

PROGRAM BILL # 22
GOVERNOR'S PROGRAM BILL

2007

MEMORANDUM

AN ACT to amend the domestic relations law, in relation to
the ability to marry

PURPOSE

This bill provides same-sex couples the same opportunity to enter into civil marriages as opposite-sex couples. The bill also provides that no member of the clergy may be compelled to perform any marriage ceremony.

SUMMARY OF PROVISIONS

Section 1 of the bill sets forth legislative intent.

Section 2 of the bill adds a new Section 10-a to the Domestic Relations Law (DRL) providing that: (1) a marriage that is otherwise valid shall be valid regardless of whether the parties to the marriage are of the same or different sex; (2) no government treatment or legal status, effect, right, benefit, privilege, protection or responsibility relating to marriage shall differ based on the parties to the marriage being or having been of the same sex rather than a different sex; and (3) all relevant gender-specific language set forth in or referenced by New York law shall be construed in a gender-neutral manner.

Section 3 of the bill amends DRL § 13 to provide that no application for a marriage license shall be denied on the ground that the parties are of the same, or a different, sex.

Section 4 of the bill amends DRL § 11(1) to make clear that no member of the clergy acting in such capacity may be required to perform any marriage.

Section 5 of the bill sets forth the effective date.

EXISTING LAW

Although the Domestic Relations Law contains no specific prohibition against, or allowance for, marriages between individuals of the same sex, the New York Court of Appeals has held that New York law does not allow for same-sex marriages. See Hernandez v. Robles, 7 N.Y.3d 338 (2005).

STATEMENT IN SUPPORT

The “freedom to marry” is, in the words of the United States Supreme Court, “one of the vital personal rights essential to the orderly pursuit of happiness by free [people].”¹ In New York, however, certain couples who seek to exercise this freedom, and partake of its rights and responsibilities by mutual consent, may not do so solely because they are of the same sex. The bar against same-sex marriages exists regardless of how long the individuals have lived together, or whether they are raising children through legally-recognized joint custody arrangements. This bill removes the barriers in New York law that deprive individuals of the equal right to marry the person of their choice, by granting the same legal recognition to all civil marriages regardless of whether those who enter into them are of the same, or of a different, sex.

Partners unable to enter into a civil marriage -- and their children -- lack basic legal protections taken for granted by married couples. In such areas as property ownership, inheritance, health care, hospital visitation, taxation, insurance coverage, child custody, pension benefits and testimonial privileges, married couples receive important safeguards against the loss or injury of a spouse, and crucial assurances against legal intrusion into their marital privacy. As important, unions lacking the state’s recognition are denoted, by force of law, as somehow not equal to other comparable relationships. Civil marriage is the means by which the state defines a couple’s place in society. Those who are excluded from its rubric are told by the institutions of the State, in essence, that their solemn commitment to one another has no legal weight.

Just as the right to marry confers important benefits on individuals, the institution of marriage produces incalculable benefits for society, by fostering stable familial relationships. Same-sex couples who wish to marry are not simply looking to obtain additional rights, they are seeking out substantial responsibilities as well: to undertake significant and binding obligations to one another, and to lives of “shared intimacy and mutual financial and emotional support.”² Granting legal recognition to these relationships can only strengthen New York’s families, by extending the ability to participate in this crucial social institution to all New Yorkers.

The history of this country for more than two centuries has been the story of once excluded individuals and groups gaining gradual access to equal rights under law. New York State, in particular, has played a proud and honorable part in that history, from hosting the foundational women’s rights convention at Seneca Falls in 1848, to breaking baseball’s color barrier, to witnessing the seminal event of the modern gay rights movement in New York City almost four decades ago. New York legislators and other political leaders, of both parties and of all viewpoints, have had an important role in this process, and in the gradual extension of equal treatment to gays and lesbians in particular. In 1983, Governor Mario Cuomo first banned discrimination in state employment by Executive Order. In 2002, Governor Pataki extended the same principle to the private sector by signing into law the Sexual Orientation Non-Discrimination Act. That year, the

¹*Loving v. Virginia*, 388 U.S. 1 (1967).

²*Hernandez v. Robles*, 7 N.Y.3d 338 (2005) (Kaye, C.J., dissenting)

State gave its first legal recognition to same-sex relationships when the Legislature unanimously passed – and the Governor signed – a bill extending workers’ compensation benefits to *all* those who lost a partner on 9/11. Yet the institution of marriage remains closed to loving same-sex couples who seek only to be able to show their mutual commitment as other individuals do. Passage of this bill would remedy that flaw, and represent yet another important and historic step in the process by which all citizens of New York State are granted full and equal rights.

Individuals on both sides of the questions raised by this bill hold deep-seated views that arise from a host of ethical and religious considerations. To ensure that the bill does not improperly intrude into matters of conscience or religious belief, the bill affirms that no member of the clergy can be compelled to solemnize any marriage. In short, this bill grants equal access to the government-created *legal* institution of civil marriage, while leaving the *religious* institution of marriage to its own separate, and fully autonomous, sphere.

BUDGET IMPLICATIONS

The bill will require additional state expenditures for spousal benefits for those partners of state employees who are not eligible for such benefits under current law. The budgetary impact, however, will be offset to the extent same-sex couples enjoy such benefits through a variety of administrative schemes. In particular, the Department of Civil Service already offers most state employees health and other insurance benefits for their domestic partners. Certain municipalities, including New York City, offer similar access to benefits.

Married same-sex couples could theoretically file joint tax returns, which would have a positive or negative impact on revenues, depending on the particularities of the differential tax treatment received by specific joint filings. In any case, since such filings almost always follow federal requirements, the bill is unlikely to have any impact in this area unless there is a change in federal law.

EFFECTIVE DATE

This bill takes effect immediately.