SB 1”). SB 1 redefined marriage to include a union between individuals of the same sex providing same-sex and opposite-sex couples the same rights, benefits, protections, and responsibilities of marriage.

PUBLIC ACCOMMODATIONS:

Hawaii’s “Public Accommodation Law” prohibits discrimination in the provision of goods and services at places of public accommodation based on sexual orientation. A place of public accommodation includes any facility which holds itself open to the general public and would include churches under most circumstances.

Solemnization Exemption: SB 1 provides an exemption to the Public Accommodations Law with regard to solemnizing marriages.

Clergy, Ministers, Priests, Rabbi, and Officers of any religious denomination or society or religious society not having clergy but providing solemnizations, shall **not** be required to solemnize a marriage that **violates his or her religious belief or faith**.

Public Accommodations Exemption: SB 1 also provides an exemption to the Public Accommodations Law for organizations regarding the solemnization and celebration of marriages.

A religious organization, or non-profit organization operated, supervised, or controlled by a religious organization, is **not** required to provide (1) goods, (2) services or (3) facilities or grounds for the purposes of solemnization or celebration of a marriage that **violates its religious beliefs or faith**.

Wedding Businesses – The Public Accommodations Exemption only applies to “religious organizations” or “non-profit organizations operated, supervised, or controlled by a religious organization.” Unless the wedding business is operated by one of these qualified entities, and the weddings are performed as part of the ministry of the church, the exemption will not apply. **A for-profit organization established by a church to provide wedding services will not be allowed to discriminate with regard to the provision of its goods, services or facilities to same-sex couples.** If the operation falls somewhere in between a non-profit Christian ministry and for profit business, it is not clear how the exemption will apply and each church is encourage to consult with their legal counsel.

The foregoing exemptions provide clergy and religious organizations immunity from fine, penalty, injunction, administrative proceeding or any other legal or administrative liability for failure or refusal.

NOTE: It is unclear exactly how broadly this provision will be interpreted with regard to whether a marriage violates an organization's religious beliefs or purposes. In the UCC, there is national precedent supportive of same sex marriage, but the basic polity of the UCC provides for the autonomy of the local church. As such, it will be up to each local church to evidence its support or rejection of same sex marriage as a matter of the church's religious belief or faith.

EMPLOYMENT DECISIONS:

Hawaii law prohibits discriminatory employment practices based on sexual orientation. This prohibition covers employment decisions related to the following

Benefits: With the implementation of SB 1, churches will be required to extend benefits to the same sex spouse of a church employee on the same terms as extended to an employee's opposite sex spouse.

Refusal to Hire/Discharge: A church may not refuse to hire or discharge someone from employment because the employee has entered into a same-sex marriage unless one or more of the exemptions set forth below apply.

Other Terms/Conditions of Employment: A church may not discriminate with regard to an employee's terms and conditions of employment – i.e. vacation, work scheduling, etc. – unless one or more of the exemptions set forth below apply.

Exemptions:

Ministerial exception: Employment decisions regarding employees in an ecclesiastical (rather than secular position) are not subject to the discrimination laws. Ecclesiastical positions will include ministers, choir leaders, and other employees who engage largely in religious or ecclesiastical activities.

NOTE: In determining if a position is ecclesiastical in nature, a court will examine the employee's duties and actual role at the church. This includes an inquiry into (1) whether the employment decision was based on religious criteria, (2) whether the employee is authorized to perform ceremonies of the church, and (3) whether the employee engages in traditionally religious or ecclesiastical activities.

Bona Fide Occupational Qualification: Employment discrimination may be made based on sexual orientation if sexual orientation is a bona fide occupational qualification for the position, i.e. if sexual orientation somehow relates to the employee's ability to properly perform the requirements of the job. Except for situations that fall under the ministerial exception, it is difficult to surmise, a bona fide occupational qualification that would permit discrimination on the basis of sexual orientation in a church employment setting.

**The information contained in this document has been prepared at the request of the Hawaii Conference of the United Church of Christ and is not intended to be relied upon by any member or other person without prior consultation with an attorney.*

