

HOUSE BILL REPORT

HB 1939

As Reported by House Committee On:
Judiciary

Title: An act relating to privileged communications.

Brief Description: Modifying privileged communications provisions.

Sponsors: Representatives Goodman, Warnick, Rodne, Williams, Priest, Moeller, B. Sullivan, Cody, Chase, Pedersen, Lantz and Hinkle.

Brief History:

Committee Activity:

Judiciary: 2/16/07, 2/20/07 [DP].

Brief Summary of Bill

- Amends the clergy-penitent privilege to explicitly include sacred confidences made to a Christian Science practitioner.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Kirby, Moeller, Pedersen, Ross and Williams.

Staff: Jasmine Vasavada (786-5793) and Edie Adams (786-7180).

Background:

The judiciary has the power to compel witnesses to appear before the court and testify in judicial proceedings so that the court may hear and consider all relevant evidence before making a determination. However, the common law and statutory law recognize exceptions to compelled testimony in some circumstances, including "testimonial privileges." Privileges are recognized when certain classes of relationships or communications within those relationships are deemed of such societal importance that they should be protected, even at the expense of the truth-seeking goal of the courts.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Washington statutory law establishes a number of privileges, including communications between the following persons: (1) clergy and penitent; (2) attorney and client; (3) husband and wife; (4) physician and patient; (5) psychologist and client; (6) optometrist and client; (7) law enforcement peer support counselor and a law enforcement officer; and (8) sexual assault advocate and victim.

All 50 states have some form of recognized privilege for clergy-penitent communications. Of these, 21 states and the District of Columbia explicitly include a Christian Science practitioner within the statutory definition of clergy and afford them a sacred communication privilege.

The clergy-penitent privilege in Washington applies unless the person making the confession waives the privilege, authorizing the clergy to testify. Washington's statute does not explicitly refer to Christian Science practitioners and does not explicitly extend to sacred confidences, the term used by the Christian Science church for a confidence shared with a Christian Science practitioner, which is similar to a sacred or holy trust or confession.

The Christian Science church does not have ordained clergy but rather practitioners who have been accredited by the church as qualified for the public practice of Christian Science. Only accredited practitioners may be listed and advertised in the Christian Science Journal, a monthly magazine that is the official publication of The First Church of Christ, Scientist.

Summary of Bill:

The testimonial privilege for confessions made to clergy is explicitly extended to sacred confidences made to a Christian Science practitioner in his or her professional role. The privilege only applies for sacred confidences made to a Christian Science practitioner who is officially listed in the Christian Science Journal, the monthly magazine of the Christian Science church.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This bill promotes religious freedom, and it is the product of a bipartisan, ecumenical effort. It clarifies that communications between a Christian Science practitioner and patient are protected. A Christian Science practitioner serves as a spiritual resource, developing a healing solution in circumstances where sometimes highly sensitive and personal issues must be revealed. For example, an individual seeking exemption from army immunization requirements is dealing with an issue that is controversial and highly sensitive, so confidentiality in communications with a Christian Science practitioner may be very

important to that individual. Concern that words of a patient may be subject to scrutiny in a court would damage the healing relationship and such disclosure is forbidden by the church manual. By extending the testimonial privilege to a Christian Science practitioner, the Legislature removes the possibility that a Christian Science practitioner would be forced to choose between the dictates of the church manual and the laws of the state.

(Opposed) None.

Persons Testifying: Representative Goodman, prime sponsor; Bill Scott, Christian Science Committee on Publication; Dottie Lehuta, Ryder Stevens, and Frederick Calkins.

Persons Signed In To Testify But Not Testifying: None.