

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 48
Judiciary

(Delegate Dwyer, *et al.*)

Maryland's Marriage Protection Act

This bill proposes an amendment to the Maryland Constitution that provides that only a marriage between a man and a woman is valid in this State. The proposed amendment also provides that a civil union or relationship between parties of the same sex that confers the benefit of marriage is not valid and is against the public policy of the State.

Fiscal Summary

State Effect: None.

Local Effect: If approved by the General Assembly, this constitutional amendment will be submitted to the voters at the 2006 general election. It should not result in additional costs for the county election boards.

Small Business Effect: None.

Analysis

Current Law: The Maryland Constitution does not define a valid marriage or a civil union. State law provides that only a marriage between a man and a woman is valid in the State of Maryland.

Background: In 1993, the Hawaii Supreme Court ruled that denial of marriage to same-sex couples violated the state's constitution. In 1998, Hawaii became one of the first states to adopt a constitutional amendment that authorizes its legislature to reserve marriage to couples of the opposite sex. In April 2000, Vermont became the first state to

recognize civil unions that provide to same-sex couples virtually all the rights and privileges provided to married couples. Connecticut became the second state to approve civil unions in 2005.

In November 2003, the Massachusetts Supreme Judicial Court, that state's highest court, ruled that under the state constitution, same-sex-couples have the right to marry. In February 2004, the court ruled that authorizing civil unions for same-sex couples while prohibiting them from marrying was also unconstitutional. As a result, Massachusetts began issuing marriage licenses to same-sex couples in May 2004 and remains the only state that permits marriage between individuals of the same sex. Efforts are underway in Massachusetts to place a constitutional amendment on the election ballot which defines marriage as a legal union between a man and a woman. However, the earliest an amendment to the Massachusetts Constitution could be presented to voters for ratification is November 2006.

Same-sex marriage is legal in the countries of Belgium, Canada, the Netherlands, and Spain. In addition, the highest court of South Africa recently ruled that prohibitions against same-sex marriage are unconstitutional. The countries of Denmark, France, Germany, and Great Britain permit civil unions, in varying forms, between same-sex couples.

According to the National Conference of State Legislatures, 42 states (including Maryland) have passed laws that either prohibit same-sex marriages or deny recognition of same-sex marriages solemnized in other jurisdictions. Eighteen states have adopted constitutional amendments defining marriage as a union only between a man and a woman. The Virginia legislature recently approved a similar constitutional amendment. Once conforming measures are passed by both houses, the measure is slated to appear on the general election ballot in November.

The Maryland law defining marriage as only between a man and a woman was enacted in 1973. In July 2004, nine same-sex couples sued Maryland in the Baltimore City circuit court claiming that its law prohibiting marriage between individuals of the opposite sex violated the Maryland Declaration of Rights, as well as due process and equal protection rights. The plaintiffs asked the court for a ruling (1) declaring that the failure of the Maryland statutory code to permit same-sex couples to marry constitutes unjustified discrimination based on sexual orientation and an unjustified deprivation of fundamental rights, including the fundamental right to marry, and therefore is a violation of Article 24 of the Maryland Declaration of Rights; and (2) enjoining the clerks of the courts from refusing to issue marriage licenses to plaintiff couples or other same-sex couples because they are same-sex couples. A hearing was held on the lawsuit in August 2005.

In January 2006, the circuit court in *Deane v. Conaway* (case # 24-C-04-005390) granted the plaintiffs' motion for summary judgment and held that the Maryland statute defining marriage is unconstitutional and violates Article 46 of the Maryland Declaration of Rights because it discriminates based on gender against a suspect class and is not narrowly tailored to serve any compelling governmental interests. Article 46 of Maryland's Declaration of Rights is commonly referred to as "Maryland's Equal Rights Amendment" and prohibits abridgment of equal rights under State law because of sex. The ruling was stayed pending an appeal. The Office of Attorney General immediately filed an appeal of the ruling.

In Maryland, Montgomery County, Baltimore City, Greenbelt, and Takoma Park extend domestic partner benefits to their employees. In Montgomery County, the provision of domestic partner benefits is not contingent on the relationship status of the partners. Maryland law does not address civil unions. However, the Court of Appeals has held that the extension of health insurance benefits by a county to same-sex domestic partners of the county's employees is not invalid under State law. *Tyma v. Montgomery County*, 369 Md. 497 (2002). The proposed amendment could affect the ability of local governments to extend benefits to partners of the same sex if the benefits are construed as conferring "the benefit of marriage." However, the precise nature of the "benefit of marriage" could be the subject of future litigation.

Local Fiscal Effect: The Maryland Constitution requires that proposed amendments to the constitution be publicized either: (1) in at least two newspapers in each county, if available, and in at least three newspapers in Baltimore City once a week for four weeks immediately preceding the general election; or (2) by order of the Governor in a manner provided by law. State law requires local boards of elections to publicize proposed amendments to the constitution either in newspapers or on specimen ballots; local boards of elections are responsible for the costs associated with these requirements. It is anticipated that the fiscal 2007 budgets of local election boards will contain funding for notifying qualified voters about proposed constitutional amendments for the 2006 general election in newspapers or on specimen ballots.

Additional Information

Prior Introductions: This bill is similar to HB 1220 of 2005. HB 1220 was referred to the Judiciary Committee, but was not heard. HB 16/SB 673, bills identical to HB 1220, were introduced in 2004. HB 16 received an unfavorable report from the Judiciary Committee and SB 673 was heard in the Judicial Proceedings Committee, but received no further action.

Cross File: SB 262 (Senator Greenip) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), National Conference of State Legislatures, *The Washington Post*, *The New York Times*, Department of Legislative Services

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