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21 state legislatures mull same-sex marriage ban

Virginia House and Senate approve bills

by Lisa Keen

Twenty-one state legislatures are considering bills to ban recognition of same-sex marriage, and it looks like Virginia will race across the legislative finish line first this year, according to a 50-state poll conducted by the *Washington Blade*.

Between 1995 and 1996, 37 states considered bills, and 16 enacted them — one in 1995, 15 in 1996. All 34 of the remaining states are expected to take up such legislation this year.

The bills typically stipulate that the particular state in question will not give legal recognition to a marriage performed in that state between two people of the same gender and that the state will not give reciprocal recognition to a same-sex couple whose marriage might be approved in some other jurisdiction.

The bills began proliferating in 1995 when the possibility that a lawsuit in Hawaii might lead to legalization of marriages in that state started getting increased publicity nationwide.

The movement of bills this year closely mirrors the action last year: There were bills in 18 states this time last year and many were approved quickly and by large margins. This year, anti-Gay marriage bills have already cleared the Senate and House in Virginia

Continued on page 21



by Clint Steib

Virginia Gov. George Allen has been hostile to equal rights for Gays.

National News

21 states consider same-sex marriage measures

Continued from page 1

and Arkansas, the House in Hawaii, and the Senate in Mississippi.

In Virginia, the House bill passed by a vote of 87-9; the Senate bill passed 37-3. Both votes took place Tuesday and, although the bills are considered identical, both must pass the other chamber before going to the desk of Republican Gov. George Allen, who has been hostile to equal rights for Gay people thus far.

In Arkansas, a slightly different version of the bill has passed each chamber but with overwhelming support which nearly ensures that one of them will clear both bodies. The Arkansas Senate voted 34-0 on Jan. 27 (with one vote absent), and the House voted 92-2 on Jan. 22. Both chambers are overwhelmingly Democratic. A spokesperson for Republican Gov. Mike Huckabee said he has indicated he will sign the legislation.

Arkansas is one of eight states which are entertaining anti-Gay marriage bills for the first time this year. The other six include Indiana, Montana, Nebraska, North Dakota, Ohio, Texas, and Vermont.

In addition to these eight new states, 13 states which considered similar bills last year but did not pass them are taking them up again this year. They include Alabama, Colorado (whose bill was killed by gubernatorial veto), Connecticut, Florida, Hawaii, Maryland, Minnesota, Mississippi, New Hampshire, New Jersey, Virginia, Washington, and Wyoming.

One of the most important of the anti-Gay marriage bills is, of course, in Hawaii. That's because Hawaii is the only state which has a likely chance of approving same-sex marriages, via the historic lawsuit of *Baehr v. Miike*. That lawsuit is now before the state supreme court, which is expected to uphold a lower court ruling that the state has no compelling reason to deny marriage licenses to Gay couples. The lower court ruling, issued in December, was delayed from going into effect until the supreme court can rule. But Dan Foley, a civil rights attorney helping to represent the Gay couples pressing the case, said he will ask the court to either vacate that "stay," which would enable same-sex couples to marry immediately, or expedite its own final ruling in the case.

Foley said that if Hawaii's anti-Gay marriage bill — seeking to amend the

state constitution to bar same-sex marriages — passes the Hawaii legislature, the state can ask the Hawaii Supreme Court to delay its decision on the case until after the voters have their say — probably in November 1998.

So, the race is on in that state between the court and the constitutional amendment. Last year, Hawaii's House passed an anti-Gay marriage bill by a vote of 37-14. This year, on Jan. 23, the vote was 44-7. The Senate was expected to vote on one of its bills — there were four but three have now been tabled — as early as this week.

Interestingly, the Senate version includes language that is clearly in response to last year's landmark decision on the Colorado Amendment 2 trial. In that decision, the U.S. Supreme Court struck down the anti-Gay initiative, saying it seemed "inexplicable by anything but animus toward the class that it affects." The Hawaii Senate's version of the anti-Gay marriage bill specifically states that the legislature cannot "base its restrictions upon animus against any element of our population."

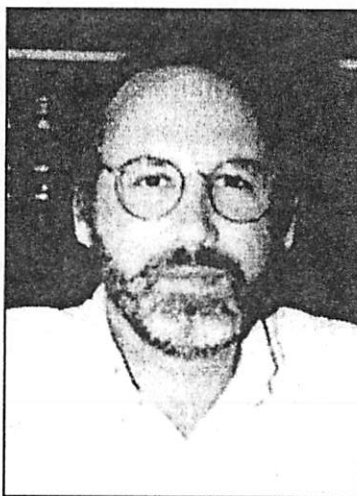
If 17 senators agree to the bill that has survived, the House and Senate will try to work out one version to send to voters. Foley said he doesn't think that will be easy. But if it does occur, the issue would likely go before voters in November 1998. Polls so far have suggested the overwhelming majority of voters would agree to the amendment.

The overwhelming majority of the anti-Gay marriage bills introduced in legislatures around the country thus far were introduced by Republicans (28 of 39 bills). Nine were introduced by Democrats, one by a bipartisan pair, and one was introduced in Nebraska, where members of the unicameral legislature are nonpartisan.

Like last year, Nebraska's legislative hopper this year also includes a bill seeking to establish recognition for same-sex marriage. And this year, Nebraska is joined by Hawaii, Maryland, and Washington state with similar bills; in all three states, the bills were introduced by Democrats.

Reciprocal beneficiaries

In a related development, the Hawaii



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House of Representatives passed a bill on Jan. 24 by a vote of 47-4 which would, if ultimately enacted, allow people in Gay relationships to become legal "reciprocal beneficiaries" to each other. The legislation stipulates that people who become reciprocal beneficiaries would not be able to sue each other for division of property should their relationship become "terminated." But they could sign and swear to a statement that they want to be reciprocal beneficiaries and receive a certificate from the director of health. With this certificate, then, they would be guaranteed the right to visit each other at a hospital, and share joint tenancy and inheritance rights.

In other action on same-sex marriage bills:

Indiana: The statewide Gay group Justice says the Democratic chair of the committee where the bill starts in the House has promised not to hold hearings on one bill there. But a Senate committee gave its bill a hearing and approved it late last month. Marla Stevens, a lobbyist for another statewide Gay group, LGBT Fairness Indiana, says it appears the anti-Gay marriage bill will "fly" through the Republican-controlled Senate, where it is

expected to be taken up on the floor very soon. If it does pass the Senate, it will then be sent to the House, where its prospects are mixed.

Maine: Maine doesn't have a bill in its legislature, but the Concerned Maine Families group, which has sought anti-Gay initiatives in the past, is trying one again this year, specifically to ban same-sex marriage. The secretary of state's office said this week that the group turned in 60,000 signatures and that its office will be able to announce in the "next couple of days" whether enough are valid to put the issue before voters in November.

Minnesota: The state's chapter of the Christian Coalition sent out a letter to members of the Democrat-controlled legislature last month to urge their support for an anti-Gay marriage bill by noting that President Clinton and the state's very liberal U.S. Sen. Paul Wellstone, both Democrats, both supported the federal Defense of Marriage Act last year.

"We do not believe that Minnesota will consider coming in to the ideological left of Senator Wellstone," wrote chapter Executive Director Carol Simmons.

New Jersey: In New Jersey, which has a statewide law prohibiting discrimination based on sexual orientation, proponents have developed a novel argument for an anti-Gay marriage bill: Without it, according to a *Philadelphia Inquirer* report, they say some heterosexual couples might marry and then one spouse might undergo a sex-change operation, leaving the state legally recognizing a same-sex marriage. The *Inquirer* noted that, in the mid-1970s, such a thing did happen but that a court ruled the marriage no longer valid. The paper noted that Republican Gov. Christine Whitman "has said she doesn't see the need for the [proposed anti-Gay marriage] law, since New Jersey already denies same-sex marriage," but it said she hasn't indicated whether she would sign or veto a bill.

Washington: This is believed to be the only jurisdiction in which a poll has shown public opposition to banning same-sex marriages — 56 percent of voters said they would be opposed to changing state law to "withhold legal status to same-gender marriages performed in other states." ▼