

STAND. COM. REP. NO.

2060

Honolulu, Hawaii

, 1996

MAR 01

RE: S.B. No. 3113

S.D. 1

Honorable Norman Mizuguchi
President of the Senate
Eighteenth State Legislature
Regular Session of 1996
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 3113 entitled:

"A BILL FOR AN ACT RELATING TO DOMESTIC PARTNERSHIPS,"

begs leave to report as follows:

The purpose of this bill is to provide equal protection of the law to same-gender couples.

The State of Hawaii is a culturally diverse and pluralistic society--a society that is the envy of the world. Our collective experience has sensitized us to civil rights and their great importance. Despite the equal protection clause of the United States Constitution, some of Hawaii's citizens were unfortunately taken against their will to internment camps at the beginning of World War II, while others were displaced from their homes or discharged from military service solely on the basis of ancestry.

The State of Hawaii has a rich history in the field of civil rights. Hawaii was the first state in the nation to ratify the proposed equal rights amendment for women in our country. Our anti-discrimination laws are enforced by one of the most vigorous mechanisms of any state in the nation through our Hawaii Civil Rights Commission. This rich history and tradition of tolerance of other people's rights and our collective sensitivity to civil rights has been severely challenged by the Hawaii Supreme Court.

SSCR SB3113 SD1 JDC

96-1775

Extensive testimony was heard on this issue. The members of your Committee were presented with conflicting testimony as to whether the right to marry is a civil right. Constitutional scholars tell us that "civil rights" are those rights that individuals have in relationship to their government. Your Committee finds that for more than fifty years, the United States Supreme Court has recognized marriage as a basic "civil right". Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535 (1942). It said so again in Zablocki v. Redhail, 434 U.S. 374 (1978) a twenty year old case involving a statute passed by the Wisconsin legislature.

Your Committee is also mindful of the full faith and credit clause of the United States Constitution, and is also aware of several states that are taking action to refuse to recognize Hawaii marriages if same-gender marriage is permitted by law. Your Committee is concerned about the harmful legal consequences that may affect all marriages if same-gender marriage is adopted. The Committee finds that the necessary legislative action needs to be more narrowly drawn in order to avoid this "legal minefield."

This bill establishes a domestic partnership law that recognizes same-gender relationships and bestows the rights and obligations that are provided in a spousal relationship. Your Committee has been made fully aware that many of our churches and religious groups condemn same-gender relationships. There is nothing in this bill to require any church or religious group to recognize or solemnize same-gender relationships. Likewise, the constitutional principle of the separation of church and state prevents religious beliefs from being enforced through state institutions.

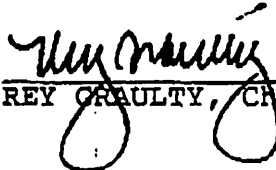
Your Committee has amended this bill by requiring a twelve month residency period, and providing that domestic partners do not gain parental rights to a child except through adoption. While your Committee believes this bill will meet the standards required of the equal protection clause of the Hawaii State Constitution, your Committee has also amended this bill to repeal the Act if the Hawaii Supreme Court issues a decision requiring the State of Hawaii to apply its marriage laws to same-gender couples.

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 S.B. No. 3113, as amended herein, and recommends that it pass Second

STAND. COM. REP. NO. **2060**
Page 3

Reading in the form attached hereto as S.B. No. 3113, S.D. 1, and
be placed on the calendar for Third Reading.

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



REY CRAULTY, Chair

A BILL FOR AN ACT

RELATING TO DOMESTIC PARTNERSHIPS.

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

1 SECTION 1. Findings. The legislature finds that the law on
2 marriage is restricted to those personal relationships between
3 couples of the opposite gender. While the legislature believes
4 that a marriage can exist only between a man and a woman, that
5 such a marriage is the most beneficial to the social and family
6 structure, and that the institution of marriage is traditionally
7 thought of as a special relationship which exists between members
8 of the opposite gender, the legislature believes that other forms
9 of personal relationships exist and can be recognized in a way
10 which does not infringe on those long standing cultural and
11 traditional concepts of marriage. The legislature finds and
12 declares that:

- 13 (1) Domestic partners live together in the context of a
14 committed family relationship. However, they are often
15 denied public and private benefits, because they cannot
16 provide state certified proof of their relationship;
- 17 (2) Domestic partners comprise a percentage of households
18 within this jurisdiction that is not insignificant.
19 Domestic partners are often subject to marital status

1 discrimination in employment, housing, and public
2 accommodations. The enactment of this registration law
3 is to eliminate this discrimination; and

4 (3) It is in the public interest to act "with all
5 deliberate speed" in response to the constitutional
6 concerns expressed by the state supreme court in Baehr
7 v. Lewin, 74 Haw. 530 (1993).

8 SECTION 2. Purpose. The purpose of this Act is to provide
9 for state recognition of persons of the same gender who choose to
10 enter into domestic partnerships in order to share their lives as
11 members of each other's immediate family and to establish a
12 statutory mechanism for the identification of the specific
13 benefits and obligations which are conferred in domestic
14 partnerships.

15 At the same time, the legislature recognizes that many
16 complex issues surround the statutory recognition of domestic
17 partners. One issue involves child custody and adoption. The
18 legislature finds that all things being equal, children are best
19 raised by their biological parents. Therefore, this Act has
20 limited the authorization of domestic partners in child custody
21 and adoption issues until such time that the State is able to
22 deliberate on the issues surrounding child rearing by domestic

1 partners.

2 The legislature is also mindful of its jurisdiction and the
3 issues surrounding the full faith and credit provision of the
4 United States Constitution. In order to avoid appearing to
5 regulate the internal affairs of another state, the legislature
6 believes that domestic partnership recognition should be limited
7 to state residents.

8 The purpose of this Act is therefore to recognize and
9 regulate the relationship that persons of the same gender may
10 have with one another, without infringing in any way on the
11 traditional concepts of marriage or with the rights, benefits,
12 and status of married people. Moreover, although this Act is
13 limited to members of the same gender, this Act is not intended
14 to violate the rights of opposite gender couples who desire to
15 enter into a domestic partnership, since opposite gender couples
16 retain the right of marriage itself under chapter 572, Hawaii
17 Revised Statutes. Finally, it is the intent of the legislature
18 that this Act become effective upon approval, but in the event
19 the supreme court of the State of Hawaii issues a decision
20 requiring the State to apply its marriage laws to same gender
21 couples in the same way that such laws are applied to opposite
22 gender couples, then the new law establishing domestic
23 partnerships shall be repealed on the effective date of the
24 court's decision.

1 SECTION 3. The Hawaii Revised Statutes is amended by adding
2 a new chapter to be appropriately designated and to read as
3 follows:

4 "CHAPTER

5 DOMESTIC PARTNERSHIPS

6 § -1 Title. This chapter shall be known as the Domestic
7 Partnership Act.

8 § -2 Definitions. For the purposes of this chapter:

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

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

18 "Director" means the director of health.

19 "Domestic partners" means two adults who are parties to a
20 valid domestic partnership contract and meet the requisites for a
21 valid domestic partnership contract as defined in section -3.

1 "Domestic partnership" means a voluntary, written personal
2 undertaking, filed with the state of registration, by adults to
3 cohabit as a family, subject to the provisions of law.

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

11 § -3 Requisites of a valid domestic partnership contract.
12 In order to make a valid domestic partnership contract it shall
13 be necessary that the parties:

- 14 (1) Reside in the same household;
15 (2) Consider themselves to be members of each other's
16 immediate family;
17 (3) Agree to be jointly responsible for each other's basic
18 living expenses;
19 (4) Agree to assume the rights and obligations specified in
20 section -6;
21 (5) Neither be married nor a member of another domestic
22 partnership;

- 1 (6) Not be related by blood in a way that would prevent
2 them from being married to each other under chapter
3 572;
- 4 (7) Each be at least eighteen years old;
- 5 (8) Be of the same gender, one of whom has been a resident
6 of the State for at least twelve consecutive months
7 preceding the date of application for domestic
8 partnership;
- 9 (9) Each be competent to enter into a contract; and
- 10 (10) Each sign a declaration of domestic partnership as
11 provided for in section -5.

12 § -4 Domestic partnership certificates; agent to grant;
13 fee. (a) The department shall appoint, and at its pleasure
14 remove, one or more suitable persons as agents authorized to
15 issue domestic partnership certificates under this chapter in
16 each judicial circuit to persons meeting the requirements for
17 registration under section -5. Such agents may issue
18 certificates from any state facility when deemed necessary by the
19 director. Any agent appointed under this subsection and
20 receiving an application for a domestic partnership certificate
21 shall collect from the applicant \$, of which the agent,
22 except those provided for in subsection (b), shall retain \$

1 for the agent's benefit and compensation and shall remit \$ to
2 the director of finance.

3 (b) The department may appoint as regular employees under
4 the civil service and classification laws the number of suitable
5 persons as agents authorized to grant domestic partnership
6 certificates for whom provision has been made in the general
7 appropriation act. In the case of such agents, the full amount
8 collected from applicants shall be remitted to the director of
9 finance as a general realization of the State.

10 (c) Every agent appointed under this section may administer
11 the oaths required by this chapter to be taken.

12 (d) The department or its authorized agent shall furnish to
13 each applicant for a domestic partnership certificate,
14 information related to venereal diseases, contraceptives, fetal
15 alcohol and drug syndromes, and acquired immune deficiency
16 syndrome (AIDS), including the availability of anonymous testing
17 for HIV infection at alternate test site; provided that such
18 information is available.

19 § -5 Application; certificate; limitations. To secure a
20 certificate to become domestic partners, the persons applying for
21 the certificate shall appear personally before an agent
22 authorized to register domestic partnerships and shall file with

1 the agent an application in writing. The application shall be
2 accompanied by a declaration of domestic partnership signed and
3 sworn to by each of the persons certifying that they meet the
4 criteria set out in section -3 and setting forth for each
5 person:

- 6 (1) Full name;
- 7 (2) Date of birth;
- 8 (3) Length of residency in Hawaii;
- 9 (4) Full names of parents;
- 10 (5) That all prior marriages and domestic partnerships, if
11 any, have been dissolved by death or dissolution;
- 12 (6) If either party has had a prior marriage or domestic
13 partnership, the date of death of the last prior spouse
14 or domestic partner, or date and jurisdiction in which
15 the last decree of dissolution was entered; and
- 16 (7) Any other information consistent with the standard
17 marriage license as recommended by the Public Health
18 Service, National Center for Health Statistics, may be
19 requested for statistical or other purpose subject to
20 the approval of and modification by the department;
21 provided that the information shall be provided at the
22 option of the applicant and no applicant shall be

1 denied registration for failure to provide the
2 information.

3 The agent shall endorse on the application, over the agent's
4 signature, the date of the filing thereof and shall issue a
5 certificate which shall bear on its face the date of issuance.
6 Every certificate shall be of full force and effect.

7 It shall be the duty of every person, legally authorized to
8 grant certificates for domestic partnerships, to promptly report
9 the issuance of every domestic partnership certificate to the
10 agent of the department in the district in which the certificate
11 is issued, setting forth all facts required to be stated in such
12 manner and on such form as the department may prescribe.

13 § -6 Rights and obligations. Upon the issuance of a
14 certificate of domestic partnership, the parties named in the
15 certificate shall have the same rights and obligations under the
16 law that are conferred on spouses in a marriage relationship
17 under chapter 572. A "domestic partner" shall be included in any
18 definition or use of the terms "spouse", "family", "immediate
19 family", or "dependent" as those terms are used throughout the
20 laws of the State of Hawaii and rules adopted pursuant thereto.

21 § -7 Limitations. The registered domestic partner of a
22 parent of a child shall not:

- 1 (1) Be entitled to the legal rights, duties, and
- 2 responsibilities of the natural father or mother,
- 3 unless those legal rights, duties, and responsibilities
- 4 have been terminated by a court or surrendered by the
- 5 natural father or mother in an adoption proceeding;
- 6 (2) Gain any parental rights to the child except through
- 7 adoption; or
- 8 (3) Be considered the natural parent for the purpose of
- 9 filling out the birth certificate of the child.

10 § -8 Dissolution of domestic partnerships. (a)

11 Exclusive original jurisdiction in matters of dissolution of

12 domestic partnerships, subject to appeal according to law, is

13 conferred upon the family court of the circuit in which the

14 applicant has been domiciled or has been physically present for a

15 continuous period of at least three months preceding the

16 application therefor. No termination of a domestic partnership

17 may be granted for any cause unless either party to the domestic

18 partnership has been domiciled or has been physically present in

19 the State for a continuous period of at least six months next

20 preceding the application therefor.

21 (b) The dissolution of domestic partnerships shall be

22 considered under all applicable laws governing the dissolution of

1 marriage under chapter 580, except that the the family court, by
2 decree of nullity, may declare void the domestic partnership
3 certification for any of the following causes, existing at the
4 time of certification:

5 (1) The parties were not at least eighteen years of age;

6 (2) A partner has a living spouse or other domestic
7 partner;

8 (3) Consent of the domestic partnership of the party
9 applying for annulment was obtained by force, duress,
10 or fraud, and there has been no subsequent
11 cohabitation; or

12 (4) A party is mentally incapable to consent to the
13 domestic partnership agreement.

14 (c) Any final decree of dissolution of domestic partnership
15 issued by the court shall not be effective until at least six
16 months after the date of service of a copy of summons and
17 petition or the date of appearance which ever occurs first as
18 required by section 580-45.

19 § -9 Records and fees. The director shall keep a record
20 of all declarations. The director shall set the amount of the
21 filing fee for declarations, but in no case shall the fee be
22 higher than the fee for a marriage license. The fees charged

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

2 § -10 Preemption. This chapter shall supersede any state
3 law or political subdivision ordinance to the contrary.

4 § -11 Private solemnization not required. Nothing in
5 this chapter shall be construed to require any religious
6 organization to solemnize a domestic partnership that does not
7 recognize a domestic partner relationship within its ideology;
8 provided that any rights and obligations of domestic partners are
9 not obstructed or violated.

10 § -12 Rules of construction. In construing this chapter,
11 the court may seek guidance from, but is not bound by, the laws
12 and principles governing marriage and annulment, divorce, and
13 dissolution of marriage."

14 SECTION 4. Section 368-1, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "§368-1 Purpose and intent. The legislature finds and
17 declares that the practice of discrimination because of race,
18 color, religion, age, sex, sexual orientation, marital status,
19 including domestic partnership, national origin, ancestry, or
20 disability in employment, housing, public accommodations, or
21 access to services receiving state financial assistance is
22 against public policy. It is the purpose of this chapter to

1 provide a mechanism which provides for a uniform procedure for
2 the enforcement of the State's discrimination laws. It is the
3 legislature's intent to preserve all existing rights and remedies
4 under such laws."

5 SECTION 5. Section 580-45, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§580-45 Decree. If after a full hearing, the court is of
8 the opinion that a divorce ought to be granted from the bonds of
9 matrimony, or that a dissolution of a domestic partnership ought
10 to be granted, a decree shall be signed, filed, and entered,
11 which shall take effect from and after such time as may be fixed
12 by the court in the decree. The court, in its discretion, may
13 waive a hearing on an uncontested divorce complaint or petition
14 to dissolve a domestic partnership and admit proof by affidavit.
15 In case of a decree dissolving the bonds of matrimony, such time
16 so fixed shall not be more than one month from and after the date
17 of the decree[.]; provided that in the case of the dissolution of
18 domestic partnership the effective date of the decree of
19 dissolution shall be not less than six months from the date of
20 service of a copy of the summons and petition or the date of
21 appearance of the respondent, whichever occurs first."

22 SECTION 6. If any provision of this Act, or the application

1 thereof to any person or circumstance is held invalid, the
2 invalidity does not affect other provisions or applications of
3 the Act which can be given effect without the invalid provision
4 or application, and to this end the provisions of this Act are
5 severable.

6 SECTION 7. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun, before its effective date.

9 SECTION 8. Statutory material to be repealed is bracketed.
10 New statutory material is underscored.

11 SECTION 9. This Act shall take effect upon its approval and
12 if the supreme court of the State of Hawaii issues a decision in
13 the case entitled Ninia Baehr, Genora Dancel, Tammy Rodrigues,
14 Antoinette Pregil, Pat Lagon, Joseph Melilio vs. Lawrence Miike
15 in his official capacity as Director of the Department of Health,
16 State of Hawaii, Civil No. 91-1394, or in any subsequent and
17 related case requiring the State of Hawaii to apply its marriage
18 laws to couples of the same gender in the same way that such laws
19 are applied to opposite gender couples, this Act shall be
20 repealed on the effective date of the court's decision.

Post-It™ brand fax transmittal memo 7571		# of pages > 10 of 9
To Tom Coleman	From Gary Bennett	
Co.	Co.	
Dept.	Phone #	
Fax # 213-258-8099	Fax #	

**Statement of Senator Rey Graulty
on February 26, 1996**

CHAIR'S RECOMMENDATION RE: SB 3113, SD 1 (Domestic Partnerships)

Ours is a culturally diverse and pluralistic society. It is a society that is in fact the envy of the world. It is our strength - - it is who we are. Our collective experience has sensitized us to civil rights and its great importance. Despite the equal protection clause in the U.S. Constitution, many of Hawaii's citizens were unfortunately taken against their will to internment camps at the beginning of World War II.

Our state has had a rich history in the field of civil rights. Hawaii was the first state in the nation to pass the equal rights amendment for women in our country. Our anti-discrimination laws are enforced by one of the most vigorous mechanisms of any state in the nation through our Hawaii Civil Rights Commission. Hawaii is but one of a half-dozen states which prohibit discrimination in employment on the basis of sexual orientation. We are a leader in the nation when it comes to civil rights.

Our rich history, our tradition for tolerance of other people's rights and our collective sensitivity to civil rights has been severely challenged by the Hawaii Supreme Court in Baehr v. Miike. I hope the members of the Committee will share in the view that passing this bill would be consistent with our standing as the culturally diverse, tolerant and pluralistic society we are.

I believe that this bill will satisfy the equal protection clause of the constitution. Out of an abundance of caution however, I have added a Section 9 to the bill which will repeal the act if the court decides it does not.

The bill also requires a 12-month residency period before a domestic partnership can be entered into and provides that domestic partners not gain any parental rights to a child except through adoption.

The members of the Committee have been made fully aware that many of our churches and religious groups condemn same-gender relationships. There is nothing in the bill to require any church or religious group to recognize or solemnize same-gender relationships. Likewise, the constitutional principle of the separation of church and state prevents religious beliefs from being enforced through state institutions, such as the Department of Health.

(continued on othe side)

The Supreme Court in Baehr has asked the Legislature to examine the rights and benefits conferred upon opposite-sex partners, but denied to same-sex partners. The Legislature responded by forming a Commission on Sexual Orientation and the Law and asked the members of the Commission to examine these benefits and deprivations.

They found "intangible benefits", such as the right to visit a spouse in the hospital, to make decisions regarding the medical use of a spouse's body, to decide its final disposition, to receive legal notice of certain proceedings in law, the right of spousal privilege and confidential communications between marital partners under our hawaii rules of evidence and the extension of the physician-patient privilege to family members.

They found "substantial quantifiable benefits", such as spousal and dependent support benefits, health insurance benefits, other insurance benefits, retirement benefits, workers' compensation benefits, wrongful death benefits, hawaiian home lands surviving spouse benefits, income tax rate benefits, other income tax benefits, estate and transfer-tax benefits, transfer of home and capital-gains tax benefits, tenancy-by-the-entirety benefits and federal benefits.

While Section 1 of the bill clearly and explicitly states that marriage can exist only between a man and a woman, this bill recognizes that other forms of personal relationships exist and can be recognized in a way which does not infringe on our longstanding cultural and traditional concepts of marriage. This is what SB.3113, SD 1 provides.

The Chair therefore recommends that we pass this bill, with amendments.

Comment: The members of the Senate Judiciary Committee adopted the chair's recommendation by a vote of 5 to 2.