

# PROGRAM BILL # 24

## GOVERNOR'S PROGRAM BILL

2011

### MEMORANDUM

AN ACT to amend the domestic relations law, in relation to the ability to marry; and to amend a chapter of the laws of 2011, amending the domestic relations law relating to the ability to marry, as proposed in legislative bill number A. 8354, in relation to the statutory construction of such chapter; and repealing certain provisions of the domestic relations law relating to parties to a marriage

#### PURPOSE:

This bill would amend the Marriage Equality Act, which was added by a chapter of laws of 2011.

#### SUMMARY OF PROVISIONS:

Section 1 of this bill would repeal Domestic Relations Law (DRL) § 10-b, as added by a chapter of the laws of 2011, and create a new DRL § 10-b to provide that no religious entity, benevolent organization, not-for-profit corporation operated, supervised or controlled by a religious entity, or employee being managed, directed or supervised by any of the aforementioned entities shall be required to solemnize or celebrate a marriage, including marriages between same-sex couples, and such entity or employee would not be subject to legal or regulatory action by state or local governments for refusing to solemnize or celebrate a marriage. Further, Section 1 would re-affirm constitutional and statutory principles afforded to religious entities.

Section 2 of this bill would amend DRL § 11(1), as added by a chapter of the laws of 2011, to make clear that no member of the clergy acting in that capacity may be required to perform a marriage or be subject to legal or regulatory action for refusing to solemnize or celebrate a marriage.

Section 3 of this bill would add a new Section 5-a to a chapter of the laws of 2011, amending the DRL to provide that all parts of this act shall be read together and that if any part of the act is ultimately deemed invalid through the judicial process, the remainder shall be considered invalid. This section would also affirm an aggrieved party's right to appeal any judicial action arising under the Act.

Section 4 of the bill sets forth the effective date, which shall be the same date as such chapter of the laws of 2011 takes effect.

**EXISTING LAW:**

The DRL outlines the requirements and criteria two people must satisfy to enter into a civil marriage in the state. Although the DRL contains no specific prohibition against, or allowance for, marriages between individuals of the same sex, the New York Court of Appeals has held that the law limits marriage within New York State to different-sex couples. *See Hernandez v. Robles*, 7 N.Y.3d 338 (2005).

In recognition of well-established common law, however, New York courts have also held that marriages between individuals of the same sex legally performed in other jurisdictions are “entitled to recognition in New York in the absence of express legislation to the contrary.” *See Martinez v. City of Monroe*, 50 A.D.3d 189 (4th Dep’t 2008); *see also, Godfrey v. Spano*, 15 Misc. 3d 809 (Sup.Ct. Westchester County 2007) and *Funderburke v. N.Y. State Dep’t of Civil Service*, 49 A.D. 3d. 809 (2d Dep’t 2008).

Because civil marriage is a relationship sanctioned, licensed and recognized by the state, it does not require the blessing or involvement of any religious institution. The federal and state Constitutions, as well as the New York Human Rights Law, guarantee that religious institutions cannot be forced to marry individuals in violation of their religious beliefs or otherwise have their freedom of worship curtailed as the result of same-sex couples being allowed to legally marry in New York. N.Y. Exec. Law § 296(11). Furthermore, while the New York Human Rights Law makes it unlawful to discriminate on the basis of sexual orientation, it carves out exemptions for religious institutions and benevolent organizations. *See* N.Y. Exec. Law § 296 (11)<sup>1</sup>, N.Y. Exec. Law § 292(2).<sup>2</sup>

**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.”<sup>3</sup> In New York, however, certain couples who seek to exercise this personal right may not do so solely because they are of the same sex. The bar against same-sex couples entering into marriages exists regardless of whether they are committed to each other, whether they have lived together for six months or 30 years, whether they have joined their finances or purchased property together, or whether they have conceived or adopted children. Rather, same-sex couples are simply unable to marry in this State, and therefore are denied the equal freedom to enter into a state-created and legally secured bond of personal, social and economic significance. This bill removes the

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<sup>1</sup> N.Y. Exec. Law § 296(11) states: “Nothing contained in this section shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or sales or rental of housing accommodations or admission to or giving preference to persons of the same religion or denomination or from taking such action as is calculated by such organization to promote the religious principles for which it is established or maintained.”

<sup>2</sup> N.Y. Exec. Law § 292(9) states: “... a corporation incorporated under the benevolent orders law or described in the benevolent orders law but formed under any other law of this state or a religious corporation incorporated under the education law or the religious corporations law shall be deemed to be in its nature distinctly private.”

<sup>3</sup> *Loving v. Virginia*, 388 U.S. 1 (1967).

barriers in New York law that currently deprive individuals of the equal right to marry the person of their choice.

Civil marriage provides a comprehensive structure of state-sanctioned protections, benefits and mutual responsibilities for couples who are permitted to marry. In such areas as health care, hospital visitation, child custody, pension benefits, property ownership, inheritance, taxation, insurance coverage, 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. New York's more than 50,000 same-sex couples and their families confront many of the same life challenges as their different-sex counterparts, but are denied these basic protections. Further, couples who are denied the State's recognition are denoted, by force of law and policy, as not equal to couples in other comparable relationships. Couples who are excluded from marriage 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."<sup>4</sup> 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.

For more than two centuries, New York has stood at the forefront in advancing equal rights for all – from hosting the women's rights convention at Seneca Falls, to breaking baseball's color barrier, to starting the modern "gay rights movement" in New York City four decades ago. New York legislators and other political leaders, of all parties, have played important roles in advancing civil rights protections for all New Yorkers, and in the extension of equal treatment to lesbians and gay men in particular. For example, in 1983, New York State banned discrimination based on sexual orientation in state employment by Executive Order. In 2002, the state extended the same principle to the private sector by enacting the Sexual Orientation Non-Discrimination Act. That same year, the state, for the first time, legally recognized same-sex relationships by extending workers' compensation benefits to all those who lost a partner on 9/11.

Despite these advances, the institution of civil marriage remains closed to loving same-sex couples. Passage of this bill would remedy this exclusionary policy, and represent yet another significant step in granting full and equal rights to all citizens of New York State.

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. By doing so, 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.

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<sup>4</sup> *Hernandez v. Robles*, 7 N.Y. 3d 338 (2005) (Kaye, C.J., dissenting).

Beyond the freedom that clergy will retain over marriage decisions, the bill also ensures that the statutory protections for religious organizations found in the New York Human Rights law remains intact, including, guaranteeing that religious institutions remain free to choose who may use their facilities and halls for marriage ceremonies and celebrations, to whom they rent their housing accommodations, or to whom they provide religious services, consistent with their religious principles. Further, the bill contains language to ensure that benevolent organizations, like the Knights of Columbus, remain exempt from New York prohibitions against discrimination in public accommodations, and are not be required to rent social halls to weddings of same-sex or other couples they choose not to accommodate. N.Y. Exec. Law § 292(9).<sup>5</sup>

### **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, and who are married under this legislation. Under current law, state expenditures for spousal benefits for same-sex couples are permitted if a couple was legally married in a different state or if the couple is recognized by the State of New York as a domestic partners.

At the same time, however, allowing same-sex marriage would have numerous positive fiscal impacts. A 2007 report by the New York City Comptroller detailed numerous sources of added revenue that would result from enacting marriage equality in New York State, including tax revenue from additional weddings, higher intake of marital licensing fees and reduction of means-tested benefit payments as a result of aggregated marital income. Moreover, any negative budgetary impact from added benefit payments will be limited, as many same-sex couples already enjoy such benefits through a variety of administrative schemes, or as a result of out-of-state marriages.

### **EFFECTIVE DATE:**

This bill takes effect on the same date as such chapter of the laws of 2011 takes effect.

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<sup>5</sup> New York Human Rights Law exempts from the public accommodations non-discrimination law a long list of organizations “incorporated under the benevolent orders law.” N.Y. Exec. Law § 292(9). This list of exempt organizations expressly includes the Knights of Columbus, N.Y. Ben. Ord. Law § 2(12), as well as, for example, Masons organizations, *id.* at § 2(1)-(3), and the Catholic Daughters of America, *id.* at § 2(23).