

Appendix A

SESSION LAWS
OF
HAWAII
PASSED BY THE
EIGHTEENTH STATE LEGISLATURE

REGULAR SESSION
1995

Convened on Wednesday, January 18, 1995
and
Adjourned sine die on Monday, May 1, 1995

SPECIAL SESSION
1995

Convened on Monday, June 5, 1995
and
Adjourned sine die on Friday, June 9, 1995

STATE OF HAWAII

OCT 0 9 1995

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ACT 5

S.B. NO. 888

A Bill for an Act Relating to the Commission on Sexual Orientation and the Law.
Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to form a new commission on sexual orientation and the law.

SECTION 2. Act 217, Session Laws of Hawaii 1994, section 6, is repealed.
["**SECTION 6.** There is created, effective upon approval of this Act, a commission on sexual orientation and the law. The commission shall consist of eleven members, ten appointed by the governor of the State of Hawaii, of which two shall be representatives from the Hawaii Civil Rights Commission; two shall be representatives from the American Friends Service Committee; two shall be representatives from the Catholic Church diocese; two shall be representatives from the Church of Latter-Day Saints; two shall be representatives from the Hawaii Equal Rights Marriage Project; and an eleventh member, who shall be the chairperson of the family law section of the Hawaii State Bar Association as of January 1, 1994, who shall serve as chairperson of the commission. Should the chairperson of the family law section of the Hawaii State Bar Association decline to serve, the president of the senate and the speaker of the house of representatives shall choose, at their joint discretion, a person with expertise in the law of domestic relations to serve as chairperson of the commission. The members of the commission shall serve without compensation and the commission shall be attached for administrative purposes to the legislative reference bureau, which shall provide staff support to the commission. The purpose of the commission shall be to:

- (1) Examine the precise legal and economic benefits extended to opposite-sex couples, but not to same-sex couples;
- (2) Examine whether substantial public policy reasons exist to extend such benefits to same-sex couples and the reasons therefor; and
- (3) Recommend appropriate action which may be taken by the legislature to extend such benefits to same-sex couples.

The commission shall submit a report on its findings to the legislature no later than twenty days prior to the convening of the 1995 regular session."]

SECTION 3. There is created, effective upon approval of this Act, a commission on sexual orientation and the law. The commission shall consist of seven members of the general public, appointed by the governor, of which two shall be appointed from a list of nominees submitted by the speaker of the house of representatives and two shall be appointed from a list of nominees submitted by the president of the senate. The governor shall designate the chair of the commission. The members of the commission shall serve without compensation and the commission shall be attached for administrative purposes to the legislative reference bureau, which shall provide staff support to the commission. The purpose of the commission shall be to:

- (1) Examine the major legal and economic benefits extended to married opposite-sex couples, but not to same-sex couples;
- (2) Examine the substantial public policy reasons to extend or not to extend such benefits in part or in total to same-sex couples; and
- (3) Recommend appropriate action which may be taken by the legislature to extend such benefits to same-sex couples.

The commission shall submit a report of its findings to the legislature no later than twenty days prior to the convening of the 1996 regular session. The commission shall cease to exist after July 1, 1996."

SECTION 4. Statutory material to be repealed is bracketed.

SECTION 5. This Act shall take effect upon its approval.

(Approved March 24, 1995.)

Appendix B

STATUTE LIST

HHCA 209 Successors to Lessee

■ Allows husbands, wives, children or their widows or widowers and other family members who are 1/4 Hawaiian or qualify under section 3 of Act of May 16, 1934 (48 Stat. 777, 779) or section 3 of Act of July 9, 1952 (66 Stat. 511, 513) to be successor lessees.

HRS 1-1 Common Law; Construction of Law, Common law of the State; Exceptions

■ Incorporates common law as the law of the State and as that includes references to family and household that may not be defined, and because of the traditional common law definition of those terms, there are benefits conferred.

HRS 11-13 Elections, Generally; Rules for Determining Residency

■ Rules for determining residency include undefined term "family" when determining the default residence of a person as that of the family residence, and, therefore, a benefit is conferred.

HRS 11-14.5 Elections, Generally

■ Authorizes a county clerk to keep a law enforcement person's residence address and phone number confidential if a life-threatening circumstance exists to that person or the person's family. "Family" not defined, and "immediate family" defined in HRS 11-191 does not include non-married partner.

HRS 11-191 Elections, Generally

■ Includes "spouse" (and does not include same-gender partner) in definition of immediate family. Definition does not confer benefit; benefit conferred by 11-204, HRS based on definition of "immediate family."

HRS 11-204 Elections; Generally

■ Allows a candidate and immediate family to contribute up to \$50,000 per person rather than \$2,000 limit for other persons or entities.

HRS 26-14 Executive and Administrative Department. Part I. Organization Generally

■ Defines purpose of DHS to improve and concern itself with "family, child, and adult" welfare projects.

HRS 28-101 Attorney General. Part VII. Witness Security; Witness Security and Protection

■ Provides witness protection for state witnesses to a witness and their family by default. "A person otherwise closely associated with" the witness who may be endangered is also included, but this classification is uncertain.

HRS 40-85(c) Audit and Accounting. Part IV Miscellaneous Provisions. Imprest Fund for Immediate Welfare Payments, Emergency Assistance, and Work-Related Expenses

■ Authorizes the release of certain funds to welfare recipients during "family" crises.

HRS 46-4 General Provisions. Part I. Generally Jurisdiction and Powers. County Zoning

■ Refers to single-"family" dwellings.

HRS 46-6 General Provisions. Part I. Generally Jurisdiction and Powers. Parks and Playgrounds for Subdivisions

■ Requires counties to zone parks and playgrounds for subdivision. Defines "dwelling unit" and "lodging unit" as an independent housekeeping unit for a "family."

HRS 46-15.3 General Provisions. Part I. Generally Jurisdiction and Powers. Regulation of Adult Family Boarding Home and Care Home

■ For purposes of fire and building codes, allows operator and operator's family and up to five boarders to be housed in an adult family boarding home.

HRS 53-5 Urban Renewal Law. Part I. Urban Redevelopment Act. Powers and Duties of Agency

■ Defines powers and duties of redevelopment agency to include relocation of displaced "families."

HRS 53-6 Urban Renewal Law. Part I. Urban Redevelopment Act. Powers and Duties of Agency

■ Defines powers and duties of redevelopment agency to include relocation of displaced "families."

HRS 53-7 Urban Renewal Law. Part I. Urban Redevelopment Act. Urban Renewal Projects in Disaster Areas

■ Initiation and approval of redevelopment plan includes the provision of relocation of displaced "families."

HRS 53-20 Urban Renewal Law. Part I. Urban Redevelopment Act. Auxiliary Redevelopment Area

■ See HRS 53-5.

HRS 53-21 Urban Renewal Law. Part I. Urban Redevelopment Act. Auxiliary Redevelopment Area; Displaced Persons

■ See HRS 53-5.

HRS 53-22 Urban Renewal Law. Part I. Urban Redevelopment Act. Governmental Advances, Donations, and Other Appropriations

■ Requires governor to submit budget to legislature to cover expenses of displaced families.

HRS 53-56 Urban Renewal Law. Part II. Urban Renewal. Workable Program, Definition

■ Defines "workable program" to include a suitable living environment for an adequate family life.

HRS 76-103 Civil Service Law. Part V. Employee Organizations; Veteran's Preference, Other Rights; Veteran's Preference

■ Extend veteran's preference to spouse of disabled veterans and surviving spouses of deceased servicemen.

HRS 79-7 Leave of Absence; Vacation Allowances on Termination of Employment

■ Benefit to spouse by default if no other designation.

HRS 79-13 Leave of Absence; Funeral Leave

■ Authorizes family leave as stated under HRS 398.

HRS 79-32 Leave of Absence; Family Leave

■ Authorizes family leave as stated under HRS 398.

HRS 83-8 Temporary Intergovernmental Assignment of Public Employees Travel and Transportation Expenses

■ Allows for moving expenses of spouse.

HRS 87-1 Public Employees Health Fund; Definitions

■ Defines "dependent beneficiary" as spouse. All benefits based on this definition do not apply to same-gender partners.

HRS 87-4 Public Employees Health Fund; Trust Fund; State and County Contribution to Fund

■ Authorizes state contributions of approximately 60% for health-care premiums to employee beneficiaries and their dependent-beneficiaries.

HRS 87-4.5 Public Employees Health Fund; Trust Fund

■ Authorizes state contributions of 50% of health care premiums for retired employee-beneficiaries with less than ten years' service and their dependent-beneficiaries, including spouses.

HRS 87-6 Public Employees Health Fund; Trust Fund

■ Authorizes state contribution of 100% of health-care premium for retirees with more than ten years service.

HRS 87-23.5 Public Employees Health Fund; Powers and Duties of the Board; Determination of Long-term Care Benefits Plan; Contract with Carrier or Third Party Administrator

■ Extends long-term care benefits to spouses of employee beneficiaries.

HRS 87-25 Public Employees Health Fund; Powers and Duties of the Board Determination of Eligibility of Employee, Dependent of Person

■ Limits those who may receive health care benefits to employee-beneficiary and "dependent-beneficiary." See HRS 87-1.

HRS 87-27 Public Employees Health Fund; Powers and Duties of the Board Supplemental Plan to federal Medicare

■ Authorizes supplemental health care plan for employee-beneficiaries and their dependent-beneficiary spouse who participate in federal Medicare plan.

HRS 88-1 Pension and Retirement System. Restrictions

■ Allows spouse or designated beneficiary in contributory plan to receive pension until remarriage.

HRS 88-4 Pension and Retirement System

■ Requires spousal income of less than \$2,400 to be eligible for free medical aid.

HRS 88-5 Pension and Retirement System

■ Authorizes the department of each county to determine who is entitled to benefits under HRS 88-4 and provide to government physician of county hospital a current list of pensioners and their spouses who are eligible for section 88-4 benefits.

HRS 88-11 Pension and Retirement System

■ Relates to pension bonuses to pensioners and spouses.

HRS 88-84 Pension and Retirement System. Ordinary Death Benefit

■ Ordinary death and surviving benefits paid out of contributory plan are by designation of member and not limited to surviving spouse. But if member's designation of beneficiary is void or member did not make a designation, then benefits go to surviving spouse by default.

HRS 88-85 Pension and Retirement System. Accidental Death Benefit

■ Accidental death benefits under the contributory plan go to the surviving spouse if the designation is declared void.

HRS 88-93 Pension and Retirement System. Named Beneficiaries by Active Members; Effect of Marriage, Divorce, or Death

■ Voids written designation of beneficiary under contributory plan if beneficiary dies before member, member divorces beneficiary or member is single and subsequently marries. Same-gender couples can not participate in legal divorce or marriage.

HRS 88-286 Pension and Retirement System. Death Benefit

■ Authorizes and defines death benefit and pension for surviving spouse under the non-contributory plan (80% of 87,000 current members) in the case of accidental or ordinary death while in service after accumulating ten years. Limits pension to surviving spouse of depend children.

HRS 88 Part III Pension and Retirement System

■ Establishes a special retirement program for certain public employees and their spouses.

HRS 105-2(6) Government Motor Vehicles; Public Property, Purchasing and Contracting

■ Allows personal use of government vehicle during work hours to transport a member of immediate family to hospital or other place because of accident or illness.

HRS 111-2 Assistance of Displaced Persons; Definitions

■ Defines "family" as two or more persons living together who are related by blood, marriage, adoption or legal guardianship.

HRS 111-4(b) Assistance of Displaced Persons; Replacement Housing

■ will make payments to an individual or family that is displaced. See definition in 111-2 that excludes same-gender couples. Although application of statute may be equal.

HRS 111-7 Assistance of Displaced Persons; Assurance of Availability of Housing

■ Requires any state agency to provide a feasible method of relocation for individuals or families.

HRS 145-1 Regulation of Dealers in Farm Produce; Definitions

■ Defines purchasing farm products for the person's "family use." "Family" is not defined.

HRS 146-21 Slaughtering Operations and Slaughterhouses; Retention of the Hide of Butchered Calf Heifer, Cow, Steer and Bull; Subject to Public Inspection

■ Retention of hides not required if purpose of slaughter is for "personal consumption," which means for one's own use or use by one's "family." "Family" is not defined.

HRS 147-71 Grades and Standards; Words, Phrases Defined

■ "Consumers" defined as a person purchasing eggs for the person's "family use." "Family" is not defined.

HRS 150A-5(2)(A) Plant and Non-Domestic Animal Quarantine; Conditions of Implementation

■ Allows one person of a family to fill out a declaration form for all members of a family. Does not define family and in fact may be conferring a benefit by requiring non-married partners actually living together to each fill out a form. Practical application indicates that family is defined more in term of "household."

HRS 157-32 Milk Control Act; Standards to Determine Minimum Prices

■ Requires the board to consider the cost of the producers' family labor when determining minimum prices for milk. Uncertain how the board would consider same-gender couples' labor.

HRS 166-6(2) Agricultural Parks; Disposition

■ One of the conditions for land disposed as agricultural parks is that lessee shall derive the major portion of income from the activities on the premises, unless the failure to derive the major portion of the income from on-premises activities results from a physical or mental disability (SSI payments) or the loss of a spouse (inheritance). The branch chief Wilfred Muramoto says that the letter of the law may project a benefit but in the application of the spirit of the law, the division has defined an inheritance from a father to a single person as not the kind of "income" that could cause a breach or default of an agricultural park lease.

HRS 171-74 Public Lands, Management and Disposition; Residence Lots, Requirements

■ Requires a lessee to have at least one person related by blood or marriage or solely dependent upon the lessee to qualify for a residential lease of a public lands. Also requires reporting of spousal income.

HRS 171-84 Public Lands, Management and Disposition; Leases to Certain Developers of Housing for Low- and Moderate-Income Families

■ Gives priority to lease land to developers, who develop project for low- and moderate- income families through federal, state, and county programs.

HRS 171-99(e) Public Lands, Management and Disposition; Continuation of Rights Under Existing Homestead Leases, Certificates of Occupation, Right or Purchase Leases and Cash Freehold Agreements

■ Allows the descent of rights under existing homestead leases and certificates of occupation to go to the widow or widower and other related parties, then to the State.

HRS 172-11 Land Commission

■ Allows for the passing down of real property interests, in the form of land commission awards, to be inherited by heirs who would be spouses.

HRS 183D-22 Hunting License; Application and Issuance of Licenses; Fees

■ Resident license fee applies to spouse of active-duty military stationed in Hawaii.

HRS 188-34 Fishing in Honolulu Harbor, Hilo Harbor, Restricted

■ Allows the use of a net smaller than fifty feet for fishing in Hilo Harbor, provided it is for family consumption.

HRS 188-45 *Nehu* and *Iao*, Taking Prohibited; Exceptions

■ Prohibits the catching of *nehu* and *iao* except for a person's family consumption and with the use of nets smaller than fifty feet.

HRS 200-39 Ocean Recreation

■ Allows the transfer of permits for commercial ocean activities in Kaneohe Bay to be made any time between family members. Restricts other thrill craft permit transfers to within five years of issuance.

HRS 201E-1 Finding and Declaration of Necessity

■ Refers to family by stating "frustration in the inability to obtain the basic necessity of decent shelter and to provide a decent home for one's family, provokes an unrest in our community that is harmful to the overall fiber of our society." HFDC is therefore indirectly promoting the development of family.

HRS 201E-62 Housing; Housing Loan and Mortgage Programs; Rules; Eligible Borrower

■ Allows HFDC to consider size of "family" when determining qualifications for HFDC loans and mortgages (presumably, the larger the family, the higher the qualification).

HRS 201E-130 Housing; Rental Assistance Program; Purpose; Findings and Determination

■ Lists "families" as a class of beneficiaries for the program insofar as its purpose is inter alia, to provide "accommodations affordable to families...of low- and moderate-income in the State."

HRS 201E-131 Housing

■ Allows a family or an individual whose income does not exceed 80% of the area median income determined by the U.S. Dept. of H.U.D., to be eligible tenants. The eligibility is related to definition of family which HFC employees say is all members of a household.

HRS 201E-141 Housing; Housing Opportunity Allowance Program; Definitions

■ Defines "eligible borrowers" as (1) married couples living together or (2) head of households with at least one dependent

HRS 201E-145 Housing; Housing Opportunity Allowance Program; Eligibility of Spouse or Dependents

■ Transfers eligibility status upon death to surviving spouse or dependent who inherits by devise or descent if spouse/dependent would qualify individually.

HRS 201E-200 Housing Finance and Development Corporation; Part III; Housing Development; General Provisions; Criteria

■ When HFDC supplies housing or assistance in obtaining housing, it shall consider the number of dependents that the applicant has.

HRS 201E-220.5 Housing Finance and Development Corporation; Part III; Housing Development; General Provisions; Co-Mortgagor

■ Allows a co-mortgagor for the purposes of qualifying for a mortgage who is a family member as defined by the HFDC. (No statutory definition given, see HRS §201E-2.)

HRS 201E-221(b) Housing Finance and Development Corporation; Part III; Housing Development; General Provisions; Real Property; Restriction on Transfer; Waiver of Restrictions

■ Authorizes HFDC to waive restriction on the sale of housing purchased through their programs if title is transferred through laws of descent to a family member who is otherwise qualified under the rules.

HRS 201F-3 Rental Housing Trust Fund; Purpose of the Fund

■ The purpose of the chapter is to provide funds for rental housing to needy persons and families.

HRS 206E-10.5 Hawaii Community Development Authority; Part I General Provisions; Relocation

■ Requires HCDA to adopt rules that provide for the relocation of individuals and families who have been displaced by government agencies.

HRS 207-2 Mortgage Loans; Qualifications for Loans

■ To qualify for a loan for low-income home buyer on state land, an applicant must have one additional

person living in the home who is related to the applicant by blood or marriage.

HRS 209-28 Disaster Relief and Rehabilitation; Part III; Commercial and Personal Loans; Purpose of Loans

■ Authorizes personal and commercial loans to individuals and families affected by a natural disaster as declared by the governor. (Chapter does not define "family.")

HRS 209-29 Disaster Relief and Rehabilitation; Part III; Commercial and Personal Loans; Eligibility for Loans

■ Described eligibility standards for loans to include a suitable program to meet necessary expenses and satisfy the serious needs of the applicant and family.

HRS 226-3 Hawaii State Planning Act; Part I; Overall Theme, Goals, Objectives and Policies; Overall Theme

■ States overall theme of state planning that includes individual and family self-sufficiency.

HRS 226-4 Hawaii State Planning Act; Part I; Overall Theme, Goals, Objectives and Policies; State Goals

■ Declares state goals and includes physical, social and economic-well being for individuals and families.

HRS 226-5 Hawaii State Planning Act; Part I; Overall Theme, Goals, Objectives and Policies; Objective and Policies for Population

■ Declares objective and policies for state planning that includes encouragement of federal actions and coordination of government agencies to promote a more balanced distribution of immigrants among states, provided they don't prevent the reunion of immediate family members.

HRS 226-19 Hawaii State Planning Act; Part I; Overall Theme, Goals, Objectives and Policies; Objectives and Policies for Socio-Cultural Advancement; Housing

■ Declares that the plans for socio-cultural advancement regarding housing include the accommodation of the needs and desires of families, and the stimulation and promotion of feasible approaches to increase housing choices for low-income, moderate-income and gap-group households.

HRS 226-22 Hawaii State Planning Act; Part I; Overall Theme, Goals, Objectives and Policies; Objectives and Policies for Socio-Cultural Advancement; Social Services

■ Declares plans for social services to include promoting programs for family planning.

HRS 226-25 Hawaii State Planning Act; Part I; Overall Theme, Goals, Objectives and Policies; Objectives and Policies for Socio-Cultural Advancement; Culture

■ Declares state plans for culture include supporting activities and customs which are sensitive to family and community needs.

HRS 231-15.8 Administration of Taxes; Time for Performing Certain Acts Postponed by Reason of Service in Combat Zones

■ A time allowance for filing taxes is given to the spouse of an individual who has served in combat duty.

HRS 231-25 Administration of Taxes

■ Sets out collection proceedings that exempts certain items owned by taxpayer's "family" from seizure.

HRS 231-57 Administration of Taxes; Apportionment of Joint Refunds

■ In a joint income-tax return, either spouse may request that the State make separate refunds if there is a set-off against the joint income-tax refund. Such a refund will then be apportioned according to the gross earnings of each as shown by information on the returns.

HRS 235-1 Income Tax Law; Definitions

■ Treats "husband and wife" as legal entity for tax purposes (defined as that accorded by the Internal Revenue Code), which the state income-tax law accords certain benefits/burdens.

HRS 235-2.4 Income Tax Law

■ Operation of certain IRC provisions including amount of standard deduction (\$1,900 for married, \$1,500 for single or surviving spouse HRS 235-2.4(a)); and rollover gain on sale of principal residence as it applies to taxpayers and their spouses who are military and on active duty in Hawaii, HRS 235-2.4(l).

HRS 235-4 Income Tax Law; Operation of Certain Internal Revenue Code Provisions

■ Application of state income taxes to residents, nonresidents, corps., estates and trusts requires nonresident spouses who file with resident spouses to be taxed on entire income as if a resident.

HRS 235-5.5 Income Tax Law; Individual Housing Accounts

■ Provides that spousal transfers of these accounts (upon death, total disability or divorce) are not taxable. Maximum amount that can be accrued under such accounts is \$10,000/yr. for married couples and \$5,000/yr. for unmarried individuals.

HRS 235-7 Income Tax Law; Other Provisions as to Gross Income, Adjusted Gross Income, and Taxable Income

■ Deduction for expenses incurred as part of a legal services plan for taxpayer and spouse.

HRS 235-7.5 Income Tax Law

■ Treatment of unearned income of minor children may include taxing at applicable parental (both parents) tax. This has no direct reference to spouse of family other than how a child's income relates to his or her parents' income.

HRS 235-12 Income Tax Law

■ Energy conservation income-tax credit may be taken on a joint return by a couple even if the one making the investment has no taxable income. Otherwise, such a person must roll the credit over to future years where the value of the credit is less due to inflation.

HRS 235-16 Income Tax Law; County Surcharge Excise Tax Credit

■ Credit is based upon adjusted gross income of individual/married couple. The credit increases at a greater rate at higher incomes (i.e. amount of credit is not proportional to amount of income), and married couples are allowed to aggregate income in computing credit (so a married couple with two high incomes gets a higher credit than an unmarried couple with the same two high incomes).

HRS 235-51 Income Tax Law; Tax Imposed on Individuals; Rates

■ Imposes different tax schedules for married couples and unmarried individuals. The schedule for married couples includes larger income brackets at the lower tax rates.

HRS 235-52 Income Tax Law; Joint Returns

■ Tax imposed in the case of joint return for married couples shall be as near as twice the tax which could be imposed if the taxable income were cut in half.

HRS 235-54 Income Tax Law; Exemptions

■ Gives an additional exemption to a taxpayer's spouse over the age of 65 (valued at \$1,040).

HRS 235-55.6 Income Tax Law; Expenses for Household and Dependent Care Services Necessary for Gainful Employment

■ Provides a tax credit for expenses incurred by a taxpayer for household and dependent care services for the taxpayer's spouse and dependents.

HRS 235-55.7 Income Tax Law; Income Tax Credit for Low-Income Household Renters

■ Allows husband and wife to pool income and rent in determining whether they qualify for the credit, even if they file separate returns.

HRS 235-55.9 Income Tax Law; Medical Services Excise Tax Credit

■ Provides a higher tax credit for medical expenses paid by an individual resident taxpayer where such taxpayer is married and both are over 65 years of age (\$600) versus an unmarried taxpayer over 65 years of age (\$400).

HRS 235-61 Income Tax Law; Withholding of Tax on Wages

■ Allows a married individual to claim a higher deduction and an additional exemption in computing taxable income subject to withholding.

HRS 235-93 Income Tax Law; Joint Returns

■ Allows husband and wife to file a joint return.

HRS 235-97 Income Tax Law; Estimates; Tax Payments; Returns

■ Allows husband and wife to submit a single payment voucher for declarations of estimated tax.

HRS 235-102.5 Income Tax Law; Income Check-Off Authorized

■ Allows husband and wife filing a joint return to pool income in determining whether they can each claim a maximum \$2 Hawaii election campaign fund income tax check-off. (Aggregate check-off can not exceed aggregate income).

HRS 236A-5 Inheritance and Estate Taxes Law; Allowance for Exemptions, Deductions and Credits

■ Provides for exemptions, deductions and credits in calculating estate/inheritance tax where decedent's gift is made to, among others, his/her spouse.

HRS 237-24.3(10) Use Tax Law; Definitions, Generally

■ Exempts from the use tax those household goods which are imported, or purchased from an unlicensed seller, for use in the state.

HRS 247-3(4), (10) Conveyance Tax; Exemptions

■ Exempts transfers between husband and wife, even after divorce.

HRS 261-32 Transportation and Utilities; Airport Relocation; Assistance for Displaced Person, Families, Business and Non-Profit Organization

■ Allows state director of transportation to provide assistance to any person or family that is relocated due to airport land acquisitions program in the form of actual and reasonable moving expenses, or \$200 or moving expenses and \$100 dislocation allowance. Director may also provide relocation assistance and enter into lease, license or other arrangements with any displaced person or family granting the use or occupancy of any lands or property under the department's jurisdiction.

HRS 261-33 Transportation and Utilities; Airport Relocation; Relocation Housing

■ Provides a replacement housing payment to be made to owners of real property improved by a single-, or two-, or multi-family dwelling under certain circumstances.

HRS 261-34 Transportation and Utilities; Airport Relocation; Not Treated as Income

■ Exempts payments received under HRS 261-32 and HRS 261-33 from the state income-tax law.

HRS 281-3 Intoxicating Liquor; Illegal Manufacture, Importation, or Sale of Liquor

■ Exemption from the prohibition of the manufacture of liquor without a license only applies to heads of families who make liquor for family use and not for sale.

HRS 286-107(g) Highway Safety; License Renewals; Procedures and Requirements

■ Authorizes an extended period for license renewal by mail if a resident military person's immediate family is out of state on official military orders.

HRS 301-2 Adult and Community Education; Scope of Adult and Community Education Programs Offered

■ Scope of adult education courses includes training in family life.

HRS 304-4(b) University of Hawaii; General and Administrative Provisions; Powers of Regents; Official Name

■ Exempts a U.H. employee's spouse from the nonresident tuition differential.

HRS 306-1 University Projects; Definitions

■ Provides that health, dining and other UH facilities shall be open to families of UH community members.

HRS 321-11.2 Department of Health; General and Administrative Provisions; Adult Foster Homes

■ Prohibits an adult foster home having more than two adults with developmental disabilities at the same time, who are unrelated to the foster family, from being certified as an adult foster home for developmentally disabled individuals requiring such care beyond the eighteenth birthday

HRS 321-123 Department of Health; Chronic Renal Disease; Financial Assistance; Eligibility Standards

■ The economic well-being of both the sufferer of chronic renal disease and the sufferer's family is considered in determining the sufferer's eligibility for financial assistance to aid the cost of health to care related to such disease.

HRS 321-321 Department of Health; Maternal and Child Health Program; Purpose

■ Describes the purpose of the maternal and child health program to promote the health of families.

HRS 321-322 Department of Health; Maternal and Child Health Program; Administration of Programs

■ Describes the purpose of the maternal and child health program to promote the health of families.

HRS 321-323 Department of Health; Maternal and Child Health Program; Definitions

■ Describes the purpose of the maternal and child health program to promote the health of families.

HRS 321-331 Department of Health; Maternal and Child Health Program; Prenatal Health Care; Authority

■ Requires confidentiality for mothers and families who participate prenatal care programs.

HRS 321-351 Department of Health; Maternal and Child Health Program; Definitions

■ Uses the term "families" when discussing the intended beneficiaries of the infant and toddler early intervention program--e.g., those who receive counseling.

HRS 324-22 Medical Research; Morbidity and Mortality Information; Cancer Studies; Identity of Person Studies and Material, Restrictions

■ Requires researchers to receive permission from the patient's immediate family when seeking to provide additional information for research studies approved by the cancer commission.

HRS 327-3 Medical and research Use of Bodies; (New) Uniform Anatomical Gift Act; Making, Revoking and Objecting to Anatomical Gifts, by Others

■ Gives spouse first authorization to make, revoke, or object to anatomical gifts, then children, then parents, then siblings, then grandparents, then legal guardian.

HRS 327-5 Medical and research Use of Bodies; (New) Uniform Anatomical Gift Act

■ Requires certain people to make inquiry to the patient and family, if appropriate, regarding organ donations. Looks to HRS 327-3 for authority of people to decide.

HRS 329-1 Uniform Controlled Substances Act; General Provisions; Definitions

■ Defines "ultimate user" as a person who legally possesses a controlled substance for their use or the use of a member of the household.

HRS 334-6 Mental Health, Mental Illness, Drug Addiction, and Alcoholism; General and Administrative Provisions; Fees; Payment of Expenses for Treatment Services

■ Requires spouse to be responsible for any payment due for expenses related to the care of a hospitalized spouse.

HRS 334-10 Mental Health, Mental Illness, Drug Addiction, and Alcoholism; General and Administrative Provisions; State Council on Mental Health

■ States that the council shall include family members of adults with serious emotional disturbances.

HRS 334-59 Mental Health, Mental Illness, Drug Addiction, and Alcoholism; Admission to Psychiatric Facility; Emergency Examination and Hospitalization

■ Provides for notification of the patient's family if the patient declines his or her right to make a phone call, unless the patient has requested that no one be called.

HRS 334-60.4 Mental Health, Mental Illness, Drug Addiction, and Alcoholism; Admission to Psychiatric Facility; Notice; Waiver of Notice; Hearing on Petition; Waiver of Hearing on Petition for Involuntary Hospitalization

■ Requires notice or waiver of notice to spouse on hearing for involuntary hospitalization.

HRS 334-60.5 Mental Health, Mental Illness, Drug Addiction, and Alcoholism; Admission to Psychiatric Facility; Hearing on Petition

■ Court may adjourn if spouse has not been informed.

HRS 334-125 Mental Health, Mental Illness, Drug Addiction, and Alcoholism; Involuntary Outpatient Treatment; Notice

■ Notice of hearing for involuntary outpatients treatment to spouse, parents, and children required.

HRS 334-134 Mental Health, Mental Illness, Drug Addiction, and Alcoholism

■ Requires same notice procedures as HRS 334-125 for a petition for discharge from outpatient treatment.

HRS 334B-3 Utilization Review and Managed Care of Mental Health, Alcohol, or Drug Abuse Treatment; Standards for Review Agents

■ Requires that a representative of the review agency is accessible to the patient's family five days a week during normal business hours.

HRS 335-1 Interstate Compact on Mental Health; Enactment of Compact

■ States that a goal of the compact is to benefit the families of the mentally ill. Takes into consideration

the location of the family when transferring mental patients to another state for care.

HRS 335-5 Interstate Compact on Mental Health; Consultation with Transferee's Family

■ Requires compact administrator of proposed transferee to consult with the proposed transferee's "immediate family."

HRS 338-18 Vital Statistics; State Public Health Statistics Act; Disclosure of Records

■ Allows disclosure of vital statistics of a person to his or her spouse.

HRS 338-21 Vital Statistics

■ Describes 3 methods of awarding children whose parents are not married at birth, the birth rights of those who were born with married parents, (1) Parents marry, (2) natural parents acknowledge (3) establishment of parent-child relationship under HRS 584 which would exclude birthrights to a child to a second gay parent.

HRS 346-10 Social Services and Housing; Protection of Records; Divulging Confidential Information Prohibited

■ The Aid to Families with Dependent Children program is mentioned; also adoptive parents have rights to certain information.

HRS 346-14 Social Services and Housing; Duties Generally

■ Assistance for families.

HRS 346-15(d) Social Services and Housing; Burial of Deceased Public Assistance Recipients or Unclaimed Corpses

■ Permission to make arrangements for the burial or cremation of the dead is given to relatives.

HRS 346-17.4 Social Services and Housing; Foster Board Allowances for Students

■ Allows for payments and reimbursements for foster parents as part of foster family.

HRS 346-29 Social Services and Housing; Applications for Public Assistance; Manner, Forms, Conditions

■ (5) In determining the needs of an applicant for medical assistance, guidelines are based on a family of two persons and an additional \$250 for each additional person included in an application.

■ (6) In determining the needs of an applicant, the department cannot consider as income payment

which was made to eligible individuals, eligible surviving spouses, surviving children or surviving parents as specified under Title I of the Civil Liberties Act of 1988, Public Law 100-383 restitution to individuals of Japanese ancestry who were interned during WW II).

■ (9) and (10) Special privileges are granted to an individual whose spouse is committed or residing in a medical institution.

HRS 346-29.5 Social Services and Housing; Real Property Liens

■ The department is authorized to place a lien on any real property owned by an applicant which will have priority over all other debts. However, this priority is subjugated by allowances made to the surviving spouse and children for their support during the administration of the estate.

HRS 346-37 Social Services and Housing; Recovery of Payments

■ Allows the department to file a claim against the estate of a recipient if he/she does not have a surviving spouse.

HRS 346-37.1 Social Services and Housing; Payment of Public Assistance for Child Constitutes Debt to Department by Natural or Adoptive Parents

■ Both parents are responsible for bills to DHS.

HRS 346-53 Social Services and Housing; Determination of Amount of Assistance

■ The determination of the amount of assistance is based on the size of the "family."

HRS 346-65 Social Services and Housing; Child Abuse and Neglect Discretionary Emergency Assistance

■ Benefits for child abuse and neglect discretionary emergency assistance are available to assist children and families.

HRS 346-71 Social Services and Housing; General Assistance

■ Assistance is available to family groups, and assistance shall be based on the income and resources of both parents.

HRS 346-82 Social Services and Housing; Purchase of Service

■ Services to the elderly and disabled adults can include some services to the participants' families.

HRS 346-237 Social Services and Housing; Notice of Proceedings

■ In a proceeding to establish a guardian ad litem, the spouse and adult children are entitled to notice.

HRS 346-261 Social Services and Housing; JOBS, Establishment; Purpose

■ JOBS program gives benefits to families.

HRS 346-261 through 272 Social Services and Housing

■ JOBS program gives benefits to families.

HRS 346-301 through 305 Social Services and Housing; Adoptive Assistance Program

■ Although HRS §346-304 provides that eligibility of adoption assistance shall not depend on income or property of adoptive families, the question arises whether same-gender parents could be accepted as adoptive families, as they presently cannot co-adopt children.

HRS 350C-1 through §350C-7 Adoption Assistance Compact and Procedures for Interstate Services Payments

■ Provides assistance to adoptive families.

HRS 351-2 Criminal Injuries Compensation; Definitions

■ Defines "relative" who is eligible under this provision as "victim's spouse".

HRS 352-13 Hawaii Youth Correctional Facilities; Evaluation, Counseling, Training

■ Provides for counseling services for the committed person's family. "Family" is not defined.

HRS 352-22 Hawaii Youth Correctional Facilities; Periodic Re-Examination of Status of Persons Committed to the Department

■ The family is to be checked during the periodic reviews which might lead to discharge of the child (if the 2nd spouse is counted as "family", it results in two parents instead of one helping in the discharge).

HRS 352-26 Hawaii Youth Correctional Facilities; Taking Into Custody and Detaining Persons for Violations of Terms and Conditions of Parole and Furlough and Attempted Escape

■ For violations, parents/legal guardians have right to notice if they wish to retain legal counsel and appeal an order from the director.

HRS 352-29 Hawaii Youth Correctional Facilities; Termination of Director's Right to Supervise Person
■ Director must notify parent/legal guardian when supervision of a minor is terminating.

HRS 352D-1 through 352D-10 Office of Youth Services
■ Provides for assistance to families of youth at risk. "Family" not defined.

HRS 353-17 Corrections; Committed Persons, Furlough, Employment
■ Furlough rights are given for the death or critical illness or injury of an immediate family member. "Family" not defined.

HRS 353-25 Corrections; Powers and Duties of Guardian
■ A prisoner's wealth shall be invested and used for the benefit of the prisoner's family upon his/her death. "Family" not defined.

HRS 353-81; Corrections; Authorization; Form of Compact
■ Within the compact area, prisoners on parole or probation may move to be with family. "Family" not defined.

HRS 358D-2 through 358D-12, and HRS 358D-17; Homeless Families Assistance Act
■ Assistance to homeless families is provided. "Family" not defined.

HRS 359-1 State Housing Projects; Findings and Declaration
■ Recognizes the need to confer housing benefits to families. "Family" not defined.

HRS 359-10; State Housing Projects; Housing, Tenants Selection
■ Confers benefits to families of veterans, families of servicemen, person or families displaced by the activities of a government. Also, first preference priority is given to veterans with a permanent disability and to a deceased veteran's widow.

HRS 359-40 State Housing Projects; Housing, Tenant Selection
■ Confers benefits to families of veterans, families of servicemen, person or families displaced by the activities of a government.

HRS 359-123 State Housing Projects; Qualified Tenant Defined
■ Establishes the qualifications for family to receive housing benefits.

HRS 359-125 State Housing Projects; Determination of Eligibility of Occupants and Rental Charges
■ Establishes the qualifications for family to receive housing benefits.

HRS 359-141 State Housing Projects; State Sales Housing
■ Sets out a guideline of contract terms for tenant families that wish to sell home.

HRS 363-1 Veterans Rights and Benefits; Definitions
■ Defines "family" as the immediate family members of a veteran.

HRS 363-3 Veterans Rights and Benefits; Activities of the Department
■ Confers benefits of counseling and assistance to the veterans and their families.

HRS 363-5 Veterans Rights and Benefits; Council's Responsibility; Burial of Servicemen, Veterans and Dependents
■ Allows for the burial of resident veterans, their spouses and minor children.

HRS 363-7 Veterans Rights and Benefits; Burial of Nonresident Servicemen and Dependents
■ Allows for the burial of nonresident veterans, their spouses and minor children.

HRS 377-1(3) Hawaii Employment Relations Act; Definitions
■ "Employee" is defined to exclude employment by parents and spouses.

HRS 383-7(5) Employment Security; Excluded Service
■ "Employment" in this section does not include employment by parents, their children, or spouses.

HRS 385-1 Additional Unemployment Compensation Benefits Law
■ Additional unemployment compensation benefits; payable when the additional aid is targeted to help families.

HRS 386-5 Worker's Compensation Law; Exclusiveness of Right to Compensation
■ Limits spouses to coverage under this law for benefits.

HRS 386-34(1); Worker's Compensation Law; Payment After Death
■ In the event an individual's dies from causes other than the compensable work injury, the surviving spouse and dependent children are given the rights to the unpaid balance of worker's compensation benefits.

HRS 386-41 Worker's Compensation Law; Entitlement to and Rate of Compensation
■ In the event a work injury causes death, this section provides that the employer shall pay for funeral expenses and shall pay weekly benefits to the surviving spouse and dependent children.

HRS 386-42 Worker's Compensation Law; Dependents
■ A surviving spouse is listed as a dependent and therefore entitled to the benefits of this chapter.

HRS 386-43 Worker's Compensation Law; Duration of Dependent's Weekly Benefits
■ Said benefits continue for spouse until death, or until remarriage, with two years' compensation in one sum.

HRS 386-54 Worker's Compensation Law; Commutation of Periodic Payments
■ Allows commutation of periodic payments to lump sum payment to spouse or dependent. Provides rules for payments when there is probability of remarriage of the spouse.

HRS 388-4 Wage and Compensation; Payment of Wages to Relatives of Deceased Employee
■ Wages, vacation, or sick leave pay due to the deceased employee can be paid to the surviving spouse.

HRS 398-1 Family Leave; Definitions
■ Defines "immediate family" to include spouse, parent and in-laws; it does not include same-gender partner. For benefit see HRS 398-3, 4, 7, 8, 9, 10.

HRS 398-3 Family Leave; Family Leave Requirement
■ Entitles an employee up to four weeks of family leave to care for immediate family.

HRS 398-4 Family Leave; Unpaid Leave Permitted; Relationship to Paid Leave
■ Provides that family leave can be paid or unpaid, or the combination of both.

HRS 398-7 Family Leave; Employment and Benefits Protection
■ Provides for the protection of the employee's employment benefit during family leave.

HRS 398-8 Family Leave; Prohibited Acts
■ Protects employee's right to exercise family leave.

HRS 398-9 Family Leave; Enforcement and Administration
■ Protects employee's right to exercise family leave.

HRS 398-10 Family Leave; Applicability
■ Protects employee's right to exercise family leave.

HRS 412-1-109 Financial Institutions
■ Includes spouse share holdings when defining "principal shareholder".

HRS 412-10-100 Financial Institutions
■ Benefits for spouse and children.

HRS 412-10-121 Financial Institutions
■ Central credit union benefits for spouses.

HRS 417E-1 Corporate Takeovers
■ Includes securities owned by spouse residing in home of person when defining "beneficial owner."

HRS 421I-3 Cooperative Housing Corps
■ Allows members of the board of directors to be spouse of shareholder.

HRS 425-4 Partnerships
■ Continuation of rights under existing homestead leases.

HRS 425-125 Partnerships
■ Excludes a partner's right in specific partnership property from dower, curtesy, or allowances to the surviving spouse.

HRS 431:9-233 Insurance Code; Insurance Licensing

■ Allows commission to issue a temporary general agent's, subagent's or solicitor's license to a surviving spouse upon the death, disability or drafting of a licensed agent or solicitor.

HRS 431:10-203 Insurance Code; Power to Contract

■ Allows a minor competent to contract for life or disability insurance on the minor's own life for the benefit of the minor or the minor's spouse.

HRS 431:10-206 Insurance Code; Application for Insurance: Consent of Insured Required

■ Allows one spouse to contract for life or disability insurance without the consent of the insured spouse.

HRS 431:10-234 Insurance Code; Spouses' Right in Life Insurance Policy

■ States that life insurance policies made payable to, or assigned, transferred to or for the benefit of the spouse of the insured shall inure to the separate use and benefit of such spouse. Allows a married person to contract policies on the life or health of spouse or children or against loss by such spouse or children, without consent of one's spouse.

HRS 431:10A-103 Insurance Code; Family Coverage Defined

■ Defines family coverage to include a policy that insures members of the family including spouse, dependent children and any other person dependent upon the policyholder.

HRS 431:10A-104 Insurance Code; Form of Policy

■ A policy of accident and sickness insurance shall neither be delivered nor issued for delivery to any person unless it purports to insure only one person, except that a policy may provide family coverage as defined in Section 431:10A-103.

HRS 431:10A-105 Insurance Code; Required Provisions

■ Subsection 9(A) and (B) requires "Payment of Claims" clause to include the following language: indemnity for loss of life payable in accordance with the beneficiary designation or to the estate of the insured, if no designation is effective at the time of the payment, or at death of the insured. For the indemnity of this policy payable to the estate of the insured, or to an insures of beneficiary who is a minor, the insurer may pay the indemnity, up to an amount not exceeding \$2,000 to any relative by blood or connection by marriage of the insured or

beneficiary who is deemed by the insurer to be equitable entitled. Such payment made by the insurer in good faith shall fully discharge the insurer to the extent of the payment.

HRS 431:10A-115 Insurance Code; Coverage of Newborn Children

■ Provides that policy providing family coverage on an expense incurred basis applicable for children shall be payable for newborn infants.

HRS 431:10A-116.5 Insurance Code; In Vitro Fertilization Procedure Coverage

■ Requires pregnancy related benefits to include a one-time only benefit for all outpatient expenses arising from vitro fertilization procedures performed on the insured or the insured's dependent spouse. The term "spouse" means a person who is lawfully married to the patient under the laws of the State.

HRS 431:10A-202 Insurance Code; Health Care Groups

■ States that policy of group disability insurance may be issued to a corporation as policyholder, existing primarily for the purpose of assisting individuals who are its subscribers...for themselves and their dependents.

HRS 431:10A-206 Insurance Code; Coverage of Newborn Children

■ Requires all group or blanket policies providing family coverage on an expense-incurred basis to provide coverage for newborn children.

HRS 431:10A-401 Extended Health Insurance; Purpose

■ States that the purpose of the extended health insurance is to more adequately meet the needs of persons and their spouses who are 65 years or older at lower cost.

HRS 431:10A-403 Extended Health Insurance; Association of Insurers; Policyholder; Policy

■ Authorizes insurers to join together to provide extended health insurance for persons and their spouses 65 years and older.

HRS 431:10B-105 Extended Health Insurance; Amount of Credit Life Insurance and Credit Disability Insurance

■ Makes exception for limiting amount of credit life insurance and credit disability insurance when indebtedness is for the sole purpose of providing

future advances or education expenses for the debtor, debtor's spouse or other dependents.

HRS 431:10C-103 Extended Health Insurance; Definitions

■ Defines "No-fault insured" as the person identified by name and includes the person's unnamed spouse or relative while living in the same household.

HRS 431:10C-302 Auto Insurance; Required Optional Additional Insurance

■ Requires the insurer to offer an option to allow compensation to the insured's spouse or dependents for damage not covered by no-fault benefits.

HRS 431:10C-305 Auto Insurance; Obligation to Pay No-Fault Benefits

■ Requires the insurer to pay without regard to fault for the benefit of the surviving spouse or dependent an amount equal to the no-fault benefits.

HRS 431:10D-104 Life Insurance; Standard Nonforfeiture Law; Life Insurance Contracts

■ Standard Nonforfeiture Law of Life Insurance defines rules for surrendering the cash value under a family policy, which defines a primary insured and provides term insurance on the life of the spouse of the primary insured.

HRS 431:10D-114 Life Insurance; Miscellaneous Proceeds

■ Authorizes the insurer to pay miscellaneous proceeds to a surviving spouse, beneficiary or person other than the insured's estate appearing to the insurer to be equitably entitled to the payment.

HRS 431:10D-201 Life Insurance; Groups' Life Insurance Requirements

■ Under this clause, contracts of life insurance insuring only individuals related by marriage, by legal adoption...or otherwise having an insurable interest in each other's life, are exempted from certain limitations on policy of group life insurance.

HRS 431:10D-203 Life Insurance; Debtor Groups

■ Limits the amount of life insurance offered to individual debtors in a debtor group not to exceed the unpaid indebtedness unless it is for future advances or educational expenses of debtor or debtor's spouse or dependent.

HRS 431:10D-212 Life Insurance; Spouses and Dependents of Insured Individuals

■ Allows insurers to extend group life insurance policies to spouses and dependent children of the insured. Allows insurer to limit or exclude coverage of a spouse or dependent child based on evidence of a nonsatisfactory individual insurability.

HRS 431:10D-308 Life Insurance; Facility of Payment

■ Authorizes the insurer to make payment under the policy to...insured's relative by legal adoption or connection by marriage...if the designated beneficiary in the policy failed to surrender the policy within certain period, or if the beneficiary is a minor, or incompetent to give a valid release, or dies before the insured.

HRS 431:13-103 Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Defined

■ Declares that an insurer's refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the gender or marital status of the individual, constitutes unfair discrimination. However, allows an insurer to take marital status into account for the purpose of defining persons eligible for dependent benefits.

HRS 431N-1 State Health Insurance Program Act; Findings and Purpose

■ States the purpose of this chapter is to establish a program . . . to ensure that basic health insurance coverage is available to medically uninsured who are defined as "gap group individuals," including dependents, primarily children of insured, who are not covered by their parent's, guardian's or spouse's policies.

HRS 432:1-104 Benefit Societies; Definitions

■ Defines mutual benefit society (inter alia) as making a provision for the payment of benefits in case of sickness, disability or death of its members, or members' spouses or children.

HRS 432:1-602 Benefit Societies; Newborn Children Coverage

■ Requires all individual and group hospital and medical service corporation contracts that provide coverage for family member of the subscriber to provide for newborn children.

HRS 432:1-604 Benefit Societies; In Vitro Fertilization Procedure Coverage

■ Requires all individual and group hospital or medical service plans that offer pregnancy benefits to provide one-time in vitro benefits...for the subscriber or the subscriber's dependent spouse.

HRS 443B-1 Collection Agencies; Definitions

■ Includes spouse of debtor in the definition of "debtor."

HRS 453-15 Medicine and Surgery

■ Gives authorization first to parents, spouse, child, guardian next of kin, then friend for authorization of postmortem examination.

HRS 486H-9 Rights of Dealer Family Member

■ Includes surviving spouse in definition of "dealer family member" who may be designated to have right to operate gas franchise.

HRS 509-2 Creation of Joint Tenancy, Tenancy by the Entirety, and Tenancy in Common

■ Allows owners of property to convey directly to themselves or to their spouses without the necessity of first conveying through a third person or "straw man."

HRS 510-5 Community Property

■ Allows either spouse to manage property.

HRS 510-6 Community Property; Incapacity of Spouse

■ Allows either husband or wife to commence an action in circuit court to manage community property when the other spouse is non compos mentis, imprisoned for more than 1 year, a drunkard or otherwise incapacitated.

HRS 510-9 Divorce; Division of Property

■ Provides for division of community property by court decree in the event of divorce.

HRS 510-10 Death of husband or Wife

■ Provides that upon the death of the husband or wife, one-half of the community property shall continue to belong to the survivor. The whole of the community property which at the time of the death of the husband or wife is held by, or is standing in the name of, the survivor who should have the power to receive, manage, control, dispose of, and otherwise deal with the property until the property has been reduced to possession or control by the personal representative of the decedent.

HRS 510-22 Uniform Disposition of Community Property Rights at Death Act; Rebuttable Presumptions

■ Applies a rebuttable presumption that property acquired during the marriage is community property.

HRS 510-23 Uniform Disposition of Community Property Rights at Death Act; Disposition Upon Death

■ Upon death of a married person, one-half of the community property is attributed to the surviving spouse and is not subject to testamentary disposition.

HRS 510-24 Uniform Disposition of Community Property Rights at Death Act; Perfection of Title of Surviving Spouse

■ Allows perfection of surviving spouse's title to community property held by the decedent at the time of death, by order of circuit court.

HRS 510-25 Uniform Disposition of Community Property Rights at Death Act; Perfection of Title of Personal Representative, Heirs, or Devisee

■ Allows personal representative or an heir or devisee of the decedent to perfect title to applicable community property held in surviving spouse's name.

HRS 514A-43 Automatic Expiration of Public Reports; Exceptions

■ Authorizes commission to suspend expiration date of public report for a two-apartment condominium, provided, inter alia, that one or both of the apartments is sold to an irrevocable trust to benefit a spouse of family member.

HRS 514A-108 Inapplicability of Part of Sections

■ Horizontal Property Regime Law relating to sales to owner-occupants does not apply to units conveyed by the developer to the developer's spouse or family members.

HRS 516-71 Residential Leasehold

■ Exempts from the plain language disclosure law any transfer of a leasehold residential lot to a co-owner or spouse.

HRS 524-1 Facilities for Elders; Definitions

■ Defines "facility" as a multi-unit residential building where units are leased for a term to last the lifetime of the lessee and the lessee's surviving spouse and reverts back to the lessor upon their deaths.

HRS 524-4 Facilities for Elders; Exclusions from Statutory Rule Against Perpetuities

■ Excludes from the statutory rule of perpetuities (HRS 525-1) a property interest with respect to a pension, or other deferred benefit plan for an employee or their spouse.

HRS 531-15 Probate

■ Determination of the bar to dower or curtesy shall not operate except by order of court on a proceeding brought by a person claiming the estate and the surviving spouse is notified. A benefit based on the dower or curtesy law.

HRS 533-1 Dower and Curtesy

■ Provides for dower and implies only for women because it uses the term "her husband." Note: Webster's Dictionary defines "dower" as "that part of man's property which his widow inherits."

HRS 533-2 Dower and Curtesy; Election in Case of Exchanged Lands

■ Same as HRS 533-1.

HRS 533-3 Dower and Curtesy; In Lands Mortgaged Before Marriage

■ Same as HRS 533-1.

HRS 533-4 Dower and Curtesy; Not in Lands Mortgaged for Purchase Money During Coverture as Against Mortgagee

■ Same as HRS 533-1.

HRS 533-5 Dower and Curtesy; In Surplus After Purchase-Money Mortgage Paid

■ Same as HRS 533-1.

HRS 533-6 Dower and Curtesy; Not in Lands Held by Husband as Mortgagee

■ Same as HRS 533-1.

HRS 533-7 Dower and Curtesy; Widow's Right to Occupy Lands While Dower Unassigned

■ Same as HRS 533-1.

HRS 533-8 Dower and Curtesy; Widow's Right to Remain in Husband's House

■ Same as HRS 533-1.

HRS 533-9 Dower and Curtesy; Barred by Divorce or Misconduct

■ Same as HRS 533-1.

HRS 533-10 Dower and Curtesy; Barred by Deed

■ Same as HRS 533-1.

HRS 533-11 Dower and Curtesy; Barred by Jointure Before Marriage

■ Same as HRS 533-1

HRS 533-12 Dower and Curtesy; Barred by Pecuniary Provision Before Marriage

■ Same as HRS 533-1

HRS 533-13 Dower and Curtesy; Election Between Dower and Jointure or Pecuniary Provision, When

■ Same as HRS 533-1.

HRS 533-16 Dower and Curtesy; Curtesy; Election Between Curtesy and Will

■ Same as HRS 533-1.

HRS 551-2 Guardians and Wards, General Provisions; Guardian Ad Litem; Next Friend; Appointment

■ Excepts the power of a court to appoint a guardian ad litem for either spouse, although a minor, in all proceedings for annulment, divorce, or separation, except in the case of annulment on the grounds of nonage.

HRS 553A-1 Uniform Transfers to Minors Act; Definitions

■ Defines "member of the minor's family" to include brother, sister, uncle, or aunt by whole or half blood or adoption.

HRS 554B-1 Uniform Custodial Transfer Act; Definitions

■ Defines "member of the beneficiary's family" to include "spouse," as well as parent, step-parent, grandparent, brother, sister, uncle, or aunt by whole or half blood or adoption.

HRS 554-6 Uniform Custodial Transfer Act; Multiple Beneficiaries, Separate Custodial Trusts, Survivorship

■ Right of survival in a custodial trust is automatically presumed for husband and wife.

HRS 560:1-201 Uniform Probate Code; General Provisions, Definitions and Probate Jurisdiction of Court; Definitions

■ Defines "heirs" as those persons, including surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent. Also, specifically includes spouse in definition of

"interested person," along with the other beneficiaries, devisees, creditors, and any others having a property right in or claim against a trust estate or estate of a decedent.

HRS 560:2-102 Uniform Probate Code; Intestate Succession and Wills; Intestate Succession; Share of the Spouse

■ Spouse entitled to entire estate if no surviving issue or parent and one-half if there is. (Widow's estate taken as dower does not pass to her by virtue of intestate succession and is, therefore, not subject to inheritance tax.) (Wife is immediately entitled to insurance proceeds upon the death of her husband.)

HRS 560:2-201 Uniform Probate Code; Elective Share of Surviving Spouse; Right to Elective Share

■ Authorizes and defines elective share of surviving spouse as one-third of net estate. (This elective share is not subject to inheritance tax.)

HRS 560:2-202 Uniform Probate Code; Elective Share of Surviving Spouse; Net Estate

■ Defines net estate for the purposes of surviving spouse's election.

HRS 560:2-203 Uniform Probate Code; Elective Share of Surviving Spouse; Right of Election Personal to Surviving Spouse

■ Requires that elective share right is personal and may be exercised only by a surviving spouse during the surviving spouse's lifetime.

HRS 560:2-205 Uniform Probate Code; Elective Share of Surviving Spouse; Proceeding for Elective Share and Dower; Time Limit.

■ Explains procedure surviving spouse must take to receive elective share and dower interest.

HRS 560:2-206 Uniform Probate Code; Elective Share of Surviving Spouse; Effect of Election on Benefits by Will or Statute

■ Authorizes the surviving spouse to be entitled to homestead allowance, exempt property, and family allowance whether or not elective share is taken. Provides that if elective share is taken, surviving spouse is precluded from any testamentary bequest unless testator spells out otherwise in will.

HRS 560:2-301 Uniform Probate Code; Spouse and Children Unprovided for in Wills; Omitted Spouse

■ Allows a spouse who married after execution of the will the right to inherit as if intestate, unless the omission was intentional.

HRS 560:2-401 Uniform Probate Code; Exempt Property and Allowances; Homestead Allowance

■ Provides a homestead allowance of \$5,000 for a surviving spouse.

HRS 560:2-402 Uniform Probate Code; Exempt Property and Allowances; Exempt Property

■ In addition to the homestead allowance, a surviving spouse is entitled to \$5,000 worth of exempted property from the estate.

HRS 560:2-403 Uniform Probate Code; Exempt Property and Allowances; Family Allowance

■ Provides for a reasonable amount of money to spouse for a family maintenance during the administration period. (Allowance provided for anyone taking care of children.)

HRS 560:2-404 Uniform Probate Code; Exempt Property and Allowances; Source, Determination and Documentation

■ Defines what property can be used to satisfy homestead allowance and exempt property right. Allows for personal representative. Family allowance limited to \$6,000 if administered by personal representative rather than spouse. Requires a non-spousal representative to petition the court if this amount is deemed insufficient.

HRS 560:2-508 Uniform Probate Code; Wills; Revocation by Divorce; No Revocation by Other Change of Circumstances

■ Revokes gifts made in a will to a former spouse after divorce.

HRS 560:2-802 Uniform Probate Code; General Provisions; Effects of Divorce, Annulment, and Decree Separation

■ Uses the terms husband and wife when referring to the effect of divorce, annulment, or decree of separation.

HRS 560:2-803 Uniform Probate Code; General Provisions; Effects of Homicide on Intestate Succession, Will, Joint Assets, Life Insurance and Beneficiary Designations

■ Provides that if a spouse kills the other spouse, he/she will not be entitled to any of the above-named benefits.

HRS 560:3-101 Uniform Probate Code; Probate of Wills and Administration; General Provisions; Devolution of Estate at Death; Restrictions

■ In defining the devolution of estate at death, the rights of the surviving spouse have precedence.

HRS 560:3-203 Uniform Probate Code; Probate of Wills and Administration; Venue for Probate Proceedings; Priority to Administer; Demand for Notice; Priority Among Persons Seeking Appointment as Personal Representative

■ Prioritizes persons seeking appointment as personal representative and places devisee surviving spouse second to person determined by will and non-devisee spouse as highest priority after all devisees.

HRS 560:3-303 Uniform Probate Code; Probate of Wills and Administration; Informal Probate and Appointment Proceedings; Testate Informal Probate Proceedings: Proof and Findings Required

■ Spouse authorized under Part 4 to petition for rights due to denial of statutory allowances or exempt property by registrar.

HRS 560:3-403 Uniform Probate Code; Probate of Wills and Administration; Formal Testacy and Appointment Proceedings

■ Requires explicitly that notice be given to the surviving spouse as well as other heirs, devisees, and personal representatives.

HRS 560:3-703 Uniform Probate Code; Probate of Wills and Administration; Duties and Powers of Personal Representative; General Duties; Relation and Liability to Persons Interested in Estate; Standing to Sue

■ Excludes from limiting liability the duty a personal representative has in accordance with rights of a claimant, the surviving spouse and children.

HRS 560:3-901 Uniform Probate Code; Probate of Wills and Administration; Special Provisions Relating to Distribution; Successor's Rights

■ Limits all distributions subject to claims of creditors and allowances of surviving spouse.

HRS 560:3-902 Uniform Probate Code; Probate of Wills and Administration; Special Provisions Relating to Distribution; Distribution; Order in Which Assets Appropriated; Abatement

■ Expects from rules of assets abatement property in connection with the elective share of surviving spouse.

HRS 560:3-906 Uniform Probate Code; Probate of Wills and Administration; Special Provisions Relating to Distribution; Distribution In-Kind; Valuation; Method

■ Allows a spouse's allowance for exempt property to prevail over an in-kind distribution to a specific devisee.

HRS 560:3-1212 Uniform Probate Code: Article 3: Probate of Wills and Administration; Collection of Personal Property by Affidavit and Summary of Administration Procedure for Small Estates; Estates of Persons Leaving No Known Relatives

■ In the event a person dies, leaving no known spouse, issue, parents, grandparent, or issue of grandparents over the age of majority, the coroner is authorized to take charge of the decedent's personal effects. If valued over \$1,000, the effects are turned over to the court clerk; if under \$1,000, the effects are used to pay any expenses, with the remainder going to charity.

HRS 560:4-101 Uniform Probate Code: Article 4: Foreign Personal Representatives; Ancillary Administration; Definitions

■ "Local personal representative" is defined as anyone qualified under §560:3-601 (resident or resident corporation) or a spouse... of a decedent.

HRS 560:4-207 Uniform Probate Code: Article 4: Foreign Personal Representatives; Ancillary Administration; Powers of Foreign Personal Representatives; Ancillary Administrations; Provisions Governing

■ A nonresident spouse is not disqualified from serving as the personal representative of a nonresident decedent.

HRS 560:5-103 Uniform Probate Code: Article 5: Protection of Persons Under Disability and their Property; General Provisions; Facility of Payment or Delivery

■ A minor is allowed to receive payment or delivery of property owed to him/her under \$1,000 if the minor is married.

HRS 560:5-210 Uniform Probate Code: Article 5: Protection of Persons Under Disability and Their Property; Guardians of the Person of Minors; Termination of Appointment of Guardian of the Person; General

■ A guardian of the person's authority terminates upon the minor's marriage.

HRS 560:5-301 Uniform Probate Code: Article 5: Protection of Persons Under Disability and their Property; Guardians of the Person of Incapacitated Persons; Testamentary Nomination of Guardian of the Person for Incapacitated Person

■ Authorizes a parent of a spouse to nominate a guardian for an incapacitated person. Prioritizes spouse's testamentary nomination before parent's.

HRS 560:5-309 Uniform Probate Code: Article 5: Protection of Persons Under Disability and their Property; Guardian of Incapacitated Persons; Notices of Guardianship Proceedings

■ Requires notice to be given to the person's or ward's spouse in proceedings for the appointment or removal of a guardian

HRS 560:5-311 Uniform Probate Code: Article 5: Protection of Persons Under Disability and their Property; Guardian of Incapacitated Persons; Who May be Guardian of the Person; Priorities

■ Prioritizes spouse of incapacitated person as most eligible guardian before those nominated by will of deceased spouse, an adult child, a parent, any relative, or a person who is caring for the incapacitated person.

HRS 560:5-408 Uniform Probate Code: Article 5: Protection of Persons Under Disability and Their Property; Protection of Persons Under Disability and Minors; Permissible Court Orders

■ Allows the court to issue an order to exercise the protected person's elective share in the estate of the person's deceased spouse.

HRS 560:5-410 Uniform Probate Code: Article 5: Protection of Persons Under Disability and Their Property; Protection of Persons Under Disability and Minors; Who May be Appointed Guardian of the Property; Priorities

■ Prioritizes who may be appointed guardian of the property of a protected person in order of (1) Guardian of the person; (2) an individual nominated by a protected person over the age of 14; (3) the spouse of the protected person.

HRS 560:5-601 Uniform Probate Code: Article 5: Protection of Persons Under Disability and Their Property; Sterilization; Definitions

■ "Interested person" is defined to include the spouse that in § 560:5-603 is able to file with the court, a petition for sterilization.

HRS 560:6-107 Uniform Probate Code: Article 6: Nonprobate Transfers; Multiple-Party Accounts; Rights Against Multiple-Party Accounts

■ Allows transfers to survivors of multiple-party accounts to be set aside if the estate has insufficient funds, and requires multiple-party accounts to account to the personal representative or spouse of the decedent for the decedent's net contribution.

HRS 571-46 Family Courts: Part 5: Procedure and Decree; Assignment by Court Order of Future Income for Payments of Support

■ Authorizes court to order assignment of future income for payments due for support of spouse or former spouse.

HRS 572-21 Marriage: Part 2: Property Contracts, Debts, and Liabilities; Presumption of Separate Property

■ There is a rebuttable presumption that all property acquired in the name of the husband or wife without regard to the time of the acquisition is the separate property of the spouse.

HRS 572-22 Marriage: Part 2: Property Contracts, Debts, and Liabilities; Contracts

■ Married couples are allowed to make valid contracts, including agreements as to spousal support, the maintenance and education of their children, although subject to court modification.

HRS 572-23 Marriage: Part 2: Property Contracts, Debts, and Liabilities; Not Liable for Spousal Debts

■ A married person is not liable for the debts of a spouse.

HRS 572-26 Marriage: Part 2: Property Contracts, Debts, and Liabilities; May be Personal Representative, Guardian, Trustee, or Other Fiduciary

■ Authorizes a married person to become a personal representative, guardian, trustee, custodian, or other fiduciary, without any act or assent from that person's spouse.

HRS 572D-1 Uniform Premarital Agreement Act; Definitions

■ Defines a premarital agreement as an agreement between prospective spouses made in contemplation of marriage, to be effective upon the marriage.

HRS 572D-3 Uniform Premarital Agreement Act; Content

■ Authorizes the parties to a premarital agreement to contract for the modification or elimination of spousal support.

HRS 572D-6 Uniform Premarital Agreement Act; Enforcement

■ In the event that the elimination of spousal support causes a spouse to become eligible for public assistance, the court may override the agreement to provide the support for the spouse to the extent that is it necessary to avoid public assistance.

HRS 572D-10 Uniform Premarital Agreement Act; Prior Agreements

■ Validates all agreements prior to July 1, 1987, as enforceable under statute if otherwise valid.

HRS 574-1 Names; Married Persons

■ Allows each party of a marriage to declare the name to be used as a married person.

HRS 574-5(3) Names; Change of Name; Procedure

■ Reaffirms that marriage is one of the only ways in which a valid change of name can be achieved.

HRS 575-2 Uniform Desertion and Nonsupport Act (Modified); Prima Facie Evidence; Sequestration of Money for Support of Spouse or Children

■ Defines prima facie evidence of desertion as an absence from, without providing support for, the spouse for 3 months or more. Thereafter, upon a finding of desertion by the court, that deserted spouse is entitled to any money in the possession of a third party that belonged to the deserting spouse.

HRS 575-3 Uniform Desertion and Nonsupport Act (Modified); Complaint

■ Authorizes a deserted spouse to file a complaint.

HRS 576D-10.5 Child Support Enforcement; Liens

■ Authorizes the placement of a lien on the personal or real property of deadbeat spouses who are over 3 months delinquent in payment of any spousal support that is in conjunction with child support.

HRS 576E-2 Administrative Process for Child Support Enforcement; Attorney General; Powers

■ Authorizes the attorney general through the child support enforcement agency, to establish, modify, terminate, enforce and collect spousal support.

HRS 576E-5 Administrative Process For Child Support Enforcement

■ Requires notice to deadbeat that child and spousal support shall be payable by an order for immediate income withholding .

HRS 576E-10 Administrative Process for Child Support Enforcement; Hearings Officers

■ Authorizes hearing officer to enter an order enforcing the collection of spousal support for a spouse or former spouse that is living with a subject child.

HRS 576E-16 Administrative Process for Child Support Enforcement

■ Authorizes income withholding in the case of spousal support for the benefit of the child.

HRS 577-25 Children

■ Marriage officially emancipates a minor in the eyes of the law except with respect to criminal law and exclusive jurisdiction of the family court.

HRS 577-26 Children

■ Authorizes counselor to inform the spouse, parent, custodian, or guardian of any minor who requests or is referred to drug or alcohol abuse counseling.

HRS 577A-3 Medical Care/Minors

■ Gives discretion to physicians who treat minors for pregnancy or venereal disease to decide whether or not to inform the spouse, parent, custodian or guardian of the minor patient.

HRS 577A-4 Medical Care/Minors

■ Releases from financial liability a spouse, parent, guardian, or custodian of a minor who consents to receive medical care and services related to pregnancy and venereal disease.

HRS 578-2 Adoption

■ In order to grant the petition to adopt an adult, the consent of the adult's spouse is required if adult adoptee is married.

HRS 578-16 Adoption

■ An individual who is adopted by a natural parent, grandparent, aunt, uncle, or sibling, or their spouse, is deemed to be included in any determination of heirs or members of any class, unless specifically excluded.

HRS 580-9 Divorce

■ Authorizes the court to award temporary support from either spouse after the filing of a complaint for divorce.

HRS 580-10 Divorce

■ Authorizes the court to issue a temporary restraining order against a spouse to prevent physical damage.

HRS 580-12 Divorce

■ Allows the sequestration of property within the State belonging to a party in a matrimonial action for the support of either spouse.

HRS 580-13 Divorce

■ Authorizes court to obtain security for the allowance to the other spouse.

HRS 580-15 Divorce

■ Authorizes county attorneys to represent the court in any contempt proceeding for the enforcement of an order of support of a spouse or child.

HRS 580-24 Divorce

■ Allows deceived spouses who enter illegal marriages unknowingly to a just allowance for support.

HRS 580-41.5 Divorce

■ Excuses spouses from participating in mediation programs for divorce settlement where there are allegations of spousal abuse.

HRS 580-47 Divorce

■ Lists relevant facts the court shall consider when ordering spousal support.

HRS 580-49 Divorce

■ Allows the court to order support of an insane spouse after divorce where the spouse was insane at the time of the decree.

HRS 580-56 Divorce

■ Limits the interest that can be obtained by a spouse of a remarried party to a divorce action where property interests are still pending after the granting of the divorce.

HRS 580-74 Divorce

■ Allows the court to order child and spousal support from either spouse upon a decree of separation.

HRS 584-6 Paternity

■ Waives required notice to a natural father in custodial proceedings when the adoptive parent is the spouse of the child's parent and there is no legitimate or court-recognized father.

HRS 584-24 Paternity

■ Waives required notice to a natural father in custodial proceedings when the adoptive parent is the spouse of the child's parent and there is no legitimate or court-recognized father.

HRS 586-1 Domestic Abuse

■ Defines "family and household members" as "spouses," and "persons jointly residing or formerly residing in the same dwelling unit."

HRS 606-5 Courts

■ Authorizes free copies of certain decrees to veteran's spouse.

HRS 626-1-304 Rules of Evidence

■ Ceremonial marriage is presumed to be valid.

HRS 626-1-504 Rules of Evidence

■ Extends physician-patient privilege to "family".

HRS 626-1-505 Rules of Evidence

■ Spousal privilege and confidential marital communications.

HRS 651-91 Attachment

■ Defines the term "head of family" to include an individual living with a deceased spouse's child.

HRS 651-92 Attachment

■ Authorizes a head of family to keep a real property interest with a value up to \$30,000 exempt from attachment; an individual gets to exclude only \$20,000.

HRS 651-93 Attachment

■ Allows each spouse to claim a separate real property exemption following the entry of a decree of separate maintenance or divorce.

HRS 651-121 Attachment

■ Uses the term household to describe the amount of household property exempt from attachment.

HRS 651C-1 Fraudulent Transfer

■ Defines "relative" as a "...spouse, or an individual related to a spouse within the third degree as so determined."

HRS 663-1 Tort Actions

■ Gives standing to sue in a tort action when damage, trespass or injury occurs to the aggrieved party's spouse inter alia.

HRS 663-3 Tort Actions

■ Authorizes damages for wrongful death for loss of parental care . . . as a result of the death of a spouse or persons wholly or partly dependent upon the deceased person.

HRS 706-670.5 Criminal Disposition

■ Requires notice to a victim or surviving immediate family members of a criminal's parole or final unconditional release. Defines "surviving immediate family member" (inter alios) as spouse of a deceased victim.

HRS 706-673 Criminal Disposition

■ Requires notice to victim or surviving immediate family members of criminal escape. Defines "surviving immediate family member" as spouse of a deceased victim.

HRS 706-700 Offenses Against the Person; Definitions

■ Defines "married" to include "persons legally married, and a male and female living together as husband and wife regardless of their legal status, but does not include spouses living apart."

HRS 706-769 Offenses Against the Person; Defenses to Extortion

■ Provides a defense to extortion if owner of property is the defendant's spouse.

HRS 708-834 Offenses Against Property Rights; Entry Upon the Premises of a Sex, Child, or Spouse Abuse Shelter

■ Defines misdemeanor of a person who knowingly enters or remains on premises after reasonable warning to leave by staff.

HRS 709-903 Offenses Against the Family; Persistent Non-Support

■ Defines misdemeanor of "persistent non-support" as a person who fails to provide support to a spouse...or other dependent.

HRS 709-906 Offenses Against the Family; Abuse of Family and Household Members, Penalty

■ Defines misdemeanor offense of abuse of family and household members to include abuse of a

spouse or persons jointly residing or former spouse or persons formerly residing in the house.

HRS 801D-2 Victim's Rights

■ Defines "Surviving immediate family members" as..."spouse, ...and any legal guardian of the homicide victim."

HRS 801D-4 Victim's Rights

■ Gives right of surviving immediate family members of a crime to be informed of the proceedings in trial and custodial care of the offender of the crime.

HRS 803-46 Search Warrants

■ Prohibits privileged conversation between spouses from being taped or intercepted unless both parties are named on the wiretap application order.

Appendix C
TESTIMONY RECEIVED BY
THE COMMISSION ON SEXUAL ORIENTATION AND THE LAW

September 13, 1995

Public Comments

Jonathan Cuneo, He Kanaka Hou
Karyn Tiedeman, He Kanaka Hou
Bill Woods, Gay Marriage Project

September 27, 1995

Invited Guests

Steven Michaels, Esq., First Deputy Attorney General
Daniel Foley, Esq.
Sumner La Croix, Ph.D., Professor of Economics
Randy Roth, Esq., Professor of Law
David Shimabukuro, Employees Retirement System
Cenric Ho, Employees Health Fund

Public Comments

George Butterfield, former Trustee for Public Employees Health Fund Trust
(written only)

October 11, 1995

Invited Guests

Steven Michaels
Dan Foley
Dan Kehoe, Ph.D.
Sumner La Croix, Ph.D., joined by James Mak, Ph.D.
Moheb Ghali, Retired Professor of Economics
Robert Aiken
Diane Paw U
Joan Chatfield

Rev. Dr. Donald K. Johnson
Charles Whitten
Rev. Jori Watland
Rev. Bob Nakata
William Woods
Kalei Puha

Invited Guests Postponed to October 11, 1995, 9:00 a.m.

Bishop Richard Lipka
Mike Gabbard
Rev. John Boaz, President, Hawaii Association of Evangelical
Mary Woodard, Head Chaplin, Great Commission Fellowship
Leon Siu, State Director, Christian Voice of Hawaii

Public Comments

Loree Johnson
Rodney Aiu
Pau Kamano
Ray Angelo
William Whittman
Mary Whittman
Rev. Gary Kutil

Written Comments

Church of the Crossroads
Catholic Diocese by Father Mark Alexander
Roger Magnuson
Richard F. Duncan, Sherman S. Welpton, Jr., Professor of Law, University of
Nebraska Lincoln, College of Law
Dallas Willard, Professor of Philosophy, University of Southern California
Charles W. Socarides, M.D.
Lawrence F. Burtoft, Ph.D., Social Research Analyst, Public Policy Division,
Focus on the Family
Joseph Nicolosi, Ph.D., Editor of the NARTH Newsletter
Penelope Spiller
David Kawate

October 25, 1995

Invited Guests

Jon Van Dyke, Esq., Professor of Law, William S. Richardson School of Law
Frederick Rohlfig III, Esq., Act 217 Commissioner
Thomas P. Coleman, Esq., Executive Director, Spectrum Institute, Los Angeles

Public Comments

Mely McGivern
Daniel P. McGivern
Laura McNamara
Sherri Silva

Written Comments

Quakers
Bruce Fernandes, Paia, Maui
Sandra Pelosi, Kihei, Maui

November 8, 1995

Invited Guests

Robert Bidwell, M.D., Professor of Pediatrics, John Burns School of Medicine
Scott Makuakane, Esq., Beck and Taylor

Public Comments

Diane Sutton, Big Island resident
Martin Rice, Kauai resident
Janice Judd
Loree Johnson

November 22, 1995

Public Comments

Rachelle Sebella

Written Comments

Unitarian Church

December 6, 1995

Public Comments

Amy Agbayani, Chairperson, Civil Rights Commission,
Donna Bryant, Steering Committee member of the Hawaii Equal Rights
Marriage Project
Tracey Bennett
Sue Reardon, Co-director of the Hawaii Equal Rights Marriage Project
Tom Ramsey
Barbara Chung
Julian Johnson
Rose Gibril Pires
Charles Woodard, Evangelist
David Bittner
Rick Nelson
Linda Borgia
Johnathan Borgia
Vanessa Y. Chong, Coalition for Equality and Diversity, through the American
Civil Liberties Union
Lisa Poulos
Charles McCrone
June Shimokawa, American Friends Service Committee
Claudio Borge, Jr.
Ron Arnold
Bill Woods, GLEA Foundation and Gay Marriage Project
Calvin N. Takara
Tom Conlon
Martin Rice, resident of Kauai
Lora Burbage,
David Mitchell,
Dawn V. Underwood,

Rev. Fr. Norman T. Wesley his congregation & 300 churches of the
Episcopal/Angelican Church
Marc Breida
Jeff Cadavona
Robert Gibson
Wayne Akana
James F. Cartwright
Susan Brown
Rev. Mike Young, Minister of the First Unitarian Church in Honolulu
John A. Hoag
Ken Gibson
Isaah Iumboa representing Gospel Temple
Elizabeth Lover
Reverend Tony Bacungua, Full Gospel Temple
Joe Ahuna
Sam Langi
Leon Siu, State Director of Christian Voice of Hawaii
Jeff Grey, from Maui
Amanda Dupont
Elizabeth Vellalos
Tiger Mosier
Diane Mosier
David Smith
Karen Smith
Don Fernandes
Nancy Greenwood
Melodie Asscentia
Sarah Banks for Julie and Paul Banks
Skip Burns from the Big Island
Troy Freitas
Peggy Y. Yorita
Rasika Gleason
Delpia Akiu
Mike Gabbard, President of Stop Promoting Homosexuality America
Dan Ditto
Harvey Alisa
Don Harriman
Philip Smith, Ph.D. in Sociology
Dale Hammond
Don Baldwin, Jr.
Dora Baldwin
Gracie Hemenway
Dennis Mau
Matte Teo

Shane Cullen
Daryl Gerloff
Bette Gerloff
Michelle Umaki for First Assembly of God
Ward Stewart
Bonnie Warring
Skip McQueen
R.K. Lau
Margaret Talamantes
Cherry Patterson
Lori DeLuca
Carl Vannoh, Jr.
Pumehana Cobb-Adams
April English
Patrick Battista
Rodney Aiu
Chuck Brocka
Vernon Taa
John Kinyon
Scott VanInwagen
Kalei Puha
Noela Napoleaon
Navahine Dudoitt
Stratton Goodhugh
Debbi Hartmann
Enric Ortiz
Lori K.Fujimoto

Written Testimony

Petitions from Kauai submitted and dated Decmeber 4, 1995, 102 names
Maryann and Simi Mapu
Mitzi and Gordon Ledingham
Barbara Ruth Bishop
Bradley Scully
Terry Nakamura
L.M. Indy Schneider, L.Ac

Numerous written testimony was received by the Commission via fax and through the mail. Copies of the public testimony will be available through the State Archives after August 1996.

Appendix D
SUGGESTED LEGISLATION

| | | |
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Appendix D-1

A. ALLOW MARRIAGE

S.B. NO.

THE SENATE
EIGHTEENTH LEGISLATURE, 1995
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO MARRIAGE.

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

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

3 "§572-1 Requisites of valid marriage contract. In order to
4 make valid the marriage contract[, which shall be only between a
5 man and a woman,] between two persons it shall be necessary that:

6 (1) The respective parties do not stand in relation to each
7 other of ancestor and descendant of any degree
8 whatsoever, brother [and] or sister of the half as well
9 as to the whole blood, uncle [and niece,] or aunt [and
10 nephew,] whether the relationship is legitimate or
11 illegitimate;

12 (2) Each of the parties at the time of contracting the
13 marriage is at least sixteen years of age; provided
14 that with the written approval of the family court of
15 the circuit within which the minor resides, it shall be
16 lawful for a person under the age of sixteen years, but

S.B. NO.

1 in no event under the age of fifteen years, to marry,
2 subject to section 572-2;

3 (3) [The man] Either party to the marriage does not at the
4 time have any lawful [wife] spouse living [and that the
5 woman does not at the time have any lawful husband
6 living];

7 (4) Consent of neither party to the marriage has been
8 obtained by force, duress, or fraud;

9 (5) Neither of the parties is a person afflicted with any
10 loathsome disease concealed from, and unknown to, the
11 other party;

12 (6) The [man and woman] parties to be married in the State
13 shall have duly obtained a license for that purpose
14 from the agent appointed to grant marriage licenses;
15 and

16 (7) The marriage ceremony be performed in the State by a
17 person or society with a valid license to solemnize
18 marriages and the [man and the woman] parties to be
19 married and the person performing the marriage ceremony
20 be all physically present at the same place and time
21 for the marriage ceremony."

22 SECTION 2. Section 572-3, Hawaii Revised Statutes, is
23 amended to read as follows:

24 "§572-3 Contracted without the State. Marriages between [a
25 man and a woman] two people, legal in the country where

S.B. NO.

1 contracted, shall be held legal in the courts of this State."

2 SECTION 3. Section 572-13, Hawaii Revised Statutes, is
3 amended by amending subsection (a) to read as follows:

4 "(a) Recordkeeping. Every person authorized to solemnize
5 marriage shall make and preserve a record of every marriage by
6 the person solemnized, comprising the names of the [man and
7 woman] two people married, their place of residence, and the date
8 of their marriage.

9 Every person authorized to solemnize marriage, who neglects
10 to keep a record of any marriage by the person solemnized shall
11 be fined \$50."

12 SECTION 4. Section 572-21, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "[~~§~~572-21] Presumption of separate property. There is
15 a rebuttable presumption that all property, both real and
16 personal, acquired in the name of [the husband or of the wife,]
17 one spouse, without regard to the time of acquisition thereof, is
18 the separate property of the spouse in the name of whom the same
19 has been acquired."

20 SECTION 5. Statutory material to be repealed is bracketed.
21 New statutory material is underscored.

22 SECTION 6. This Act shall take effect upon its approval.

23

24

INTRODUCED BY: _____

H.B. NO.

1 status discrimination in employment, housing, and public
2 accommodations. The enactment of this registration section is a
3 means of attempting to eliminate this discrimination.

4 § -3 Definitions. For the purposes of this chapter:

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

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

14 "Director" means the director of health.

15 "Domestic partners" means two adults who are parties to a
16 valid domestic partnership contract and meet the requisites for a
17 valid domestic partnership contract as defined in section -4.

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

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

7 § -4 Requisites of a valid domestic partnership contract.
8 In order to make a valid domestic partnership contract it shall
9 be necessary that the parties shall:

- 10 (1) Live together;
- 11 (2) Consider themselves to be members of each other's
12 immediate family;
- 13 (3) Agree to be jointly responsible for each other's basic
14 living expenses;
- 15 (4) Neither be married nor a member of another domestic
16 partnership;
- 17 (5) Not be related by blood in a way that would prevent
18 them from being married to each other under chapter
19 572;
- 20 (6) Each be at least eighteen years old;
- 21 (7) Each shall be competent to enter into a contract; and
- 22 (8) Each sign a declaration of domestic partnership as
23 provided for in section -5.

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1 § -5 **Establishing a domestic partnership.** Two persons,
2 who meet the criteria set out in section -4, may establish a
3 domestic partnership by presenting a signed notarized declaration
4 of domestic partnership to the director, who shall file it and
5 give the partners a certificate of domestic partnership showing
6 that the declaration was filed in the names of the parties who
7 shall be known as "domestic partners".

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

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

22 § -8 **Records and Fees.** The director shall keep a record
23 of all declarations. The director shall set the amount of the
24 filing fee for declarations, but in no case shall the fee be

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1 higher than the fee for a marriage license. The fees charged
2 shall cover the State's costs of administering this section.

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

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

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

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

24 SECTION 3. If any provision of this Act, or the application
25 thereof to any person or circumstance is held invalid, the

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

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

8 SECTION 5. This Act shall take effect upon its approval.

9

10

INTRODUCED BY: _____

Appendix D-2

A. CONSTITUTIONAL AMENDMENT TO PROHIBIT MARRIAGE

HOUSE OF REPRESENTATIVES
EIGHTEENTH LEGISLATURE, 1996
STATE OF HAWAII

H.B. NO.

A BILL FOR AN ACT

PROPOSING AN AMENDMENT TO ARTICLE I, SECTION 5, OF THE
CONSTITUTION OF THE STATE OF HAWAII, TO AMEND THE DUE
PROCESS AND EQUAL PROTECTION CLAUSE RELATING TO SAME SEX
MARRIAGES.

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

1 SECTION 1. The purpose of this Act is to propose an
2 amendment to Article I, section 5, of the Constitution of the
3 State of Hawaii to clarify that same sex marriages are not
4 constitutionally protected and to define marriage as a legal
5 relationship between a male and a female.

6 SECTION 2. Article I, section 5, of the Constitution of the
7 State of Hawaii is amended to read as follows:

8 "DUE PROCESS AND EQUAL PROTECTION

9 Section 5. No person shall be deprived of life, liberty or
10 property without due process of law, nor be denied the equal
11 protection of the laws, nor be denied the enjoyment of the
12 person's civil rights or be discriminated against in the exercise
13 thereof because of race, religion, sex or ancestry.

14 Nothing in this section or any other section of this
15 Constitution shall be interpreted to create a constitutional

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1 right to same-sex marriages in order to reserve marriage as a
 2 legal relationship between a man and a woman as husband and wife
 3 which has been sanctioned by the State. Marriage and its
 4 requisites may be subject to reasonable regulation by the State."

5 SECTION 3. The question to be printed on the ballot shall
 6 be as follows:

7 "Shall the Due Process And Equal Protection Clause be
 8 amended to clarify that same sex marriages are not
 9 constitutionally protected in order to define marriage as a
 10 legal relationship between a man and a woman as husband and
 11 wife which has been sanctioned by the State and which may be
 12 reasonably regulated by the State."

13 SECTION 4. New constitutional material is underscored.

14 SECTION 5. This amendment shall take effect upon compliance
 15 with Article XVII, section 3, of the Constitution of the State of
 16 Hawaii.

17

18

INTRODUCED BY: _____

Appendix D-2

B. EXPANSION OF DEFINITION OF FAMILY

HOUSE OF REPRESENTATIVES
EIGHTEENTH LEGISLATURE, 1996
STATE OF HAWAII

H.B. NO.

A BILL FOR AN ACT

RELATING TO FAMILY.

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

1 SECTION 1. Section 11-14.5, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) If a life threatening circumstance exists to a law
4 enforcement person or to the law enforcement person's family,
5 that law enforcement person may apply to the county clerk to keep
6 confidential the information relating to residence address and
7 telephone number contained in the affidavit of registration of
8 that law enforcement person, or any list or register prepared
9 therefrom.

10 For the purposes of this section:

11 "Economic expenses of life" means the cost of the daily
12 necessities of life including the cost food, housing and
13 clothing. It shall be considered sharing the expenses of life if
14 only one person pays the entire costs of the economic expenses of
15 life for two or more people living together; and"

16 "Family" shall include those people who share a house or
17 apartment and the economic expenses of life."

1 SECTION 2. Section 46-15.3, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) For the purpose of this section:

4 "Building code" means an ordinance the purpose of which is
5 to provide minimum standards to safeguard life or limb, health,
6 property, and public welfare by regulating and controlling the
7 design, construction, quality of materials, use and occupancy,
8 location, and maintenance of all buildings and structures within
9 the county's jurisdiction and certain equipment specifically
10 regulated by the ordinance.

11 "Economic expenses of life" means the cost of the daily
12 necessities of life including the cost food, housing and
13 clothing. It shall be considered sharing the expenses of life if
14 only one person pays the entire costs of the economic expenses of
15 life for two or more people living together."

16 "Family" shall include those people who share a house or
17 apartment and the economic expenses of life.

18 "Fire code" means an ordinance adopted under section 132-3
19 or an ordinance intended to prescribe regulations consistent with
20 recognized good practice for the safeguarding to a reasonable
21 degree of life and property from the hazards of fire and
22 explosion arising from the storage, handling, and use of
23 hazardous substances, materials, and devices and from conditions
24 hazardous to life or property in the use or occupancy of
25 buildings or premises.

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1 "Licensed adult family boarding home" means an adult family
2 boarding home licensed under chapter 346, part IV.

3 "Licensed care home" means a care home licensed under
4 section 321-15.6.

5 "Life safety code" means an ordinance the purpose of which
6 is to establish minimum requirements that will provide a
7 reasonable degree of safety from fire in buildings and
8 structures."

9 SECTION 3. Section 150A-5, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§150A-5 Conditions of importation. (a) The importation
12 into the State of any of the following articles, viz., nursery-
13 stock, tree, shrub, herb, vine, cut-flower, cutting, graft,
14 scion, bud, seed, leaf, root, or rhizome; nut, fruit, or
15 vegetable; grain, cereal, or legume in the natural or raw state;
16 moss, hay, straw, dry-grass, or other forage; unmanufactured log,
17 limb, or timber, or any other plant-growth or plant-product,
18 unprocessed or in the raw state; soil; bacteria, fungus, or
19 virus; live bird, reptile, nematode, insect, or any other animal
20 in any stage of development (that is in addition to the so-called
21 domestic animal, the quarantine of which is provided for in
22 chapter 142); box, vehicle, baggage, or any other container in
23 which such articles have been transported or any packing material
24 used in connection therewith shall be made in the manner
25 hereinafter set forth:

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1 (1) Notification of arrival. Any person who receives for
2 transport or brings or causes to be brought to the
3 State as freight, air freight, baggage, or otherwise,
4 for the purpose of debarkation or entry therein, or as
5 ship's stores, any of the foregoing articles, shall,
6 immediately upon the arrival thereof, notify the
7 department, in writing, of the arrival, giving the
8 waybill number, container number, name and address of
9 the consignor, name and address of the consignee or the
10 consignee's agent in the State, marks, number of
11 packages, description of contents of each package, port
12 at which laden, and any other information that may be
13 necessary to locate or identify the same, and shall
14 hold such articles at the pier, airport, or any other
15 place where they are first received or discharged, in
16 such a manner that they will not spread or be likely to
17 spread any infestation or infection of insects or
18 diseases that may be present until inspection and
19 examination can be made by the inspector to determine
20 whether or not any article, or any portion thereof, is
21 infested or infected with or contains any pest. In
22 addition, the department by rules shall designate
23 restricted articles that shall require a permit from
24 the department in advance of importation. The
25 restricted articles shall include, but not be limited

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1 to, fungi, bacteria, virus, or living insects. Failure
2 to obtain the permit in advance is a violation of this
3 section.

4 (2) Individual passengers, officers, and crew.

5 (A) It shall be the responsibility of the
6 transportation company to distribute, prior to the
7 debarkation of passengers and baggage, the State
8 of Hawaii plant and animal declaration form to
9 each passenger, officer, and crew member of any
10 aircraft or vessel originating in the continental
11 United States or its possessions or from any other
12 area not under the jurisdiction of the appropriate
13 federal agency in order that the passenger,
14 officer, or crew member can comply with the
15 directions and requirements appearing thereon.
16 All passengers, officers, and crew members,
17 whether or not they are bringing or causing to be
18 brought for entry into the State the articles
19 listed on the form, shall complete the
20 declaration, except that one adult member of a
21 family may complete the declaration for other
22 family members. Any person who defaces the
23 declaration form required under this section,
24 gives false information, fails to declare
25 restricted articles in the person's possession or

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1 baggage, or fails to declare in cargo manifests is
2 in violation of this section.

3 (B) Completed forms shall be collected by the
4 transportation company and be delivered,
5 immediately upon arrival, to the inspector at the
6 first airport or seaport of arrival. Failure to
7 distribute or collect declaration forms or to
8 immediately deliver completed forms is a violation
9 of this section.

10 (C) It shall be the responsibility of the officers and
11 crew of an aircraft or vessel originating in the
12 continental United States or its possessions or
13 from any other area not under the jurisdiction of
14 the appropriate federal agency to immediately
15 report all sightings of any plants and animals to
16 the plant quarantine branch. Failure to comply
17 with this requirement is a violation of this
18 section.

19 (3) Plant and animal declaration form. The form shall
20 include directions for declaring domestic and other
21 animals cited in chapter 142, in addition to the
22 articles enumerated in this chapter.

23 (4) Labels. Each container in which any of the above-
24 mentioned articles are imported into the State shall be
25 plainly and legibly marked, in a conspicuous manner and

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1 place, with the name and address of the shipper or
2 owner forwarding or shipping the same, the name or mark
3 of the person to whom the same is forwarded or shipped
4 or the person's agent, the name of the country, state,
5 or territory and locality therein where the product was
6 grown or produced, and a statement of the contents of
7 the container. Upon failure to comply with this
8 paragraph, the importer or carrier is in violation of
9 this section.

10 (5) Authority to inspect. Whenever the inspector has good
11 cause to believe that the provisions of this chapter
12 are being violated, the inspector may:

13 (A) Enter and inspect any aircraft, vessel, or other
14 carrier at any time after its arrival within the
15 boundaries of the State, whether offshore, at the
16 pier, or at the airport, for the purpose of
17 determining whether any of the articles or pests
18 enumerated in this chapter or rules adopted
19 thereto, is present.

20 (B) Enter into or upon any pier, warehouse, airport,
21 or any other place in the State where any of the
22 above-mentioned articles are moved or stored, for
23 the purpose of ascertaining, by inspection and
24 examination, whether or not any of the articles is
25 infested or infected with any pest or disease or

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1 contaminated with soil or contains prohibited
2 plants or animals.

3 (C) Inspect any baggage or personal effects of
4 disembarking passengers, officers, and crew
5 members on aircraft or vessels arriving in the
6 State to ascertain if they contain any of the
7 articles or pests enumerated in this chapter. No
8 baggage or other personal effects of the
9 passengers or crew members shall be released until
10 the baggage or effects have been passed.

11 Baggage or cargo inspection shall be made at the
12 discretion of the inspector, on the pier, vessel, or
13 aircraft or in any quarantine or inspection area.

14 Whenever the inspector has good cause to believe
15 that the provisions of this chapter are being violated,
16 the inspector may require that any box, package,
17 suitcase, or any other container carried as ship's
18 stores, cargo, or otherwise by any vessel or aircraft
19 moving between the continental United States and Hawaii
20 or between the Hawaiian Islands, be opened for
21 inspection to determine whether any article or pest
22 prohibited by this chapter or by rules adopted pursuant
23 thereto is present. It is a violation of this section
24 if any prohibited article or any pest or any plant,
25 fruit, or vegetable infested with plant pests is found.

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- 1 (6) Request for importation and inspection. In addition to
2 requirements of the United States customs authorities
3 concerning invoices or other formalities incident to
4 importations into the State, the importer shall be
5 required to file a written statement with the
6 department, signed by the importer or the importer's
7 agent, setting forth the importer's desire to import
8 certain of the above-mentioned articles into the State
9 and giving the following additional information: the
10 kind (scientific name), quantity, and description; the
11 locality where same were grown or produced; the
12 certification that all animals to be imported are the
13 progeny of captive populations or have been held in
14 captivity for a period of one year immediately prior to
15 importation or have been specifically approved for
16 importation by the board; the port from which the same
17 were last shipped; the name of the shipper; and the
18 name of the consignee. The statement shall also
19 contain:
- 20 (A) A request that the department, by its duly
21 authorized agent, examine the articles described;
- 22 (B) An agreement by the importer to be responsible for
23 all costs, charges, or expenses; and
- 24 (C) A waiver of all claims for damages incident to the
25 inspection or the fumigation, disinfection,

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1 quarantine, or destruction of the articles, or any
2 of them, as hereinafter provided, if any treatment
3 is deemed necessary.

4 Failure or refusal to file a statement, including
5 the agreement and waiver, is a violation of this
6 section and may, in the discretion of the department,
7 be sufficient cause for refusing to permit the entry of
8 the articles into the State.

9 (7) Place of inspection. If, in the judgment of the
10 inspector, it is deemed necessary or advisable to move
11 any of the above-mentioned articles, or any portion
12 thereof, to a place more suitable for inspection than
13 the pier, airport, or any other place where they are
14 first received or discharged, the inspector is
15 authorized to do so. All costs and expenses incident
16 to the movement and transportation of the articles to
17 such place shall be borne by the importer or the
18 importer's agent.

19 (8) Disinfection or quarantine. If, upon inspection, any
20 article so received or brought into the State for the
21 purpose of debarkation or entry therein is found to be
22 infested or infected or there is reasonable cause to
23 presume that it is infested or infected and the
24 infestation or infection can, in the judgment of the
25 inspector, be eradicated, a treatment shall be given

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1 such article. The treatment shall be at the expense of
2 the owner or the owner's agent, and the treatment shall
3 be as prescribed by the department. The article shall
4 be held in quarantine at the expense of the owner or
5 the owner's agent at a satisfactory place approved by
6 the department for a sufficient length of time to
7 determine that eradication has been accomplished. If
8 the infestation or infection is of such nature or
9 extent that it cannot be effectively and completely
10 eradicated, or if it is a potentially destructive pest
11 or it is not widespread in the State, or after
12 treatment it is determined that the infestation or
13 infection is not completely eradicated, or if the owner
14 or the owner's agent refuses to allow the article to be
15 treated or to be responsible for the cost of treatment
16 and quarantine, the article, or any portion thereof,
17 together with all packing and containers, may, at the
18 discretion of the inspector, be destroyed or sent out
19 of the State at the expense of the owner or the owner's
20 agent. Such destruction or exclusion shall not be made
21 the basis of a claim against the department or the
22 inspector for damage or loss incurred.

23 (9) Disposition. Upon completion of inspection, either at
24 the time of arrival or at any time thereafter should
25 any article be held for inspection, treatment, or

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1 quarantine, the inspector shall affix to the article or
2 the container or to the delivery order in a conspicuous
3 place thereon, a tag, label, or stamp to indicate that
4 the article has been inspected and passed. This action
5 shall constitute a permit to bring the article into the
6 State.

7 (10) Ports of entry. None of the articles mentioned in this
8 section shall be allowed entry into the State except
9 through the airports and seaports in the State
10 designated and approved by the board.

11 (b) For the purposes of this section:

12 "Economic expenses of life" means the cost of the daily
13 necessities of life including the cost food, housing and
14 clothing. It shall be considered sharing the expenses of life if
15 only one person pays the entire costs of the economic expenses of
16 life for two or more people living together; and

17 "Family" shall include those people who share a house or
18 apartment and the economic expenses of life."

19 SECTION 4. Section 184-34, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§188-34 Fishing in Honolulu harbor, Hilo harbor,
22 restricted. It is unlawful to take or kill fish by means of any
23 draw, drag, or seine net in the waters of the harbor of Honolulu;
24 provided that commercial marine licensees as defined in chapter
25 187A may take bait fish by means of any draw, drag, or seine net

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1 during periods scheduled by the harbor master.

2 It is unlawful to take or kill fish by means of any net in
3 the waters of that portion of the bay of Hilo bounded by the
4 breakwater, a line from the outer end of the breakwater to
5 Alealea Point, and the shoreline from Alealea Point to the
6 inshore end of the breakwater, provided that commercial marine
7 and pond operators with appropriate licenses issued by the
8 department of land and natural resources may take bait fish or
9 pua, or persons may use throw net, opae net, crab net, or nehu
10 net not longer than fifty feet to take nehu for family
11 consumption or bait purposes.

12 For the purposes of this section:

13 "Economic expenses of life" means the cost of the daily
14 necessities of life including the cost food, housing and
15 clothing. It shall be considered sharing the expenses of life if
16 only one person pays the entire costs of the economic expenses of
17 life for two or more people living together; and

18 "Family" shall include those people who share a house or
19 apartment and the economic expenses of life."

20 SECTION 5. Section 188-45, Hawaii Revised Statutes, is
21 amended to read as follows:

22 "**§188-45 Nehu and iao, taking prohibited; exceptions.** It
23 is unlawful for any person to fish for, catch, or take in or from
24 any of the waters within the jurisdiction of the State any nehu
25 or iao; provided that any person may lawfully catch nehu for the

1 person's family consumption or bait purposes with a net not
2 longer than fifty feet; and provided further that the department
3 of land and natural resources may issue to commercial marine
4 licensees, as defined in chapter 187A, licenses to take nehu,
5 iao, or any other species for which an open season may be
6 declared by the department for use as bait only; provided that
7 nehu may be taken by any licensed commercial marine licensee only
8 if employed on a live-bait tuna boat and only if the licensee's
9 principal means of livelihood is derived from tuna fishing and
10 the sale of tuna, and the nehu is not sold to others. The
11 licenses may be issued by the department upon terms and
12 conditions the department may deem necessary to conserve the
13 supply of the fish within state waters. The license may be
14 summarily revoked for a violation of any term or condition
15 thereof, and any or all licenses may be revoked summarily
16 whenever, in the judgment of the department, the action is
17 necessary for the conservation of the fish.

18 Any person whose license has been revoked for violation of
19 the terms and conditions of the person's license shall not be
20 eligible for another license until the expiration of one year
21 from the date of revocation.

22 For the purposes of this section:

23 "Economic expenses of life" means the cost of the daily
24 necessities of life including the cost food, housing and
25 clothing. It shall be considered sharing the expenses of life if

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1 only one person pays the entire costs of the economic expenses of
2 life for two or more people living together; and

3 "Family" shall include those people who share a house or
4 apartment and the economic expenses of life."

5 SECTION 6. Section 201F-3, Hawaii Revised Statutes, is
6 amended by amending subsection (c) to read as follows:

7 "(c) For the purposes of this chapter[, the applicable]:

8 "Applicable median family income" shall be the median family
9 income for the county or standard metropolitan statistical area
10 in which the project is located as determined by the United
11 States Department of Housing and Urban Development, as adjusted
12 from time to time[.];

13 "Economic expenses of life" means the cost of the daily
14 necessities of life including the cost food, housing and
15 clothing. It shall be considered sharing the expenses of life if
16 only one person pays the entire costs of the economic expenses of
17 life for two or more people living together; and

18 "Family" shall include those people who share a house or
19 apartment and the economic expenses of life."

20 SECTION 7. Section 209-29, Hawaii Revised Statutes, is
21 amended to read as follows:

22 "§209-29 Eligibility for loans. (a) Loans may be made to
23 individuals, partnerships, corporations, cooperatives, or other
24 business associations, but only if the applicant:

25 (1) Suffered loss of or damage to property in a

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- 1 rehabilitation area as a result of a state disaster;
- 2 (2) For a commercial loan, had operated an industrial,
3 manufacturing, processing, wholesaling, or retailing
4 business, or professional or service business, or
5 building rental business, immediately before the
6 disaster;
- 7 (3) Presents a suitable program for:
- 8 (A) Rehabilitation or re-establishment of the
9 applicant's business to its predisaster level when
10 applying for a commercial loan; or
- 11 (B) Meeting necessary expenses and satisfying the
12 serious needs of the applicant and the applicant's
13 family when applying for a personal loan;
- 14 (4) Has reasonable ability to repay the loan; and
- 15 (5) For a commercial loan, presents written evidence that
16 the Small Business Administration had declined an
17 application for financial assistance under the Small
18 Business Administration Disaster Loan Program or has
19 reduced the amount of the loan request; provided that
20 the declination was not due to the applicant's having
21 sufficient financial resources to rehabilitate the
22 applicant; or
- 23 (6) For a commercial loan, cannot secure any loans from the
24 Small Business Administration Disaster Loan Program
25 because the making of the loans is not covered by the

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1 program, and the director of business, economic
2 development, and tourism is reasonably satisfied that
3 the applicant is not able to secure loans from private
4 lending institutions and does not have sufficient
5 financial resources to rehabilitate the applicant.

6 Paragraph (6) shall be applied in the alternative with
7 respect to paragraph (5) of this section.

8 (b) For the purposes of this section:

9 "Economic expenses of life" means the cost of the daily
10 necessities of life including the cost food, housing and
11 clothing. It shall be considered sharing the expenses of life if
12 only one person pays the entire costs of the economic expenses of
13 life for two or more people living together; and

14 "Family" shall include those people who share a house or
15 apartment and the economic expenses of life."

16 SECTION 8. Section 231-25, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§231-25 Payment, enforcement of by assumpsit action or by
19 levy and distraint upon all property and rights to property. (a)
20 If any tax be unpaid when due, the director of taxation may
21 proceed to enforce the payment of the same, with all penalties,
22 as follows:

23 (1) By action in assumpsit, in the director's own name, on
24 behalf of the State, for the amount of taxes and costs,
25 or, if the tax is delinquent, for the amount of taxes,

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1 costs, penalties, and interest, in any district court,
2 irrespective of the amount claimed. Execution may
3 issue upon any judgment rendered in any such action
4 which may be satisfied out of any real or personal
5 property of the defendant.

6 (2) By levy upon all property and rights to property
7 (except such property as is exempt under paragraph
8 (b)(5) of this section) belonging to such taxpayer or
9 on which there is a lien, as the director may deem
10 sufficient to satisfy the payment of taxes due,
11 penalties and interest if any, and the costs and
12 expenses of the levy.

13 (b) The following rules are applicable to the levy as
14 provided for in paragraph (a)(2) of this section:

15 (1) Seizure and sale of property. The term "levy" as used
16 in this section includes the power of distraint and
17 seizure by any means. A levy shall extend only to
18 property possessed and obligations existing at the time
19 thereof. In any case in which the director or the
20 director's representative may levy upon property or
21 rights to property, the director may seize and sell
22 such property or rights to property (whether real or
23 personal, tangible or intangible).

24 (2) Successive seizures. Whenever any property or right to
25 property upon which levy has been made is not

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1 sufficient to satisfy the claim of the State for which
2 levy is made, the director or the director's
3 representative may, thereafter, and as often as may be
4 necessary, proceed to levy in like manner upon any
5 other property liable to levy of the person against
6 whom such claim exists, until the amount due from the
7 person, together with all expenses, is fully paid.

8 (3) Surrender of property subject to levy.

9 (A) Requirement. Any person in possession of (or
10 obligated with respect to) property or rights to
11 property subject to levy upon which a levy has
12 been made shall, upon demand of the director or
13 the director's representative, surrender such
14 property or rights (or discharge such obligation)
15 to the director or the director's representative,
16 except such part of the property or rights as is,
17 at the time of such demand, subject to an
18 attachment or execution under any judicial
19 process.

20 (B) Extent of personal liability. Any person who
21 fails or refuses to surrender property or rights
22 to property, subject to levy, upon demand by the
23 director or the director's representative, shall
24 be liable in the person's own person and estate to
25 the State in a sum equal to the value of the

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1 property or rights not so surrendered, but not
2 exceeding the amount of taxes for the collection
3 of which such levy has been made, together with
4 costs and interest on such sum at the rate of
5 eight per cent a year from the date of such levy.
6 Any amount (other than costs) recovered under this
7 subparagraph shall be credited against the tax
8 liability for the collection of which such levy
9 was made.

10 (C) Penalty for violation. In addition to the
11 personal liability imposed by subparagraph (B), if
12 any person required to surrender property or
13 rights to property fails or refuses to surrender
14 such property or rights to property without
15 reasonable cause, such person shall be liable for
16 a penalty equal to fifty per cent of the amount
17 recoverable under subparagraph (B). No part of
18 such penalty shall be credited against the tax
19 liability for the collection of which such levy
20 was made.

21 (D) Effect of honoring levy. Any person in possession
22 of (or obligated with respect to) property or
23 rights to property subject to levy upon which a
24 levy has been made who, upon demand by the
25 director or the director's representative,

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- 1 surrenders such property or rights to property (or
2 discharges such obligation) to the director or the
3 director's representative shall be discharged from
4 any obligation or liability to the delinquent
5 taxpayer with respect to such property or rights
6 to property arising from such surrender or
7 payment.
- 8 (E) Person defined. The term "person," as used in
9 subparagraph (A), includes an officer or employee
10 of a corporation or a member or employee of a
11 partnership, who as such officer, employee, or
12 member is under a duty to surrender the property
13 or rights to property, or to discharge the
14 obligation.
- 15 (4) Production of books. If a levy has been made or is
16 about to be made on any property, or right to property,
17 any person having custody or control of books or
18 records, containing evidence or statements relating to
19 the property or right to property subject to levy,
20 shall, upon demand of the director or the director's
21 representative, exhibit such books or records to the
22 director or the director's representative.
- 23 (5) Property exempt from levy. Notwithstanding any other
24 law of the State, no property or rights to property
25 shall be exempt from levy other than the following:

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- 1 (A) Wearing apparel and school books. Such items of
2 wearing apparel and such school books as are
3 necessary for the taxpayer or for members of the
4 taxpayer's family.
- 5 (B) Fuel, provisions, furniture, and personal effects.
6 If the taxpayer is the head of a family, so much
7 of the fuel, provisions, furniture, and personal
8 effects in the taxpayer's household, and of the
9 arms for personal use, livestock, and poultry of
10 the taxpayer, as does not exceed \$500 in value.
- 11 (C) Books and tools of a trade, business or
12 profession. So many of the books and tools
13 necessary for the trade, business, or profession
14 of the taxpayer as do not exceed in the aggregate
15 \$250 in value.
- 16 (D) Unemployment benefits. Any amount payable to an
17 individual with respect to the individual's
18 unemployment (including any portion thereof
19 payable with respect to dependents) under an
20 unemployment compensation law of the United States
21 or the State.
- 22 (E) Undelivered mail. Mail, addressed to any person,
23 which has not been delivered to the addressee.
- 24 (6) Sale of the seized property.
- 25 (A) Notice of sale. The director shall take

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1 possession and keep the levied property until the
2 sale. After taking possession, the director shall
3 sell the taxpayer's interest in the property at
4 public auction after first giving fifteen days'
5 public notice of the time and place of the sale by
6 publication at least once in a newspaper,
7 published in the district, or by posting the
8 notice in at least three public places in the
9 district where the sale is to be held.

10 (B) Assistance in seizure and sale. The director may
11 require the assistance of any sheriff or
12 authorized police officer of any county to aid in
13 the seizure and sale of the levied property. The
14 director may further retain the services of any
15 person competent and qualified to aid in the sale
16 of the levied property, provided that the consent
17 of the delinquent taxpayer is obtained. Any
18 sheriff or the person so retained by the director
19 shall be paid a fair and reasonable fee but in no
20 case shall the fee exceed ten per cent of the
21 gross proceeds of the sale. Any person other than
22 a sheriff so retained by the director to assist
23 the director may be required to furnish bond in an
24 amount to be determined by the director. The fees
25 and the cost of the bond shall constitute a part

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1 of the costs and expenses of the levy.

2 (C) Time and place of sale. The sale shall take place
3 within thirty days after seizure; provided that by
4 public announcement at the sale, or at the time
5 and place previously set for the sale, it may be
6 extended for one week. Any further extension of
7 the sale shall be with the consent of the
8 delinquent taxpayer. The sale shall, in any
9 event, be completed within forty-five days after
10 seizure of the property.

11 (D) Manner and conditions of sale. Sufficient
12 property shall be sold to pay all taxes,
13 penalties, interest, costs, and expenses. On
14 payment of the price bid for any property sold,
15 the delivery thereof with a bill of sale from the
16 director shall vest the title of the property in
17 the purchaser. No charge shall be made for the
18 bill of sale. All surplus received upon any sale
19 after the payment of the taxes, penalties,
20 interest, costs, and expenses, shall be returned
21 to the owner of the property sold, and until
22 claimed shall be deposited with the department
23 subject to the order of the owner. Any unsold
24 portion of the property seized may be left at the
25 place of sale at the risk of the owner.

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1 (E) Redemption of property. If the owner of the
2 property seized desires to retain or regain
3 possession thereof, the owner may give a
4 sufficient bond with surety to produce the
5 property at the time and place of sale, or pay all
6 taxes, penalties, interest, costs and expenses.

7 (c) For the purposes of this section:

8 "Economic expenses of life" means the cost of the daily
9 necessities of life including the cost food, housing and
10 clothing. It shall be considered sharing the expenses of life if
11 only one person pays the entire costs of the economic expenses of
12 life for two or more people living together; and

13 "Family" shall include those people who share a house or
14 apartment and the economic expenses of life."

15 SECTION 9. Section 321-123, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**§321-123 Financial assistance; eligibility standards. (a)**
18 The department of health shall extend financial assistance under
19 this part to aid in offsetting:

20 (1) Expenses directly incurred in dialysis or any other
21 medical or surgical procedures necessary for the care
22 and treatment of chronic renal disease; and

23 (2) The cost of purchasing and installing home dialysis
24 equipment and the supplies therefor.

25 (b) The department shall establish standards of eligibility

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1 for financial assistance under this part which, taking into
2 consideration the total funds available under this part and the
3 number of sufferers needing financial assistance, seek to
4 minimize, to the greatest extent possible, the effect of chronic
5 renal disease on the economic well-being of the sufferer and the
6 sufferer's family. In determining eligibility for financial
7 assistance under this part, the department shall consider the
8 financial resources of the patient, the availability of third
9 party reimbursement for all or part of the expense of the care
10 and treatment of the sufferer, and the extent to which the
11 failure to extend financial assistance under this part would
12 affect the sufferer and the sufferer's family; provided that the
13 financial assistance extended under this part shall not be used
14 to reduce assistance payments from the department of human
15 services to which the sufferer or the sufferer's family is
16 otherwise entitled.

17 (c) For the purposes of this section:

18 "Economic expenses of life" means the cost of the daily
19 necessities of life including the cost food, housing and
20 clothing. It shall be considered sharing the expenses of life if
21 only one person pays the entire costs of the economic expenses of
22 life for two or more people living together; and

23 "Family" shall include those people who share a house or
24 apartment and the economic expenses of life."

25 SECTION 10. Section 321-351, Hawaii Revised Statutes, is

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1 amended by adding two new definitions to be appropriately
2 inserted and to read as follows:

3 "Economic expenses of life" means the cost of the daily
4 necessities of life including the cost food, housing and
5 clothing. It shall be considered sharing the expenses of life if
6 only one person pays the entire costs of the economic expenses of
7 life for two or more people living together.

8 "Family" shall include those people who share a house or
9 apartment and the economic expenses of life."

10 SECTION 11. Section 323-51, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "[~~§~~323-51~~]~~ Animal therapy. Animals of the kind
13 commonly kept as household or family pets may be brought into
14 long term health care facilities for the purpose of visiting
15 patients therein. The institution shall determine whether an
16 animal is suitable for visitation, the location where the visit
17 may take place, and the policies governing the visit. At the
18 discretion of the institution, the animal owner may be required
19 to produce written documentation from a veterinarian attesting to
20 the animal's good health, before visitation is permitted.

21 For the purposes of this section:

22 "Economic expenses of life" means the cost of the daily
23 necessities of life including the cost food, housing and
24 clothing. It shall be considered sharing the expenses of life if
25 only one person pays the entire costs of the economic expenses of

1 life for two or more people living together; and

2 "Family" shall include those people who share a house or
3 apartment and the economic expenses of life."

4 SECTION 12. Section 327-3, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§327-3 Making, revoking, and objecting to anatomical
7 gifts, by others. (a) Any member of the following classes of
8 persons, in the order of priority listed, may make an anatomical
9 gift of all or a part of the decedent's body for an authorized
10 purpose, unless the decedent, at the time of death, has made an
11 unrevoked refusal to make that anatomical gift:

12 (1) The spouse of the decedent or[;] adult family member
13 who lived with the decedent just prior to death as
14 defined in subsection (f);

15 (2) An adult son or daughter of the decedent;

16 (3) Either parent of the decedent;

17 (4) An adult brother or sister of the decedent;

18 (5) A grandparent of the decedent; and

19 (6) A guardian of the person of the decedent at the time of
20 death.

21 (b) An anatomical gift may not be made by a person listed
22 in subsection (a) if:

23 (1) A person in a prior class is available at the time of
24 death to make an anatomical gift;

25 (2) The person proposing to make an anatomical gift knows

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1 of a refusal or contrary indications by the decedent;
2 or

3 (3) The person proposing to make an anatomical gift knows
4 of an objection to making an anatomical gift by a
5 member of the person's class or a prior class.

6 (c) An anatomical gift by a person authorized under
7 subsection (a) shall be made by:

8 (1) A document of gift signed by the person; or

9 (2) The person's telegraphic, recorded telephonic, or other
10 recorded message, or other form of communication from
11 the person that is contemporaneously reduced to writing
12 and signed by the recipient.

13 (d) An anatomical gift by a person authorized under
14 subsection (a) may be revoked by any member of the same or a
15 prior class if, before procedures have begun for the removal of a
16 part from the body of the decedent, the physician, surgeon,
17 technician, or enucleator removing the part knows of the
18 revocation.

19 (e) A failure to make an anatomical gift under subsection
20 (a) is not an objection to the making of an anatomical gift.

21 (f) For the purposes of this section:

22 "Economic expenses of life" means the cost of the daily
23 necessities of life including the cost food, housing and
24 clothing. It shall be considered sharing the expenses of life if
25 only one person pays the entire costs of the economic expenses of

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1 life for two or more people living together; and

2 "Family" shall include those people who share a house or
3 apartment and the economic expenses of life."

4 SECTION 13. Section 334-59, Hawaii Revised Statutes, is
5 amended by amending subsection (d) to read as follows:

6 "(d) Emergency hospitalization. If the physician or the
7 psychologist who performs the emergency examination has reason to
8 believe that the patient is:

- 9 (1) Mentally ill or suffering from substance abuse;
- 10 (2) Imminently dangerous to self or others, or is gravely
11 disabled, or is obviously ill; and
- 12 (3) In need of care or treatment, or both;

13 the physician or the psychologist may direct that the patient be
14 hospitalized on an emergency basis or cause the patient to be
15 transferred to another psychiatric facility for emergency
16 hospitalization, or both. The patient shall have the right
17 immediately upon admission to telephone the patient's guardian or
18 a family member or an adult friend and an attorney. If the
19 patient declines to exercise that right, the staff of the
20 facility shall inform the adult patient of the right to waive
21 notification to the family and shall make reasonable efforts to
22 ensure that the patient's guardian or family is notified of the
23 emergency admission but the patient's family need not be notified
24 if the patient is an adult and requests that there be no
25 notification. The patient shall be allowed to confer with an

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1 attorney in private.

2 For the purposes of this section:

3 "Economic expenses of life" means the cost of the daily
4 necessities of life including the cost food, housing and
5 clothing. It shall be considered sharing the expenses of life if
6 only one person pays the entire costs of the economic expenses of
7 life for two or more people living together; and

8 "Family" shall include those people who share a house or
9 apartment and the economic expenses of life."

10 SECTION 14. Statutory material to be repealed is bracketed.
11 New statutory material is underscored.

12 SECTION 15. This Act shall take effect upon its approval.

13

14

INTRODUCED BY: _____

Appendix E

HISTORICAL LESSONS¹

It is said that we as a society are doomed to repeat the mistakes of the past unless we study and learn the lessons of history. For the purposes of this report, the Commission finds the most compelling similarity of facts, and hence the existence of relevant lessons from history, in the treatment of "marriage" during the religious wars of 17th century England.²

Two other historical periods are less clear as relevant examples for the Commission's work. Most African-Americans prior to 1865 could get married using their own clergy or, at times, a state-licensed member of the clergy, but they would not be issued government certificates because they were slaves. Such couples were married but lacked certificates.

Jewish-Germans under the Nazi government were likewise capable of getting married but not being certified by the government.

In both these latter examples, however, the people being discriminated against were also denied many other basic human rights and were not considered full citizens. The married couples, or potentially marriable couples, in modern Hawaii who are being denied certificates are, however, accorded many more basic human rights than the slaves or Jews in these two examples.

Also, the slaves and Jews were generally in immutable situations -- they could not themselves change their race, slave-status, or ethnicity. The religious minorities of 17th century England were instead persecuted for their choice of religious belief -- they could themselves change their status by converting to the state church. For the same-gender couples in modern Hawaii who are discriminated against, many may have immutable sexual orientations, but at least some may have chosen their partner as a matter of choice.³

1. This appendix was contributed by Dr. Stauffer and approved and endorsed by the Commission.

2. One text, which includes key portions of the transcript from the historic Bushell's Case described later in the text, is Braithwaite, William C. *The Second Period of Quakerism*. York, England: William Sessions Limited, 1979 edition of the 1919 original volume.

See also the two general histories by Hill, Christopher: *Puritanism and Revolution*. New York: Schocken, 1958, and *The World Turned Upside Down*. New York: Viking, 1972.

3. The Hon. James Burns, acting associate justice of the Hawaii Supreme Court for the Baehr case, based his partial dissent on this point. I.e., that if sexual orientation is an immutable status, then discrimination exists; if it is not immutable, then perhaps it does not. *Baehr v. Lewin*, 74 Haw. 530, 585.

The court's majority ruled that the issue was not relevant as the discrimination was not on the basis of sexual orientation but purely on gender.

The historical example of the English persecutions would support this: whether a discriminated class is based on immutable grounds such as race or ethnicity, or whether it is based on mutable grounds such as religious belief, is irrelevant. As long as it is a protected class (such as religion, national origin, or gender), it should be accorded the proper level of protection.

Many other similarities exist between the English example and the modern Hawaii situation. The laws against the non-believers and wrong-believers in England were based on their "immorality" of religious belief and their "pernicious" conduct. The discrimination was based on the further belief that society-wide disaster would await England due to Divine retribution for allowing the wrong-believers and non-believers to legally exist.

The discrimination was also based on strongly-held majoritarian religious beliefs. And it was based on strongly-held majoritarian social beliefs, as and enacted into law by the people's representatives. The discrimination was also based on not wanting to extend "special rights" to the non-believers and wrong-believers. That is to say, the persecutory laws were equal in their application: all non-believers and wrong-believers were treated equally. It could be said that it would be granting a "special right" to allow any of them to worship in a manner anathema to the True Church and against the laws of the land.

This then is the historical case: for a decade in the 1650s the English throne was overturned and a non-monarchy republic established. The official Church of England, allied to the throne, also lost favor, while the "Nonconformist" churches held much power, particularly the Puritans (today's United Church of Christ).

With the restoration of the monarchy and re-establishment of the Kingdom in 1660, the state church also regained power. Laws were soon passed outlawing all Nonconformist faiths, particularly the newly founded Quakers (the Religious Society of Friends) and the Baptists.

Many Nonconformists saw their church buildings seized or shut-down, their clergy threatened with arrest or forced underground. With their worship officially outlawed, many would gather at dining tables in private homes with food set out before them, and hold their services. If the authorities burst in -- as they often did -- the worshipers could claim that they were simply gathered for a meal.

The Quakers went a step further, gathering outside their seized or government-destroyed meeting houses and holding their services in the open, daring the authorities to act. The government met the challenge, beating many worshippers and arresting thousands, with large numbers dying in the filthy prisons of the era. At the height of the "Intolerance" era, throughout large areas of England not a single adult male Quaker remained outside of jail.

The laws weighed heavily within the arena of marriage. Couples who married at a Nonconformist church were denied government marriage certificates. These marriages were not "legal marriages," and the spouses were not "legal spouses." Put another way, the couples were married, but lacked a government certificate because of religious discrimination on the part of the government.

These couples could be prosecuted under criminal statutes for "living in sin," their children could be harassed or sometimes taken away as being "illegitimate," and greedy relatives often could claim the family's assets at the time of death of one or both parents, thus dispossessing the children and at times the second spouse.

That is to say, the "major legal and economic marriage benefits" of the day guaranteed the right to legally cohabit, to have legal children, and to provide for an orderly probate process at the time of death, in favor of the surviving spouse and children. These benefits were denied to those married couples that did not have government certificates.

The persecution of the day created tremendous pressure on married couples seeking to provide benefits for their children. Several married Quaker couples, for instance, would

seek out a government-sanctioned priest to certify their relationships. But this meant breaking the doctrine of their own religion, which regarded the Church of England priests as agents of evil. Quaker congregations met often during this period to counsel and at times discipline couples who had sinned by consenting to "marriage by the priest."⁴

The government's witch hunt meanwhile reached its climax when the Quaker minister William Penn, later the founder of Pennsylvania, went to his seized and shuttered meeting house in London in 1670 and began services on the sidewalk outside. William Meade was in the congregation with other Friends, when the constables attacked.

The religious persecution laws permitted trials without jury, but the authorities unwittingly charged Penn and Meade with rioting, a charge accorded the right of jury. The trial was however short-lived, Penn appealing to the "fundamental rights" of all English citizens, and the judge ordering he and Meade hauled away.

The jury returned a decision of "not guilty" for Meade, and found Penn "guilty of speaking in Gracious Street," noting that street talk was no crime. The judge refused the verdict, whereupon it was repeated in writing by the jury and again refused, the jury then being sent off without "meat, drink, fire, and tobacco" until the next morning.

The next day found the jury unrepentant, with the judge threatening to cut off the jury foreman's nose, Penn claiming that menacing a jury violated the Magna Charta, and the court's recorder -- in words reminiscent of testimony received by the Commission -- calling for the (Quaker) perversion to be removed from the land through introducing the techniques of the Spanish Inquisition. The following day, with the jury still on their enforced fast, they again stood by their verdict, and when this was refused once more, they issued a new written verdict of "not guilty" for both Penn and Meade.

The judge then fined and jailed the jury and kept the now not-guilty Penn and Meade in jail as well. Word of the scandal, and the heroism of the non-Quaker jury, spread through the Kingdom. Months later the jury was released after an Habeas Corpus appeal. About a year later a higher court, led by a judge who evidently loved the Church of England but loved liberty more, issued the landmark Bushell's Case decision, named for Edward Bushell, an outspoken member of the jury.

Wrote the latter court, "what either necessary or convenient use can be fancied of [i.e., found for] juries, or [even] to continue trials by them at all" if their presiding judges do not give them the right to decide decisions?⁵ British and American principles of civil rights, including the right by a jury free to issue its own decision, have abided by the Bushell's Case's principles ever since.

Still, the religious wars continued, the level of persecution first ebbing and then flowing once again. Nearly twenty years later (1689) there was a Toleration Act that eased the oppression religious rules somewhat, but it was 1753 before Quaker marriages (for different-gendered couples) were universally certified by the government.

It was the fearful memories of the abuse of "fundamental rights" perpetrated by government-supported churches and religiously-influenced governmental laws that led

4. Braithwaite, p. 253.

5. Braithwaite, p. 73.

ultimately within the U.S. to adoption of the First Amendment's rules, (a) against the Federal government showing favoritism towards any particular religion, and, (b) against improper influence of religion in government. These two rules were then extended to the States after passage of the Fourteenth Amendment in 1868.

The Commission finds clear and convincing parallels between the events outlined above and the current marriage situation in Hawaii. Some of the Nonconformist churches of that earlier day, in their modern incarnations,⁶ and other churches,⁷ are today marrying together spouses, only to find that these couples cannot receive government certificates.

The Commission also finds that these many churches are legally protected in their right to marry same-gender couples,⁸ more than can be said for the lack of liberty given their counterparts in England three centuries ago. But these modern Hawaii churches and their members still cannot obtain certification for these marriages. Further, while history has judged the English authorities to have discriminated on the basis of religion, the Hawaii Supreme Court has judged the Hawaii State authorities to be showing discrimination today on the basis of gender. The Commission finds further that the broader question of whether something should be recommended to be done about this is addressed in the body of this report.

The lessons from the above historical parallels, however, reinforce the Commission's finding that it is necessary in this report to differentiate between "marriage" and being "legally married;" between being a spouse and being a "legal spouse;" and between being "married" and "having a government certificate." There are same-gender spouses in Hawaii today who are married and have formally celebrated their religious marriage ceremonies in their churches, presided over by government-licensed clergy.⁹ What does not exist today in Hawaii, however, are such couples that possess government certificates, just as there were so many married couples three centuries ago that were denied such certificates.

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6. I.e., in Hawaii, congregations of the United Church of Christ and of the Religious Society of Friends have both either married same-gender couples or announced their willingness to do so.
 7. E.g., the Unitarian-Universalists, some Lutherans, the Metropolitan churches, many Buddhist denominations, etc.
 8. Section 572-1.6, *Hawaii Revised Statutes* (1993 and Supp 1994).
 9. This also applies to couples ready, willing, and able to get married, who would be denied certificates if they got married and then applied for governmental certification. It also applies to couples who, like their different-gender counterparts, would desire to get certified by a judge.