

## Memorandum in Support

NYSBA Memorandum #8-A

June 22, 2009

S. 4401

By: Senator Duane

A. 7732

By: M. of A. O'Donnell

Senate Committee: Judiciary

Assembly Committee: Judiciary

Effective Date: Immediately

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

### **THE NEW YORK STATE BAR ASSOCIATION SUPPORTS THIS LEGISLATION**

This bill is the Governor's Program Bill #10 and it 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.

Section 1 of the bill sets forth legislative intent, stating, in part, that "[i]t 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."

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.

## Support for Civil Marriage

In 2005, the State Bar Association approved a report from its Special Committee to Study Issues Affecting Same-Sex Couples that contained a comprehensive review and analysis of the legal and constitutional issues surrounding same-sex couples, an examination of the steps that had been taken to address these issues, and a series of conclusions about ways in which the New York State Legislature might address this subject. A resolution adopted by the Association's House of Delegates, its policy-making body, called for legislation to afford same-sex couples the ability to obtain the comprehensive set of rights and responsibilities available to opposite sex couples. The 2005 resolution provided that these rights might be achieved in the form of a domestic partnership registry, civil unions, or an amendment to the statutory definition of marriage.

There have been many developments since 2005, both in New York and throughout the country with regard to marriage rights. One critical event was the decision of the New York Court of Appeals in *Hernandez v. Robles*, 7 NY3d 338 (2005), where the Court held that New York law does not allow for same-sex marriages. The Court further said that recognition of such marriages is a question to be addressed by the Legislature.

In 2008, the Association's Special Committee on LGBT People and the Law conducted a follow-up study and drafted an updated report. Part of the report analyzed the use of civil unions and domestic partnerships in other jurisdictions, and whether those alternatives to marriage have succeeded in affording comprehensive rights for same-sex couples. The report concluded that same-sex couples in other states where these alternative structures had been adopted (such as Vermont and New Jersey) failed to receive equal rights, and that civil marriage was the only way to vest same-sex couples with the full panoply of rights and responsibilities enjoyed by married opposite-sex couples.

On June 20, 2009, the Association's House of Delegates approved the report and recommendations of the Special Committee on LGBT People and the Law (available at <http://www.nysba.org/LGBTreportandresolution>), along with a report and analysis of the Association's Trusts & Estates Law Section, which reached the same conclusion. Accordingly, the Association now supports the amendment of the Domestic Relations Law to permit same-sex marriage, which is the only statutory change that would convey full equality of legal marriage rights for same-sex couples.

Based on the foregoing, the New York State Bar Association SUPPORTS this legislation.