



## Calif. passes another gay marriage bill

Schwarzenegger vetoed similar measure in '05

By ELIZABETH PERRY  
SEP. 14, 2007

All eyes are on California Gov. Arnold Schwarzenegger after the California Legislature approved a same-sex marriage bill last week for the second time in two years.

Schwarzenegger vetoed a similar bill in 2005, but supporters of the bill are holding out hope the Republican governor will change his position.

The bill's author, Assembly member Mark Leno (D-San Francisco) said the bill, passed Sept. 7, addresses Section 300 of the California Family Code, which defines marriages as a civil contract between a man and a woman. If signed into law, it would amend the definition of marriage as a civil contract between two persons. It would also reaffirm that no religious denominations would have to perform same-sex marriages.

"My Senate colleagues recognized what an ever-increasing number of fair-minded Californians also see that marriage strengthens our society and singling same-sex couples out of this important institution hurts us all," he said in a statement.

The bill died in committee the first time it was introduced in 2004, however the 2007 measure, called the Religious Freedom and Civil Marriage Protection Act, was approved by a 22-15 vote. It is almost identical to 2005 bill AB849, which received the minimum number of votes in the legislature to pass, but was vetoed by Schwarzenegger.

Equality California sponsored this year's legislation. The organization's executive director Geoffrey Kors said just three Senate votes made the difference this year: Denise Moreno Ducheny (D-San Diego), Jack Scott (D-Pasadena) and Mike Machado (D-Linden).

Because of term limits in the legislature, the bill picked up one new vote this year from Sen. Alex Padilla (D-San Fernando Valley). Ducheny, Scott and Machado abstained from voting on the similar measure in 2005. Machado abstained again for the 2007 vote, a move Kors said has the same effect as a "nay" vote.

"We needed a minimum of 21 votes in the Senate and 41 in the Assembly," he said. "The only thing that counts is a 'yes' vote. They didn't vote against you, but their action is the same as a 'no' vote."

Machado, Scott, Ducheny and Padilla were in the final legislative session of the year and did not return the Blade's calls by press time.

Kors said the initiative has continued to gain public support and that senators and Assembly members who voted in favor of it in 2005 did not suffer any negative consequences for their vote. Equality California members met with legislators who voted against it and brought them face-to-face with gay and lesbian families.

"We talked to them about legal and societal recognition, the meaning beyond rights," Kors said. "We helped them understand that people get married because they are in love, not just for hospital visitation rights."

Also instrumental in the same-sex marriage effort was the support of gay rights groups including the Human Rights Campaign and the **National Gay & Lesbian Task Force**, which worked with Equality California to organize a coalition of organizations in support of marriage equality.

Leno said the list includes some 250 organizations including the NAACP California State Conference, United Farm Workers, Mexican American Legal Defense and Educational Fund, Chinese for Affirmative Action, California Teachers Association, California Nurses Association, Anti-Defamation League, California National Organization for Women, California Church Impact and others.

**“The California Constitution is clear,” said Matt Foreman, executive director of the Task Force. “Everyone is equal under the law, and that’s just what this bill does — grants equality to all couples. For far too long, too many California families have been placed in harm’s way because they lack the full, fundamental protections they deserve. Governor Schwarzenegger can rectify this inequality by stepping up and signing this bill the moment it lands on his desk.”**

Sabrina Lockhart, spokesperson for Schwarzenegger, said he has not yet taken a position on this year’s bill. Leno, the bill’s author, said Schwarzenegger told a group of students earlier in the year that he would veto it again. Still, Leno remains hopeful.

“You never know,” he said. “He said he would veto our green house gas bill and then signed it. He vetoed the minimum wage bill and then signed it.”

Schwarzenegger’s 2005 veto statement to the California State Assembly regarding AB849 said he believes lesbian and gay couples are entitled to full legal protection and should not be discriminated against and that he supports domestic partnership rights. Schwarzenegger said signing the same-sex marriage bill would prove too confusing while the constitutionality of Proposition 22, the 2000 ballot initiative that passed preventing the state from recognizing same-sex marriage, is wending its way through the state Supreme Court.

“This bill simply adds confusion to a constitutional issue,” he said. “If the ban of same-sex marriage is unconstitutional, this bill is not necessary. If the ban is constitutional, this bill is ineffective.”

Leno, though, said his bill concerns section 300 of the Family Code, which addresses who can marry in California. He said Proposition 22 addresses section 308, which concerns marriages performed out of state. A case regarding the constitutionality of both sections of the statute is pending in the state Supreme Court and a decision is expected to be rendered early next year.

The marriage debate is not new to California. The state made national headlines in 2004, when San Francisco Mayor Gavin Newsom granted marriage licenses to gay couples in his city. Some 4,000 couples exchanged vows before the Supreme Court stepped in and annulled the marriages. The court ruled Newsom did not have the authority to issue same-sex marriage licenses and sent the gay marriage fight back to the lower courts to decide. The court ruled that denying marriage licenses to gay couples was discriminatory and the case was sent to the Court of Appeals.

“The court of appeals in its decision against us said it is up to the legislature to decide,” Leno said. “Arnold Schwarzenegger said in his 2005 veto message it is not up to the legislature, it is up to the courts.”

Leno countered Schwarzenegger’s argument that domestic partnerships will “do the trick” for gay Californians. He said he married a gay couple at San Francisco City Hall in 2004. The men had been together for 50 years and were legally registered as domestic partners in the state. A year

later one of the men died unexpectedly and when the surviving partner tried to claim his deceased partner's pension, health care, military and Social Security benefits he was turned down because he did not have a valid marriage license.

"Because he couldn't access those benefits, that come automatically with a marriage license, he could not afford the rent on the home they shared for 50 years," Leno said. "In the midst of grieving for his lifelong partner, my friend Marvin became homeless. This is what Arnold Schwarzenegger thinks of equality — kicking 70-year-old men to the curb."

If Schwarzenegger changes his mind and signs the legislation, gay couples may not be running to the chapel. Kors said conservative religious groups, including Focus on the Family, have submitted five possible ballot measures to ban same-sex marriage. Another group called Campaign for California Families has submitted three initiatives to repeal domestic partnerships.

"The major difference is once we have same-sex marriages in California we will have a second state with gay marriage," Kors said. "It will have a transformative effect on the movement. We saw it in San Francisco, where family and friends treated married same-sex couples differently and knew what to call them."

If the governor vetoes the bill, Kors and Leno intend to keep fighting for marriage equality. They hope the state Supreme Court will rule the current law is unconstitutional by the time the next legislative session rolls around. If not, Equality California and Leno will introduce another bill and continue to educate legislators and the public about the importance of same-sex marriage over domestic partnerships, at least until Schwarzenegger's term ends in 2010.