

A8354 O'Donnell (MS) No Same as

Governor Program # 14

Domestic Relations Law

TITLE....Enacts the Marriage Equality Act relating to ability of individuals to marry

06/14/11 referred to judiciary

06/15/11 reported referred to rules

06/15/11 reported

06/15/11 rules report cal.320

06/15/11 ordered to third reading rules cal.320

06/15/11 message of necessity - 3 day message

06/15/11 passed assembly

06/15/11 delivered to senate

06/24/11 ORDERED TO THIRD READING CAL.1545

06/24/11 MESSAGE OF NECESSITY

06/24/11 PASSED SENATE

06/24/11 RETURNED TO ASSEMBLY

06/24/11 delivered to governor

06/24/11 signed chap.95

| Chapter | Bill No. | Signed Date | Effective Date |
|----------------|-----------------|--------------------|--|
| 95 | A8354 | 06/24/2011 | takes effect on (7/24/11) the thirtieth day after it shall have become a law |

STATE OF NEW YORK

8354

2011-2012 Regular Sessions

IN ASSEMBLY

June 14, 2011

Introduced by M. of A. O'DONNELL, GOTTFRIED, GLICK, TITONE, KELLNER, BRONSON, J. RIVERA, SILVER, FARRELL, SAYWARD, LENTOL, NOLAN, WEISENBERG, ARROYO, BRENNAN, DINOWITZ, HOYT, LIFTON, MILLMAN, CAHILL, PAULIN, REILLY, BING, JEFFRIES, JAFFEE, ROSENTHAL, KAVANAGH, DenDEKKER, SCHIMEL, HEVESI, BENEDETTO, SCHROEDER, J. MILLER, LAVINE, LANCMAN, LINARES, MOYA, ROBERTS, SIMOTAS, ABINANTI, BRAUNSTEIN -- Multi-Sponsored by -- M. of A. AUBRY, BOYLAND, BROOK-KRASNY, CANESTRARI, COOK, DUPREY, ENGLEBRIGHT, LATIMER, V. LOPEZ, LUPARDO, MAGNARELLI, McENENY, MORELLE, ORTIZ, PRETLOW, RAMOS, N. RIVERA, P. RIVERA, RODRIGUEZ, RUSSELL, SWEENEY, THIELE, TITUS, WEPRIN, WRIGHT, ZEBROWSKI -- (at request of the Governor) -- read once and referred to the Committee on Judiciary

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

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. This act shall be known and may be cited as the "Marriage
2 Equality Act".
3 § 2. Legislative intent. Marriage is a fundamental human right. Same-
4 sex couples should have the same access as others to the protections,
5 responsibilities, rights, obligations, and benefits of civil marriage.
6 Stable family relationships help build a stronger society. For the
7 welfare of the community and in fairness to all New Yorkers, this act
8 formally recognizes otherwise-valid marriages without regard to whether
9 the parties are of the same or different sex.
10 It is the intent of the legislature that the marriages of same-sex and
11 different-sex couples be treated equally in all respects under the law.
12 The omission from this act of changes to other provisions of law shall
13 not be construed as a legislative intent to preserve any legal
14 distinction between same-sex couples and different-sex couples with
15 respect to marriage. The legislature intends that all provisions of law

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 which utilize gender-specific terms in reference to the parties to a
2 marriage, or which in any other way may be inconsistent with this act,
3 be construed in a gender-neutral manner or in any way necessary to
4 effectuate the intent of this act.

5 § 3. The domestic relations law is amended by adding two new sections
6 10-a and 10-b to read as follows:

7 § 10-a. Parties to a marriage. 1. A marriage that is otherwise valid
8 shall be valid regardless of whether the parties to the marriage are of
9 the same or different sex.

10 2. No government treatment or legal status, effect, right, benefit,
11 privilege, protection or responsibility relating to marriage, whether
12 deriving from statute, administrative or court rule, public policy,
13 common law or any other source of law, shall differ based on the parties
14 to the marriage being or having been of the same sex rather than a
15 different sex. When necessary to implement the rights and responsibil-
16 ities of spouses under the law, all gender-specific language or terms
17 shall be construed in a gender-neutral manner in all such sources of
18 law.

19 § 10-b. Application. 1. Notwithstanding any other provision of law,
20 pursuant to subdivision nine of section two hundred ninety-two of the
21 executive law, a corporation incorporated under the benevolent orders
22 law or described in the benevolent orders law but formed under any other
23 law of this state or a religious corporation incorporated under the
24 education law or the religious corporations laws shall be deemed to be
25 in its nature distinctly private and therefore, shall not be required to
26 provide accommodations, advantages, facilities or privileges related to
27 the solemnization or celebration of a marriage.

28 2. A refusal by a benevolent organization or a religious corporation,
29 incorporated under the education law or the religious corporations law,
30 to provide accommodations, advantages, facilities or privileges in
31 connection with section ten-a of this article shall not create a civil
32 claim or cause of action.

33 3. Pursuant to subdivision eleven of section two hundred ninety-six of
34 the executive law, nothing in this article shall be deemed or construed
35 to prohibit any religious or denominational institution or organization,
36 or any organization operated for charitable or educational purposes,
37 which is operated, supervised or controlled by or in connection with a
38 religious organization from limiting employment or sales or rental of
39 housing accommodations or admission to or giving preference to persons
40 of the same religion or denomination or from taking such action as is
41 calculated by such organization to promote the religious principles for
42 which it is established or maintained.

43 § 4. Section 13 of the domestic relations law, as amended by chapter
44 720 of the laws of 1957, is amended to read as follows:

45 § 13. Marriage licenses. It shall be necessary for all persons
46 intended to be married in New York state to obtain a marriage license
47 from a town or city clerk in New York state and to deliver said license,
48 within sixty days, to the clergyman or magistrate who is to officiate
49 before the marriage ceremony may be performed. In case of a marriage
50 contracted pursuant to subdivision four of section eleven of this chap-
51 ter, such license shall be delivered to the judge of the court of record
52 before whom the acknowledgment is to be taken. If either party to the
53 marriage resides upon an island located not less than twenty-five miles
54 from the office or residence of the town clerk of the town of which such
55 island is a part, and if such office or residence is not on such island
56 such license may be obtained from any justice of the peace residing on

1 such island, and such justice, in respect to powers and duties relating
2 to marriage licenses, shall be subject to the provisions of this article
3 governing town clerks and shall file all statements or affidavits
4 received by him while acting under the provisions of this section with
5 the town clerk of such town. No application for a marriage license shall
6 be denied on the ground that the parties are of the same, or a differ-
7 ent, sex.

8 § 5. Subdivision 1 of section 11 of the domestic relations law, as
9 amended by chapter 319 of the laws of 1959, is amended and a new subdivi-
10 sion 1-a is added to read as follows:

11 1. A clergyman or minister of any religion, or by the senior leader,
12 or any of the other leaders, of The Society for Ethical Culture in the
13 city of New York, having its principal office in the borough of Manhat-
14 tan, or by the leader of The Brooklyn Society for Ethical Culture,
15 having its principal office in the borough of Brooklyn of the city of
16 New York, or of the Westchester Ethical Society, having its principal
17 office in Westchester county, or of the Ethical Culture Society of Long
18 Island, having its principal office in Nassau county, or of the River-
19 dale-Yonkers Ethical Society having its principal office in Bronx coun-
20 ty, or by the leader of any other Ethical Culture Society affiliated
21 with the American Ethical Union; provided that no clergyman or minister
22 as defined in section two of the religious corporations law, or Society
23 for Ethical Culture leader shall be required to solemnize any marriage
24 when acting in his or her capacity under this subdivision.

25 1-a. A refusal by a clergyman or minister as defined in section two of
26 the religious corporations law, or Society for Ethical Culture leader to
27 solemnize any marriage under this subdivision shall not create a civil
28 claim or cause of action.

29 § 6. This act shall take effect on the thirtieth day after it shall
30 have become a law.

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A8354

SPONSOR: O'Donnell (MS)

TITLE OF BILL: An act to amend the domestic relations law, in relation to the ability to marry

PURPOSE: The Marriage Equality Act amends the domestic relations law to grant same-sex couples the ability to enter into civil marriages in New York, while preserving the well-established constitutional and statutory principles that no member of the clergy may be compelled to perform any marriage ceremony. The Act also re-affirms that religious institutions and benevolent organizations cannot be required to participate in same-sex marriage ceremonies or celebrations.

SUMMARY OF PROVISIONS: Section 1 of this bill is the short title, "Marriage Equality Act."

Section 2 of this bill would set forth legislative intent.

Section 3 of this bill would add 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 this bill would add a new Section 10-b to the DRL to re-affirm that legalizing marriage for same-sex couples would not limit the protections and exemptions provided to benevolent organizations and religious institutions.

Section 4 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 5 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 6 of the bill sets forth the effective date.

EXISTING LAW: New York's Domestic Relations Law outlines the requirements and criteria two people must satisfy to enter into a civil marriage in the state. 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 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){1}, N.Y. Exec. Law § 292(2).{2}

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." {3} 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 denied the equal freedom to enter into a state-created and legally secured bond of personal, social and economic significance. This bill removes the 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."⁴ 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. 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.

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 it chooses not to accommodate. N.Y. Exec. Law § 292(9).⁵

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 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 Comp-

troller 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 thirtieth day after it shall become law.

{1} 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."

{2} 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 religions corporations law shall be deemed to be in its nature distinctly private."

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

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

{5} 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).

LAWS OF NEW YORK, 2011

CHAPTER 95

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

Became a law June 24, 2011, with the approval of the Governor. Passed on message of necessity pursuant to Article III, section 14 of the Constitution by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "Marriage Equality Act".

§ 2. Legislative intent. Marriage is a fundamental human right. Same-sex couples should have the same access as others to the protections, responsibilities, rights, obligations, and benefits of civil marriage. Stable family relationships help build a stronger society. For the welfare of the community and in fairness to all New Yorkers, this act formally recognizes otherwise-valid marriages without regard to whether

the parties are of the same or different sex.

It is the intent of the legislature that the marriages of same-sex and different-sex couples be treated equally in all respects under the law. The omission from this act of changes to other provisions of law shall not be construed as a legislative intent to preserve any legal distinction between same-sex couples and different-sex couples with respect to marriage. The legislature intends that all provisions of law which utilize gender-specific terms in reference to the parties to a marriage, or which in any other way may be inconsistent with this act, be construed in a gender-neutral manner or in any way necessary to effectuate the intent of this act.

§ 3. The domestic relations law is amended by adding two new sections 10-a and 10-b to read as follows:

§ 10-a. Parties to a marriage. 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, whether deriving from statute, administrative or court rule, public policy, common law or any other source of law, shall differ based on the parties to the marriage being or having been of the same sex rather than a different sex. When necessary to implement the rights and responsibilities of spouses under the law, all gender-specific language or terms shall be construed in a gender-neutral manner in all such sources of law.

§ 10-b. Application. 1. Notwithstanding any other provision of law, pursuant to subdivision nine of section two hundred ninety-two of the executive law, 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 laws shall be deemed to be

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

in its nature distinctly private and therefore, shall not be required to provide accommodations, advantages, facilities or privileges related to the solemnization or celebration of a marriage.

2. A refusal by a benevolent organization or a religious corporation, incorporated under the education law or the religious corporations law, to provide accommodations, advantages, facilities or privileges in connection with section ten-a of this article shall not create a civil claim or cause of action.

3. Pursuant to subdivision eleven of section two hundred ninety-six of the executive law, nothing in this article shall be deemed or construed to prohibit 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.

§ 4. Section 13 of the domestic relations law, as amended by chapter 720 of the laws of 1957, is amended to read as follows:

§ 13. Marriage licenses. It shall be necessary for all persons intended to be married in New York state to obtain a marriage license from a town or city clerk in New York state and to deliver said license, within sixty days, to the clergyman or magistrate who is to officiate before the marriage ceremony may be performed. In case of a marriage contracted pursuant to subdivision four of section eleven of this chapter, such license shall be delivered to the judge of the court of record before whom the acknowledgment is to be taken. If either party to the marriage resides upon an island located not less than twenty-five miles from the office or residence of the town clerk of the town of which such island is a part, and if such office or residence is not on such island such license may be obtained from any justice of the peace residing on such island, and such justice, in respect to powers and duties relating to marriage licenses, shall be subject to the provisions of this article governing town clerks and shall file all statements or affidavits received by him while acting under the provisions of this section with the town clerk of such town. No application for a marriage license shall be denied on the ground that the parties are of the same, or a different, sex.

§ 5. Subdivision 1 of section 11 of the domestic relations law, as amended by chapter 319 of the laws of 1959, is amended and a new subdivision 1-a is added to read as follows:

1. A clergyman or minister of any religion, or by the senior leader, or any of the other leaders, of The Society for Ethical Culture in the city of New York, having its principal office in the borough of Manhattan, or by the leader of The Brooklyn Society for Ethical Culture, having its principal office in the borough of Brooklyn of the city of New York, or of the Westchester Ethical Society, having its principal office in Westchester county, or of the Ethical Culture Society of Long Island, having its principal office in Nassau county, or of the Riverdale-Yonkers Ethical Society having its principal office in Bronx county, or by the leader of any other Ethical Culture Society affiliated with the American Ethical Union; provided that no clergyman or minister as defined in section two of the religious corporations law, or Society for Ethical Culture leader shall be required to solemnize any marriage when acting in his or her capacity under this subdivision.

1-a. A refusal by a clergyman or minister as defined in section two of the religious corporations law, or Society for Ethical Culture leader to solemnize any marriage under this subdivision shall not create a civil claim or cause of action.

§ 6. This act shall take effect on the thirtieth day after it shall have become a law.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

DEAN G. SKELOS
Temporary President of the Senate

SHELDON SILVER
Speaker of the Assembly
