



9-2012

Charting the Success of Same-Sex Marriage Legislation

Robin F. Wilson

Washington and Lee University School of Law, wilsonrf@wlu.edu

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/wlufac>



Part of the [Family Law Commons](#)

Recommended Citation

Robin Fretwell Wilson, *Charting the Success of Same-Sex Marriage Legislation*, 2012.

This Article is brought to you for free and open access by the Faculty Scholarship at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Scholarly Articles by an authorized administrator of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

**Charting the Success of Same-Sex Marriage Legislation:
An Appendix to The Calculus of Accommodation:
**Contraception, Abortion, Same-Sex Marriage,
and Other Clashes between Religion and Civil Society****

By

Robin Fretwell Wilson

NEW YORK

Legislation proposed in 2009 was passed by the Assembly, the lower house of the New York Legislature, by a vote of 89-52 on May 12, 2009. The New York Senate rejected the legislation on December 2, 2009, by a vote of 24 to 38.¹ In 2011, Governor Andrew M. Cuomo proposed The Marriage Equality Act, a revised bill which included the religious protection from 2009 described in column one, which was itself amended to include even more protections. The Act was approved by the New York Assembly on June 15, 2011 by a vote of 80 to 63. It was approved by the New York Senate on June 24, 2011 by a vote of 33 to 29.²

| | Initial Same-Sex Marriage Bill: | Revised Same-Sex Marriage Bill: | Enacted Same-Sex Marriage Legislation: |
|----------------------------------|---|---|---|
| CLERGY EXEMP- TION | New York, 2009: (clergy exemption): Senate Bill 4401, § 4: 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 | New York, 2011 (Governor Cuomo’s Bill): An Act to Amend the Domestic Relations Law, § 5, contains text identical to Senate Bill 4401, § 4 | New York, 2011: N.Y. Dom. Rel. Law § 11(1): contains text identical to Senate Bill 4401, § 4: 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 |

¹ See Jeremy W. Peters, *N.Y. Assembly Passes Gay Marriage Bill*, N.Y. Times, May 12, 2009; Dwyer Acre, *New York Senate Rejects Same-Sex Marriage Legislation*, Jurist, Dec. 2, 2009.

² See Nicholas Confessore and Michael Barbaro, *New York Allows Same-Sex Marriage, Becoming Largest State to Pass Law*, New York Times, June 24, 2011.

| | | | |
|--|---|---|--|
| | <p>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.</p> | | <p>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.</p> |
| <p>NO CIVIL CAUSE OF ACTION OR PENALTY</p> | <p>New York, 2009: No protective language</p> | <p>New York, 2011 (Governor Cuomo’s Bill): An Act to Amend the Domestic Relations Law, § 5: 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.</p> | <p>New York, 2011 (both protections): New York Dom. Rel. Law § 11(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 or result in any state or local government action to penalize, withhold benefits or discriminate against such clergyman or minister.</p> |
| <p>RELIGIOUS INSTITUTIONS</p> | <p>New York, 2009: No protective language</p> | <p>New York, 2011 (Governor Cuomo’s Bill): An Act to Amend the Domestic Relations Law, § 3: Notwithstanding any other provision of law,</p> | <p>New York, 2011 (both protections): New York Dom. Rel. Law § 10(b)(1): Notwithstanding any state, local or municipal law, rule, regulation, ordinance, or other provision of law to the contrary, a religious entity as</p> |

| | | | |
|---|--|---|--|
| <p>AND BE- NEVALENT ORGANIZ- ATIONS</p> | | <p>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 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 . . . (continues below)</p> | <p>defined under the education law or section two of the religious corporations law, or 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 not-for-profit corporation operated, supervised, or controlled by a religious corporation, or any employee thereof, being managed, directed, or supervised by or in conjunction with a religious corporation, benevolent order, or a not-for-profit corporation as described in this subdivision, shall not be required to provide services, accommodations, advantages, facilities, goods, or privileges for the solemnization or celebration of a marriage. . . . (continues below)</p> |
| <p>RELIGIOUS ORGANIZ- ATIONS: NO CIVIL CAUSE OF ACTION OR PENALTY</p> | <p>New York, 2009: No protective language</p> | <p>New York, 2011 (Governor Cuomo’s Bill): An Act to Amend the Domestic Relations Law, § 3 (continued): . . . 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 [a same-sex marriage] shall not create a civil claim or cause of action.</p> | <p>New York, 2011 (both protections): New York Dom. Rel. Law § 10(b)(1) (continued): . . . Any such refusal to provide services, accommodations, advantages, facilities, goods, or privileges shall not create any civil claim or cause of action or result in any state or local government action to penalize, withhold benefits, or discriminate against such religious corporation, benevolent order, a not-for-profit corporation operated, supervised, or controlled by a religious corporation, or any employee thereof being managed, directed, or supervised by or in conjunction with a religious corporation, benevolent order, or a not-for-profit corporation.</p> |
| <p>RELIGIOUS NOT-FOR- PROFITS</p> | <p>New York, 2009: No protective language</p> | <p>New York, 2011 (Governor Cuomo’s Bill): No protective language</p> | <p>New York, 2011 (protected): New York Dom. Rel. Law § 10(b)(1): Notwithstanding any state, local or municipal law, rule, regulation, ordinance, or other provision of law to the contrary, a not-for-profit corporation operated, supervised, or controlled by a religious corporation,</p> |

| | | | |
|--|-------------------------------|---|--|
| | | | <p>or any employee thereof, being managed, directed, or supervised by or in conjunction with a . . . not-for-profit corporation as described in this subdivision, shall not be required to provide services, accommodations, advantages, facilities, goods, or privileges for the solemnization or celebration of a marriage. Any such refusal to provide services, accommodations, advantages, facilities, goods, or privileges shall not create any civil claim or cause of action or result in any state or local government action to penalize, withhold benefits, or discriminate against such . . . a not-for-profit corporation operated, supervised, or controlled by a religious corporation, or any employee thereof being managed, directed, or supervised by or in conjunction with a . . . not-for-profit corporation.</p> |
| <p>RELIGIOUS PREFER- ENCES</p> | <p>New York, 2009:</p> | <p>New York, 2011 (Governor Cuomo’s Bill):</p> <p>An Act to Amend the Domestic Relations Law, § 3: [N]othing 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.</p> | <p>New York, 2011 (protected):</p> <p>New York Dom. Rel. Law § 10(b)(2): [N]othing in this article shall limit or diminish the right . . . of 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, to limit employment or sales or rental of housing accommodations or admission to or give 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.</p> |

MAINE

The 2009 Act to End Discrimination in Civil Marriage and Affirm Religious Freedom passed both houses of the Maine Legislature by overwhelming margins of approximately 60%. In the House of Representatives, 89 legislators voted for the bill, 57 voted against the bill, and 5 members were absent from the vote. In the Senate, 21 legislators voted for the bill, 13 voted against the bill, and 1 senator was absent from the vote. However, less than two months after the legislation went into effect, on November 3, 2009, Maine voters exercised a “people’s veto” over the legislation during a general election by narrowly affirming Question One: “Do you want to reject the new law that lets same-sex couples marry and allows individuals and religious groups to refuse to perform these marriages?” Of 568,676 citizens who cast ballots on this issue, 52.9% voted in favor of Question One and 47.1% voted against the question and thus for retention of the new law. Thus, Question One’s language made the bill’s religious protection explicitly clear to the voters – and the voters clearly felt that protection was not sufficient. ³EqualityMaine has organized a petition drive to support placement of a 2012 ballot initiative that will ask Maine voters “Do you favor a law allowing marriage licenses for same-sex couples that protects religious freedom by ensuring no religion or clergy be required to perform such a marriage in violation of their religious beliefs?”⁴

| | Initial Same-Sex Marriage Bill: | Revised Same-Sex Marriage Bill: | Enacted Same-Sex Marriage Legislation: |
|--------------------------|--|--|---|
| CLERGY EXEMPT- ION | <p>Maine, 2009 (enacted, subsequently repealed):</p> <p>An Act to End Discrimination in Civil Marriage and Affirm Religious Freedom, Pub. Law 1020 (2009), amended Chapter 82, Section 3 of the Maine Revised Statutes to read: 3. Affirmation of religious freedom. This Part does not authorize any court or other state or local governmental body, entity, agency or commission to compel, prevent or interfere in any way with</p> | None | Maine, 2009 (legislation repealed) |

³ See State of Maine Legislature, Bill Info and Summary, *Summary of LD 1020*, <http://www.mainelegislature.org/LawMakerWeb/summary.asp?ID=280031932>; State of Maine, Bur. of Corp’ns., Elections, & Comm’ns., *Citizen’s Guide to the Referendum Election*, <http://www.maine.gov/sos/cec/elec/2009/intent09.htm>; Maine, Bur. of Corp’ns., Elections, & Comm’ns., *November 3, 2009 General Election Tabulations*, <http://www.maine.gov/sos/cec/elec/2009/referendumbycounty.html>. See also Abby Goodnough, *A Setback in Maine for Gay Marriage, but Medical Marijuana Law Expands*, N.Y. TIMES, Nov. 4, 2009 at http://www.nytimes.com/2009/11/05/us/politics/05maine.html?_r=3.

⁴ See Rebekah Metzler, *Language for Same-Sex Petitions Approved*, Maine Morning Sentinel, Aug. 18, 2011.

any religious institution's religious doctrine, policy, teaching or solemnization of marriage within that particular religious faith's tradition as guaranteed by the Maine Constitution, Article 1, Section 3 or the First Amendment of the United States Constitution. **A person authorized to join persons in marriage and who fails or refuses to join persons in marriage is not subject to any fine or other penalty** for such failure or refusal.

NEW JERSEY

The Freedom of Religion and Equality in Civil Marriage Act was narrowly approved by the New Jersey Senate Judicial Committee by a vote of 7 to 6 on December 7, 2009 after protective language stating that clergy would not be required to perform same-sex marriages was added to the legislation. On January 7, 2010 the full Senate rejected the Act by a vote of 20 to 14.⁵ On January 10, 2012, the Marriage Equality and Religious Exemption Act was introduced in the New Jersey Senate.⁶ The bill provided a much broader range of religious protections and was passed by the Senate on February 13, 2012 by a vote of 24 to 16.⁷ The same legislation passed the lower chamber, the New Jersey Assembly, on February 16, 2012 by a vote of 42 to 33.⁸ New Jersey Governor Chris Christie vetoed the legislation on February 17, 2012.⁹

| | Initial Same-Sex Marriage Bill: | Revised Same-Sex Marriage Bill: | Enacted Same-Sex Marriage Legislation: |
|---------------------|--|--|---|
| CLERGY EXEMPTION | New Jersey, 2008: Bill A2978, the Freedom of Religion and Equality in Civil Marriage Act, § 5: No member of the clergy of any religion authorized to solemnize marriage and no religious society, institution or | New Jersey, 2012: S.1, Marriage Equality and Religious Exemption Act, § 5(a): No member of the clergy of any religion authorized to solemnize marriage and no religious society, institution or organization in this State | New Jersey, 2012 (vetoed): S.1, Marriage Equality and Religious Exemption Act, § 5(a): No member of the clergy of any religion authorized to solemnize marriage and no religious society, institution or organization in this State shall be required to solemnize any marriage in violation of the free exercise of religion guaranteed |

⁵ See David Kocienniewski, *New Jersey Senate Defeats Gay Marriage Bill*, New York Times, Jan. 7, 2010.

⁶ See New Jersey State Legislature, *Marriage Equality and Religious Exemption Act*, available at http://www.njleg.state.nj.us/2012/Bills/S0500/1_11.PDF; see also Kate Zernike, *Same-Sex Marriage a Priority for Democrats in Trenton*, N.Y. Times, Jan. 8, 2012.

⁷ See Kate Zernike, *Christie Keeps his Promise to Veto Gay Marriage Bill*, N.Y. Times, Feb. 17, 2012.

⁸ *Id.*

⁹ *Id.*

| | | | |
|--|--|---|--|
| | <p>organization in this State shall be required to solemnize any marriage in violation of the free exercise of religion guaranteed by the First Amendment to the United States Constitution or by Article I, paragraph 4 of the New Jersey Constitution.</p> | <p>shall be required to solemnize any marriage in violation of the free exercise of religion guaranteed by the First Amendment to the United States Constitution or by Article I, paragraph 4 of the New Jersey Constitution.</p> | <p>by the First Amendment to the United States Constitution or by Article I, paragraph 4 of the New Jersey Constitution.</p> |
| <p>RELIGIOUS INSTITUTIONS AND BE- NEVALENT ORGANIZ- ATIONS</p> | <p>New Jersey, 2008: No protective language</p> | <p>New Jersey, 2012: S.1, Marriage Equality and Religious Exemption Act, § 5(b): No religious society, institution or organization in this State serving a particular faith or denomination shall be compelled to provide space, services, advantages, goods, or privileges related to the solemnization, celebration or promotion of marriage if such solemnization, celebration or promotion of marriage is in violation of the beliefs of such religious society, institution or organization.</p> | <p>New Jersey, 2012 (vetoed): S.1, Marriage Equality and Religious Exemption Act, § 5(b): No religious society, institution or organization in this State serving a particular faith or denomination shall be compelled to provide space, services, advantages, goods, or privileges related to the solemnization, celebration or promotion of marriage if such solemnization, celebration or promotion of marriage is in violation of the beliefs of such religious society, institution or organization.</p> |
| <p>NO CIVIL CAUSE OF ACTION OR PENALTY</p> | <p>New Jersey, 2008: No protective language</p> | <p>New Jersey, 2012: S.1, Marriage Equality and Religious Exemption Act, § 5(c): No civil claim or cause of action against any religious society, institution or organization, or any employee thereof, shall arise out of any refusal to provide space, services, advantages, goods, or privileges pursuant to this section. No State action to penalize or withhold benefits from any such religious society, institution or organization, or any employee thereof, shall</p> | <p>New Jersey, 2012 (vetoed): S.1, Marriage Equality and Religious Exemption Act, § 5(c): No civil claim or cause of action against any religious society, institution or organization, or any employee thereof, shall arise out of any refusal to provide space, services, advantages, goods, or privileges pursuant to this section. No State action to penalize or withhold benefits from any such religious society, institution or organization, or any employee thereof, shall result from any refusal to provide space, services, advantages, goods, or privileges pursuant to this section.</p> |

result from any refusal to provide space, services, advantages, goods, or privileges pursuant to this section.

NEW HAMPSHIRE

An Act Relative to Civil Marriage and Civil Unions, containing no protective language, was approved by the New Hampshire Senate on April 29, 2009 by a vote of 13 to 11. On May 6, 2009, the Act was approved by the New Hampshire House of Representatives by a vote of 178 to 167. Governor John Lynch indicated he would sign the bill if it was amended to provide protections against lawsuits for clergy and religious organizations that refused to marry same-sex couples.¹⁰ Amended House Bill 436 was passed by the New Hampshire Senate on May 29, 2009 by a vote of 14 to 10 and was approved by the New Hampshire House on June 3, 2009 by a vote of 198 to 176. Governor Lynch promptly signed the bill into law.¹¹

| | Initial Same-Sex Marriage Bill: | Revised Same-Sex Marriage Bill: | Enacted Same-Sex Marriage Legislation: |
|------------------|---|--|--|
| CLERGY EXEMPTION | <p>New Hampshire, 2009:</p> <p>House Bill 436 (2009), An Act Relative to Civil Marriage and Civil Unions: No protective language</p> | <p>New Hampshire, 2009:</p> <p>House Bill 436 (amended) (2009), An Act Relative to Civil Marriage and Civil Unions, § 59-4: Affirmation of Freedom of Religion in Marriage. Members of the clergy . . . or other persons otherwise authorized under law to solemnize a marriage shall not be obligated or otherwise required by law to officiate at any particular civil marriage or religious rite of marriage in violation of their right to free exercise of religion protected by the First Amendment to the United States Constitution or by part I, article 5 of the New Hampshire constitution.</p> | <p>New Hampshire, 2009:</p> <p>House Bill 436 (amended) (2009), An Act Relative to Civil Marriage and Civil Unions, § 59-4: Affirmation of Freedom of Religion in Marriage. Members of the clergy . . . or other persons otherwise authorized under law to solemnize a marriage shall not be obligated or otherwise required by law to officiate at any particular civil marriage or religious rite of marriage in violation of their right to free exercise of religion protected by the First Amendment to the United States Constitution or by part I, article 5 of the New Hampshire constitution.</p> |

¹⁰ See Abby Goodnough, *New Hampshire Senate Passes Gay Marriage Bill*, N.Y. Times, April 29, 2009; *Same-Sex Marriage Bill in Limbo*, Nashua Telegraph, May 10, 2009.

¹¹ See Abby Goodnough, *New Hampshire Legalizes Same-Sex Marriage*, New York Times, June 3, 2009.

VERMONT

The Act Relating to Civil Marriage was passed by the Vermont Senate on March 23, 2009 by a vote of 26 to 4.¹² Vermont's same-sex marriage act, as amended, passed the Vermont House of Representatives on April 3, 2009 by a vote of 95 to 52. The Vermont Senate approved the House amendments on April 6, 2009 and Governor Jim Douglas immediately vetoed the bill. On April 7, 2009 the House overrode the Governor's veto by a vote of 100 to 49 and the Senate overrode the veto by a vote of 23 to 5. The legislation, as passed, contained the original protection provided in the Senate version and all the protections added by the House.¹³

| | Initial Same-Sex Marriage Bill: | Revised Same-Sex Marriage Bill: | Enacted Same-Sex Marriage Legislation: |
|---|--|---|--|
| CLERGY EXEMPTION | <p>Vermont, 2009:</p> <p>S. 115 (Act 0003) (2009), An Act Relating to Civil Marriage, Sec. 9(b): No member of the clergy authorized to solemnize a marriage . . . nor societies of Friends or Quakers, the Christadelphian Ecclesia, or the Baha'i Faith shall be required to solemnize any marriage in violation of the right to religious liberty protected by the First Amendment to the United States Constitution and by Chapter I, Article 3 of the Constitution of the State of Vermont.</p> | <p>Vermont, 2009 (post-veto House revision):</p> | <p>Vermont, 2009 (all protections):</p> <p>S. 115 (Act 0003) (2009), An Act Relating to Civil Marriage, Sec. 9(b): No member of the clergy authorized to solemnize a marriage . . . nor societies of Friends or Quakers, the Christadelphian Ecclesia, or the Baha'i Faith shall be required to solemnize any marriage in violation of the right to religious liberty protected by the First Amendment to the United States Constitution and by Chapter I, Article 3 of the Constitution of the State of Vermont.</p> |
| RELIGIOUS INSTITUTIONS AND BENEFICIAL ORGANIZATIONS | <p>Vermont, 2009:</p> <p>No protective language</p> | <p>Vermont, 2009 (post-veto House revision):</p> <p>S. 115 (Act 0003) (2009) (amended), An Act Relating to Civil Marriage, Sec. 10(b): The civil marriage laws shall not be construed to affect the ability of a society to determine the admission of its members . . . or to determine the scope of beneficiaries in accordance with . . . this title, and shall</p> | <p>Vermont, 2009:</p> <p>S. 115 (Act 0003) (2009) (amended), An Act Relating to Civil Marriage, Sec. 10(b): The civil marriage laws shall not be construed to affect the ability of a society to determine the admission of its members . . . or to determine the scope of beneficiaries in accordance with . . . this title, and shall not require a society that has been established and is operating for charitable and educational purposes and which is operated, supervised, or controlled by or in connection with a religious</p> |

¹² See Adam Silverman, *Same-Sex Marriage Measure Sails Through Vt. Senate*, U.S.A. Today, March 23, 2009.

¹³ See Abby Goodnough, *Gay Rights Groups Celebrate Victories in Marriage Push*, N.Y. Times, April 7, 2009.

| | | | |
|--|---|--|---|
| | | <p>not require a society that has been established and is operating for charitable and educational purposes and which is operated, supervised, or controlled by or in connection with a religious organization to provide insurance benefits to any person if to do so would violate the society's free exercise of religion, as guaranteed by the First Amendment to the Constitution of United States or by Chapter I, Article 3 of the Constitution of the State of Vermont.</p> | <p>organization to provide insurance benefits to any person if to do so would violate the society's free exercise of religion, as guaranteed by the First Amendment to the Constitution of United States or by Chapter I, Article 3 of the Constitution of the State of Vermont.</p> |
| <p>NO CIVIL CAUSE OF ACTION OR PENALTY</p> | <p>Vermont, 2009: No protective language</p> | <p>Vermont, 2009 (post-veto House revision): S. 115 (Act 0003) (2009) (amended), An Act Relating to Civil Marriage, Sec. 11(1): Notwithstanding any other provision of law, a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, shall not be required to provide services, accommodations, advantages, facilities, goods, or privileges to an individual if the request for such services, accommodations, advantages, facilities, goods, or privileges is related to the solemnization of a marriage or celebration of a marriage. Any refusal to provide services, accommodations, advantages, facilities,</p> | <p>Vermont, 2009: S. 115 (Act 0003) (2009) (amended), An Act Relating to Civil Marriage, Sec. 11(1): Notwithstanding any other provision of law, a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, shall not be required to provide services, accommodations, advantages, facilities, goods, or privileges to an individual if the request for such services, accommodations, advantages, facilities, goods, or privileges is related to the solemnization of a marriage or celebration of a marriage. Any refusal to provide services, accommodations, advantages, facilities, goods, or privileges in accordance with this subsection shall not create any civil claim or cause of action. This subsection shall not be construed to limit a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization from selectively providing services, accommodations, advantages, facilities, goods, or</p> |

goods, or privileges in accordance with this subsection **shall not create any civil claim or cause of action.** This subsection **shall not be construed to limit** a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization from **selectively providing services, accommodations, advantages, facilities, goods, or privileges to some individuals with respect to the solemnization or celebration of a marriage but not to others.**

privileges to some individuals with respect to the solemnization or celebration of a marriage but not to others.

CONNECTICUT

The Act Concerning Marriage Equality was approved by the Connecticut House Judiciary Committee on April 12, 2007 by a vote of 27 to 15. In the face of a promise by Governor M. Jodi Rell to veto any same-sex marriage bill that passed, regardless of any religious protections provided, sponsors removed the bill from consideration before it could be considered by the full House of Representatives or Senate.¹⁴ On Oct. 28, 2008, the Supreme Court of Connecticut issued its opinion in Kerrigan et al. v. Comm’r of Pub. Health, 957 A.2d 407 (2008). The Court held that “the state has failed to provide sufficient justification for excluding same sex couples from the institution of marriage. . . [T]he state’s disparate treatment of same sex couples is constitutionally deficient. . . .” Id. at 412. Further, “[R]eligious autonomy is not threatened by recognizing the right of same sex couples to marry civilly. Religious freedom will not be jeopardized by the marriage of same sex couples because religious organizations that oppose same sex marriage as irreconcilable with their beliefs will not be required to perform same sex marriages or otherwise to condone same sex marriage or relations.” Id. at 250-51. With same-sex marriage now constitutionally protected in Connecticut, the General Assembly passed the Act Implementing the Guaranty of Equal Protection under the Constitution for Same Sex Couples to harmonize state law with the decision in Kerrigan.

| | Initial Same-Sex Marriage Bill: | Revised Same-Sex Marriage Bill: | Enacted Same-Sex Marriage Legislation: |
|---------------------|--|---|---|
| CLERGY EXEMPTION | Connecticut, 2007: H.B. No. 7395 (2007), An Act Concerning Marriage Equality, Sec. 5(a): | Connecticut, Oct. 28, 2008: <i>Kerrigan et al. v. Comm’r of Pub. Health</i> | Connecticut, 2009: Pub. Act No. 09-13 (2009), An Act Implementing the Guaranty of Equal Protection under the Constitution for |

¹⁴ See Daniela Altimari, *Gay Marriage Off Agenda*, Hartford Courant, May 12, 2007.

| | | |
|--|---|--|
| | <p>No person authorized to join persons in marriage pursuant to section 46b-22 of the general statutes shall be required to solemnize any marriage in violation of his or her right to the free exercise of religion guaranteed by the first amendment to the United States Constitution or section 3 of article first of the Constitution of the state.</p> | <p>Same Sex Couples, § 7(a): No member of the clergy authorized to join persons in marriage pursuant to section 46b-22 of the general statutes shall be required to solemnize any marriage in violation of his or her right to the free exercise of religion guaranteed by the first amendment to the United States Constitution or section 3 of article first of the Constitution of the state. (b) No church or qualified church-controlled organization, as defined in 26 USC 3121, shall be required to participate in a ceremony solemnizing a marriage in violation of the religious beliefs of that church or qualified church-controlled organization.</p> |
| <p>NO CAUSE OF ACTION OR CIVIL PENALTY</p> | <p>Connecticut, 2007: H.B. No. 7395 (2007), An Act Concerning Marriage Equality, Sec. 5(b): Any person authorized to join persons in marriage pursuant to section 46b-22 of the general statutes who fails or refuses to join persons in marriage for any reason shall not be subject to any fine or other penalty for such failure or refusal.</p> | <p>Connecticut, 2009: Pub. Act No. 09-13 (2009), An Act Implementing the Guaranty of Equal Protection under the Constitution for Same Sex Couples, § 17: Pub. Act No. 09-13 (2009), An Act Implementing the Guaranty of Equal Protection under the Constitution for Same Sex Couples, § 17: Notwithstanding any other provision of law, a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, shall not be required to provide services, accommodations, advantages, facilities, goods or privileges to an individual if the request for such services, accommodations, advantages, facilities, goods or privileges is related to the solemnization of a marriage or celebration of a marriage and such solemnization or celebration is in violation of their religious beliefs and faith. Any refusal to provide services, accommodations, advantages, facilities, goods or privileges in accordance with this section shall not create any civil claim or cause of action, or result in any state action to penalize or withhold benefits from such religious</p> |

| | | | |
|--|---|--|--|
| | | | organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society. |
| RELIGIOUS INSTITUTIONS AND BE- NEVALENT AND FRATERNAL ORGANIZ- ATIONS | Connecticut, 2007: No protective language | | Connecticut, 2009: Pub. Act No. 09-13 (2009), An Act Implementing the Guaranty of Equal Protection under the Constitution for Same Sex Couples, § 18: The marriage laws of this state shall not be construed to affect the ability of a fraternal benefit society to determine the admission of members as provided in section 38a-598 of the general statutes or to determine the scope of beneficiaries in accordance with section 38a-636 of the general statutes, and shall not require a fraternal benefit society that has been established and is operating for charitable and educational purposes and which is operated, supervised or controlled by or in connection with a religious organization to provide insurance benefits to any person if to do so would violate the fraternal benefit society's free exercise of religion as guaranteed by the first amendment to the Constitution of the United States and section 3 of article first of the Constitution of the state. |
| ADOPTION AGENCIES AND SOCIAL SERVICES | Connecticut, 2007: No protective language | | Connecticut, 2009: Pub. Act No. 09-13 (2009), An Act Implementing the Guaranty of Equal Protection under the Constitution for Same Sex Couples, § 19: Nothing in this act shall be deemed or construed to affect the manner in which a religious organization may provide adoption, foster care or social services if such religious organization does not receive state or federal funds for that specific program or purpose. |

DISTRICT OF COLUMBIA

The Religious Freedom and Civil Marriage Equality Amendment Act was passed by the Council of the District of

Columbia on a first reading on December 1, 2009 by a vote of 11-2. Fourteen days later, the Act passed on its second reading by the same vote. On December 18, 2009 the Act was signed by the Mayor of the District of Columbia and, following a mandatory review by the U.S. Congress, became the law of the District.

| | Initial Same-Sex Marriage Bill: | Revised Same-Sex Marriage Bill: | Enacted Same-Sex Marriage Legislation: |
|--|--|--|---|
| CLERGY EXEMPTION | <p>District of Columbia, 2009:</p> <p>Equal Access to Marriage Act, § 2(c):</p> <p>No priest, minister, imam, or rabbi of any religious denomination and no official of any nonprofit religious organization authorized to solemnize marriages, as defined in this section, shall be required to solemnize any marriage in violation of his or her right to the free exercise of religion guaranteed by the First Amendment to the United States Constitution.</p> | | <p>District of Columbia, 2009:</p> <p>D.C. Code § 46-406(c): No priest, imam, rabbi, minister or other official of any religious society who is authorized to solemnize or celebrate marriages shall be required to solemnize or celebrate any marriage.</p> |
| EXCLUSIVE CONTROL OVER DOCTRINE | <p>District of Columbia, 2009:</p> <p>Equal Access to Marriage Act, § 2(d):</p> <p>Each religious organization, association, or society has exclusive control over its own religious doctrine, teachings, and beliefs regarding who may marry within that particular religious tradition's faith, as guaranteed by the First Amendment to the United States Constitution</p> | | <p>District of Columbia, 2009:</p> <p>D.C. Code § 46-406(d): Each religious society has exclusive control over its own theological doctrine, teachings, and beliefs regarding who may marry within that particular religious society's faith.</p> |
| RELIGIOUS INSTIT- | <p>District of Columbia, 2009:</p> | | <p>District of Columbia, 2009:</p> <p>D.C. Code § 46-406(e)(1):</p> |

| | | | |
|---|---|--|---|
| <p>UTIONS AND NOT- FOR- PROFIT ORGANIZ- ATIONS</p> | <p>Equal Access to Marriage Act, § 2(e): Notwithstanding any other provision of law, a religious organization, association or society, or a nonprofit organization, association or society, shall not be required to provide services, accommodations, facilities or goods for a purpose related to the solemnization or celebration of a marriage, or the promotion of marriage, that is in violation of the entity's religious beliefs, unless the entity makes such services, accommodations, or goods available for purchase, rental, or use to members of the general public. . . . (continued below)</p> | | <p>Notwithstanding any other provision of law, a religious society, or a nonprofit organization that is operated, supervised, or controlled by or in conjunction with a religious society, shall not be required to provide services, accommodations, facilities, or goods for a purpose related to the solemnization or celebration of a marriage, or the promotion of marriage through religious programs, counseling, courses, or retreats, that is in violation of the religious society's beliefs.</p> |
| <p>NO CIVIL CAUSE OF ACTION OR PENALTY</p> | <p>District of Columbia, 2009: Equal Access to Marriage Act, § 2(e) (continued): Any refusal to provide services, accommodations, facilities, or goods in accordance with this section shall not create any civil claim or cause of action, or result in any District action to penalize or withhold benefits from such entity, unless such entity makes such services, accommodations, facilities, or goods available for purchase, rental, or use to members of the general public.</p> | | <p>District of Columbia, 2009: D.C. Code § 46-406(e)(2): A refusal to provide services, accommodations, facilities, or goods in accordance with this subsection shall not create any civil claim or cause of action, or result in a District action to penalize or withhold benefits from the religious society or nonprofit organization that is operated, supervised, or controlled by or in conjunction with a religious society.</p> |
| <p>MARYLAND</p> | | | |
| <p><i>Recent efforts to pass legislation permitting same-sex marriages in Maryland began in 2008 with bills introduced in</i></p> | | | |

both chambers. Each contained merely clergy-only exemptions. Neither House Bill 351 nor Senate Bill 290 were voted upon by their chambers. In 2009, bills containing identical clergy-only exemption language also failed to proceed beyond committee investigation. In 2011, the House considered two bills that contained the same clergy-only exemption language and a more robust Senate bill that contained a number of protections. The Senate bill passed by a vote of 25 to 21 on February 24, 2011, but legislation in the House was returned to the Judiciary Committee. On February 1, 2012, the legislation was reintroduced with additional protections. The Maryland House passed the legislation on February 17, 2012 by a vote of 72 to 67.¹⁵ The Maryland Senate voted to approve the legislation on February 23, 2012 by a vote of 25-22.¹⁶ Governor Martin O'Malley has pledged to sign the legislation into law.¹⁷

| | Initial Same-Sex Marriage Bill: | Revised Same-Sex Marriage Bill: | Enacted Same-Sex Marriage Legislation: |
|-----------------------|--|--|---|
| CLERGY ONLY EXEMPTION | <p>Maryland, 2008:</p> <p>House Bill 351, Religious Freedom and Civil Marriage Protection Act, § 2:</p> <p>[T]his Act may not be construed to require an official of a religious institution or body authorized to solemnize marriages to solemnize any marriage in violation of the right to free exercise of religion guaranteed by the First Amendment to the United States Constitution and by the Maryland Constitution and the Maryland Declaration of Rights.</p> <p>Senate Bill 290, Religious Freedom and Civil Marriage Protection Act, § 2:</p> <p>[A]n official of a religious institution or body authorized to solemnize marriages may not be required to solemnize any marriage in violation of the right to free exercise</p> | | <p>Maryland, 2012 (passed by House):</p> <p>House Bill 438, Civil Marriage Protection Act, § 2:</p> <p>[A]n official of a religious order or body authorized by the rules and customs of that order or body to perform a marriage ceremony may not be required to solemnize or officiate any particular marriage or religious rite of any marriage in violation of the right to free exercise of religion guaranteed by the First Amendment to the United States Constitution and by the Maryland Constitution and the Maryland Declaration of Rights.</p> |

¹⁵ See Sabrina Tavernise, *In Maryland, House Passes Bill to Let Gays Wed*, N.Y. Times, Feb. 17, 2012.

¹⁶ See *Md. Gay Marriage Bill to Become Law Thursday Afternoon, Opponents Begin Referendum Effort*, Washington Post, Feb. 24, 2011, available at http://www.washingtonpost.com/local/cardinal-obrien-says-md-gay-marriage-vote-threatens-families-will-work-to-overturn-law/2012/02/24/gIQA73yjXR_story.html.

¹⁷ *Id.*

| | | | |
|--------------------------------------|---|--|--|
| | <p>of religion guaranteed by the First Amendment to the United States Constitution and by the Maryland Constitution and Maryland Declaration of Rights.</p> | | |
| <p>CLERGY ONLY EXEMPTION</p> | <p>Maryland, 2009:</p> <p>House Bill 1055, Religious Freedom and Civil Marriage Protection Act, § 2:</p> <p>[T]his Act may not be construed to require an official of a religious institution or body authorized to solemnize marriages to solemnize any marriage in violation of the right to free exercise of religion guaranteed by the First Amendment to the United States Constitution and by the Maryland Constitution and the Maryland Declaration of Rights.</p> <p>Senate Bill 565, Religious Freedom and Civil Marriage Protection Act, § 2:</p> <p>[A]n official of a religious institution or body authorized to solemnize marriages may not be required to solemnize any marriage in violation of the right to free exercise of religion guaranteed by the First Amendment to the United States Constitution and by the Maryland Constitution and Maryland Declaration of Rights.</p> | | |
| <p>CLERGY EXEMPTION</p> | <p>Maryland, 2011:</p> <p>House Bill 55, Religious</p> | | |

Freedom and Civil
Marriage Protection Act, §
2:

**[A]n official of a religious
institution or body**
authorized to solemnize
marriages **may not be
required to solemnize
any marriage** in violation
of the right to free exercise
of religion guaranteed by
the First Amendment to
the United States
Constitution and by the
Maryland Constitution and
the Maryland Declaration
of Rights.

House Bill 175, Religious
Freedom and Civil
Marriage Protection Act, §
2:

**[A]n official of a religious
institution or body**
authorized to solemnize
marriages **may not be
required to solemnize
any marriage** in violation
of the right to free exercise
of religion guaranteed by
the First Amendment to
the United States
Constitution and by the
Maryland Constitution and
the Maryland Declaration
of Rights.

CLERGY

Maryland, 2011:

EXEMPTION

Senate Bill 116, Civil
Marriage Protection Act, §
2:

**[A]n official of a religious
institution or body**
authorized to solemnize
marriages **may not be
required to solemnize
any marriage** in violation
of the right to free exercise
of religion guaranteed by
the First Amendment to
the United States

| | | | |
|---|---|--|---|
| | Constitution and by the Maryland Constitution and Maryland Declaration of Rights. | | |
| RELIGIOUS INSTITUTIONS AND NOT-FOR-PROFITS | <p>Maryland, 2011:</p> <p>Senate Bill 116, Civil Marriage Protection Act, § 3(a):</p> <p>(a) Notwithstanding any other provision of law, a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by a religious organization, association, or society, may not be required to provide services, accommodations, advantages, facilities, goods, or privileges to an individual if the request for the services, accommodations, advantages, facilities, goods, or privileges is related to:</p> <p>(1) the solemnization of a marriage or celebration of a marriage that is in violation of the entity’s religious beliefs; or</p> <p>(2) the promotion of marriage, through religious programs, counseling, educational courses, summer camps, and retreats, in violation of the entity’s religious beliefs.</p> | | <p>Maryland, 2012 (passed by House):</p> <p>House Bill 438, Civil Marriage Protection Act, § 3(a):</p> <p>(a) Notwithstanding any other provision of law, a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by a religious organization, association, or society, may not be required to provide services, accommodations, advantages, facilities, goods, or privileges to an individual if the request for the services, accommodations, advantages, facilities, goods, or privileges is related to:</p> <p>(1) the solemnization of a marriage or celebration of a marriage that is in violation of the entity’s religious beliefs; or</p> <p>(2) the promotion of marriage through any social or religious programs or services, in violation of the entity’s religious beliefs, unless State or federal funds are received for that specific program or service.</p> |
| NO CIVIL CLAIM, CAUSE OF ACTION, OR GOVERN- | <p>Maryland, 2011:</p> <p>Senate Bill 116, Civil Marriage Protection Act, § 3(b):</p> <p>(b) A refusal by an entity described in subsection (a) of this section to provide</p> | | <p>Maryland, 2012 (passed by House):</p> <p>House Bill 438, Civil Marriage Protection Act, § 2:</p> <p>An official of a religious order or body authorized to join individuals in marriage . . . and who fails or refuses to join individuals in marriage is not</p> |

| | | |
|--|---|--|
| <p>MENT PENALTY</p> | <p>services, accommodations, advantages, facilities, goods, or privileges in accordance with subsection (a) of this section may not create a civil claim or cause of action or constitute the basis for the withholding of governmental benefits or services from the entity.</p> | <p>subject to any fine or other penalty for the failure or refusal.</p> <p>House Bill 438, Civil Marriage Protection Act, § 3(b):</p> <p>A refusal by an entity described in subsection (a) of [§ 3], or of any individual who is employed by an entity described in subsection (a) of [§ 3], to provide services, accommodations, advantages, facilities, goods, or privileges . . . may not create a civil claim or cause of action or result in any State action to penalize, withhold benefits from, or discriminate against the entity or individual.</p> |
| <p>FRATERNAL BENEFIT SOCIETIES</p> | <p>Maryland, 2011:</p> <p>Senate Bill 116, Civil Marriage Protection Act, § 4:</p> <p>(a) Notwithstanding any other provision of law, a fraternal benefit society described in § 8-402 of the Insurance Article that is operated, supervised, or controlled by a religious organization may not be required to admit an individual as a member or to provide insurance benefits to an individual if to do so would violate the society's religious beliefs.</p> <p>(b) A refusal by a fraternal benefit society described in subsection (a) of this section to admit an individual as a member or to provide insurance benefits to an individual may not create a civil claim or cause of action or constitute the basis for the withholding of governmental benefits or services from the fraternal benefit society.</p> | <p>Maryland, 2012 (passed by House):</p> <p>House Bill 438, Civil Marriage Protection Act, § 4:</p> <p>(a) Notwithstanding any other provision of law, a fraternal benefit society described in § 8-402 of the Insurance Article that is operated, supervised, or controlled by a religious organization may not be required to admit an individual as a member or to provide insurance benefits to an individual if to do so would violate the society's religious beliefs.</p> <p>(b) A refusal by a fraternal benefit society described in subsection (a) of this section to admit an individual as a member or to provide insurance benefits to an individual may not create a civil claim or cause of action or constitute the basis for the withholding of governmental benefits or services from the fraternal benefit society.</p> |

| | | | |
|---|--|--|--|
| <p>EXCLUSIVE CONTROL OVER DOCTRINE, MEMBERSHIP, AND PREFERENCES</p> | | | <p>Maryland, 2012 (passed by House):</p> <p>House Bill 438, Civil Marriage Protection Act, § 2:</p> <p>Each religious organization, association, or society has exclusive control over its own theological doctrine, policy teachings, and beliefs regarding who may marry within that faith.</p> <p>House Bill 438, Civil Marriage Protection Act, § 3(c):</p> <p>Nothing in this Act shall be deemed or construed to prohibit any religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by a religious organization, association, or society, from limiting admission to or giving preferences to individuals of the same religion or denomination when otherwise permitted by law.</p> |
|---|--|--|--|

WASHINGTON

The Act Relating to Providing Equal Protection for all Families in Washington by Creating Equality in Civil Marriage and Changing the Domestic Partnership Laws, while Protecting Religious Freedom, was introduced in the Washington Senate on January 16, 2012 and was immediately referred to the Committee on Government Operations, Tribal Relations and Elections. On January 26, 2012 the bill was voted out of committee by a vote of 4-3. On February 1, 2012 the full Senate passed the bill by seven votes, 28-21. In the Washington House, the Senate legislation was voted out of committee by a vote of 7-5 on February 6, 2012 and the full House approved the legislation by a vote of 55-43 on February 8, 2012. The Governor of Washington signed the bill into law on February 13, 2012.

| | <p>Initial Same-Sex Marriage Bill:</p> | <p>Revised Same-Sex Marriage Bill:</p> | <p>Enacted Same-Sex Marriage Legislation:</p> |
|-----------------------------|--|--|--|
| <p>CLERGY EXEMPTION</p> | <p>Washington, 2012:</p> <p>Senate Bill 6239, § 1(2):</p> <p>No official of any religious denomination or nonprofit institution authorized to solemnize marriages may be required to solemnize any marriage in violation</p> | <p>Washington, 2012:</p> <p>Senate Bill 6239, § 1(4):</p> <p>No regularly licensed or ordained minister or any priest, imam, rabbi, or similar official of any religious organization is required to solemnize or recognize any marriage.</p> | <p>Washington, 2012:</p> <p>Senate Bill 6239, § 1(4):</p> <p>No regularly licensed or ordained minister or any priest, imam, rabbi, or similar official of any religious organization is required to solemnize or recognize any marriage.</p> |

| | | | |
|--|--|---|---|
| | of his or her right to free exercise of religion guaranteed by the First Amendment to the United States Constitution or by the Washington state Constitution. | | |
| NO CIVIL CAUSE OF ACTION OR PENALTY | <p>Washington, 2012:</p> <p>Senate Bill 6239, § 4(2):</p> <p>No regularly licensed or ordained minister or any priest, imam, rabbi, or similar official of any church or religious denomination is required to solemnize any marriage. A refusal to solemnize any marriage under this section by a regularly licensed or ordained minister or priest, imam, rabbi, or similar official of any church or religious denomination does not create a civil claim or cause of action. No state agency or local government may base a decision to penalize, withhold benefits from, or refuse to contract with any church or religious denomination on the refusal of a person associated with such church or religious denomination to solemnize a marriage under this section.</p> | <p>Washington, 2012:</p> <p>Senate Bill 6239, § 1(4):</p> <p>A regularly licensed or ordained minister or priest, imam, rabbi, or similar official of any religious organization shall be immune from any civil claim or cause of action based on a refusal to solemnize or recognize any marriage under this section. No state agency or local government may base a decision to penalize, withhold benefits from, or refuse to contract with any religious organization on the refusal of a person associated with such religious organization to solemnize or recognize a marriage under this section.</p> | <p>Washington, 2012:</p> <p>Senate Bill 6239, § 1(4):</p> <p>A regularly licensed or ordained minister or priest, imam, rabbi, or similar official of any religious organization shall be immune from any civil claim or cause of action based on a refusal to solemnize or recognize any marriage under this section. No state agency or local government may base a decision to penalize, withhold benefits from, or refuse to contract with any religious organization on the refusal of a person associated with such religious organization to solemnize or recognize a marriage under this section.</p> |
| RELIGIOUS INSTITUTIONS AND BE- NEVALENT ORGANIZ- | <p>Washington, 2012:</p> <p>Senate Bill 6239, § 7(1):</p> <p>No religious organization is required to provide accommodations, facilities, advantages, privileges, services, or goods related to the solemnization or</p> | <p>Washington, 2012:</p> <p>Senate Bill § 1(5):</p> <p>No religious organization is required to provide accommodations, facilities, advantages, privileges, services, or goods related to the solemnization or celebration of a marriage.</p> | <p>Washington, 2012:</p> <p>Senate Bill § 1(5):</p> <p>No religious organization is required to provide accommodations, facilities, advantages, privileges, services, or goods related to the solemnization or celebration of a marriage.</p> |

| | | | |
|---------------|---|---|---|
| <p>ATIONS</p> | <p>celebration of a marriage unless the organization offers admission, occupancy, or use of those accommodations or facilities to the public for a fee, or offers those advantages, privileges, services, or goods to the public for sale.</p> <p>Senate Bill 6239, § 7(2):</p> <p>A refusal by any religious organization to provide accommodations, facilities, advantages, privileges, services, or goods related to the solemnization or celebration of a marriage does not create a civil claim or cause of action unless the organization offers those accommodations, facilities, advantages, privileges, services, or goods to the public in transactions governed by law against discrimination.</p> | <p>Washington, 2012:</p> <p>Senate Bill 6239, § 1(6):</p> <p>A religious organization shall be immune from any civil claim or cause of action . . . based on its refusal to provide accommodations, facilities, advantages, privileges, services, or goods related to the solemnization or celebration of a marriage.</p> | <p>Washington, 2012:</p> <p>Senate Bill 6239, § 1(6):</p> <p>A religious organization shall be immune from any civil claim or cause of action . . . based on its refusal to provide accommodations, facilities, advantages, privileges, services, or goods related to the solemnization or celebration of a marriage.</p> |
|---------------|---|---|---|

CALIFORNIA

In 2004, the California Marriage License Nondiscrimination Act, Assembly Bill No. 1967, proposed legalizing same-sex marriage in California. However, the bill contained no exemptions or religious protections of any kind and failed to make it out of committee. The following year, Assembly Bill 19, the Religious Freedom and Civil Marriage Protection Act, failed in the Assembly by a vote of 35 to 37 despite the inclusion of a clergy exemption. Later during that session of the legislature an attempt was made to pass the bill by merely appending it to a fisheries bill. On September 2, 2005 the California Senate passed the bill by a vote of 21 to 15 and four days later the State Assembly passed the bill by a vote of 41-35. Governor Arnold Schwarzenegger had stated he would veto the bill, and despite intense lobbying before the bill was delivered to his desk, the Governor did veto the legislation on September 29, 2005. On December 4, 2006, the same text containing only a clerical exemption was introduced as another iteration of the Religious Freedom and Civil Marriage Protection Act The bill passed the California Assembly on June 5, 2007 by a vote of 42 to 34 and on September 7 of that year passed the California Senate by a vote of 22 to 15. On October 7, Governor Schwarzenegger vetoed the legislation.

| | | | |
|--|---|---|--|
| | <p>Initial Same-Sex Marriage Bill:</p> | <p>Revised Same-Sex Marriage Bill:</p> | <p>Enacted Same-Sex Marriage Legislation:</p> |
|--|---|---|--|

| | | | |
|--|---|---|--|
| <p>RELIGIOUS EXEMPTIONS OR PROTECTIONS</p> | <p>California, 2004: California Marriage License Nondiscrimination Act No protections or exemptions</p> | | |
| <p>CLERGY ONLY EXEMPTION</p> | | <p>California, 2005: Religious Freedom and Civil Marriage Protection Act, § 7: No priest, minister, or rabbi of any religious denomination, and no official of any nonprofit religious institution authorized to solemnize marriages, shall be required to solemnize any marriage in violation of his or her right to free exercise of religion guaranteed by the First Amendment to the United States Constitution or by Section 4 of Article I of the California Constitution.</p> | |
| <p>CLERGY ONLY EXEMPTION</p> | | <p>California, 2006: Religious Freedom and Civil Marriage Protection Act, § 7: No priest, minister, or rabbi of any religious denomination, and no official of any nonprofit religious institution authorized to solemnize marriages, shall be required to solemnize any marriage in violation of his or her right to free exercise of religion guaranteed by the First Amendment to the United States Constitution or by Section 4 of Article I of the California Constitution.</p> | <p>California, 2007: Religious Freedom and Civil Marriage Protection Act, § 7: No priest, minister, or rabbi of any religious denomination, and no official of any nonprofit religious institution authorized to solemnize marriages, shall be required to solemnize any marriage in violation of his or her right to free exercise of religion guaranteed by the First Amendment to the United States Constitution or by Section 4 of Article I of the California Constitution. Vetoed</p> |

RHODE ISLAND

In 2011, the Rhode Island Senate considered Senate Bill 0029, which permitted same-sex marriages while providing exemptions for members of the clergy and guarantees of doctrinal autonomy. Although the bill made some progress in the legislature, the decision of House Speaker Gordon Fox to back civil union legislation rather than a same-sex marriage bill resulted in the marriage bill's tabling without a vote.¹⁸

| | Initial Same-Sex Marriage Bill: | Revised Same-Sex Marriage Bill: | Enacted Same-Sex Marriage Legislation: |
|--|---|---------------------------------|--|
| CLERGY EXEMPTION | <p>Rhode Island, 2011:</p> <p>Senate Bill 0029, § 3(b):</p> <p>Consistent with the guarantees of freedom of religion set forth by both the First Amendment to the United States Constitution and Article I, Section 3 of the Rhode Island Constitution, ordained clergy, ministers or elders as described and authorized in sections 15-3-5 and 15-3-6 of the general laws to officiate at a civil marriage shall not be obligated or otherwise required by law to officiate at any particular civil marriage or religious rite of marriage.</p> | | |
| EXCLUSIVE CONTROL OVER DOCTRINE | <p>Rhode Island, 2011:</p> <p>Senate Bill 0029, § 3(a):</p> <p>Consistent with the guarantees of freedom of religion set forth by both the First Amendment to the United States Constitution and Article I, Section 3 of the Rhode Island Constitution, each</p> | | |

¹⁸ See Michael Levenson, *In R.I., Hopes Fading for Gay Marriage Bill*, Boston Globe, June 28, 2011.

religious institution has exclusive control over its own religious doctrine, policy, and teachings regarding who may marry within their faith, and on what terms. No court or other state or local governmental body, entity, agency or commission shall compel, prevent, or interfere in any way with any religious institution's decisions about marriage eligibility within that particular faith's tradition.

IOWA

In a unanimous decision in Varnum v. Brien, 763 N.W.2d 862 (April 3, 2009), The Iowa Supreme Court upheld a lower court ruling that marriage licenses could not be denied same-sex couples on the basis of their sexual orientation.

ILLINOIS

The Religious Freedom and Marriage Fairness Act was introduced in the Illinois House of Representatives in 2007, but failed to emerge from committee.¹⁹ In 2009, the legislation was reintroduced but again failed to emerge from committee.²⁰ That same year, similar legislation, the Equal Marriage Act, was introduced in the Illinois Senate but did not emerge from committee.²¹ In February 2012, H.B. 5170, the Religious Freedom – Marriage Act, was introduced in the Illinois House and is presently pending in committee.²²

| | Initial Same-Sex Marriage Bill: | Revised Same-Sex Marriage Bill: | Enacted Same-Sex Marriage Legislation: |
|---------|--|--|---|
| CLERGY- | Illinois, 2007: | | |

¹⁹ H.B. 1826 (2007), available at <http://www.ilga.gov/legislation/fulltext.asp?DocName=09500HB1826ham001&GA=95&SessionId=51&DocTypeID=HB&DocNum=1826&GAID=9>.

²⁰ H.B. 0178 (2009), available at <http://www.ilga.gov/legislation/billstatus.asp?DocNum=178&GAID=10&GA=96&DocTypeID=HB&LegID=40195&SessionID=76#actions>.

²¹ S.B. 2468 (2009), available at <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=2468&GAID=10&DocTypeID=SB&LegId=48572&SessionID=76&GA=96>.

²² Text available at <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=5170&GAID=11&DocTypeID=HB&LegId=65291&SessionID=84&GA=97>.

ONLY
EXEMPTION

House Bill 1615, § 209(a-1):

[N]othing in this Act shall be construed as to **require any religious denomination, Indian Nation or Tribe or Native Group to solemnize any marriage to which it objects.** Instead, any religious denomination, Indian Nation or Tribe or Native Group is free to choose which marriage it will solemnize.

Illinois, 2009:

House Bill 0178, § 209(a-1):

[N]othing in this Act shall be construed as to **require any religious denomination, Indian Nation or Tribe or Native Group to solemnize any marriage to which it objects.** Instead, any religious denomination, Indian Nation or Tribe or Native Group is free to choose which marriage it will solemnize.

Illinois, 2009:

Senate Bill 2468, § 209(a-1):

[N]othing in this Act shall be construed as to **require any religious denomination, Indian Nation or Tribe or Native Group to solemnize any marriage to which it objects.** Instead, any religious denomination, Indian Nation or Tribe or Native Group is free to choose which marriage it

will solemnize.

Illinois, 2012:

House Bill 5170, § 209(a-5):

[N]othing in this Act shall be construed as to require any religious denomination, Indian Nation or Tribe or Native Group to solemnize any marriage to which it objects. Instead, any religious denomination, Indian Nation or Tribe or Native Group is free to choose which marriage it will solemnize.