

Department of Legislative Services  
Maryland General Assembly  
2004 Session

FISCAL AND POLICY NOTE

House Bill 16  
Judiciary

(Delegate Boutin)

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Valid Marriages

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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.

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Fiscal Summary

**State Effect:** None.

**Local Effect:** If approved by the General Assembly, this constitutional amendment will be submitted to the voters at the 2004 general election. It should not result in additional costs for the county election boards.

**Small Business Effect:** None.

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Analysis

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

**Background:** 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. Massachusetts state officials were given 180 days to implement the ruling, which is scheduled to go into effect in May 2004. 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, for a proposed amendment to be put to voters for ratification, an amendment would have to be passed this year and next year by

the Massachusetts legislature. 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 Canadian provinces of Ontario and British Columbia and in the countries of Belgium and the Netherlands. Vermont is the only state that currently permits civil unions between members of the same sex. The countries of Denmark, France, and Germany also permit civil unions between same-sex couples.

New Jersey has recently enacted a law that would recognize some domestic partnerships, including same-sex couples, and would confer some legal rights on same-sex couples that married couples now enjoy. However, the law does not establish the authority for same-sex civil unions. According to the National Conference of State Legislatures, California, Connecticut, New York, Vermont, and Washington provide insurance benefits to the domestic partners of state government employees. In addition, Delaware, Massachusetts, and Oregon provide limited benefits, such as bereavement leave, for domestic partners of state employees. In Maryland, Montgomery County, Baltimore City, Greenbelt, and Takoma Park offer employees domestic partner benefits.

The federal Defense of Marriage Act (DOMA) of 1996 defines marriage as a legal union between a man and a woman and provides that states are not required to recognize same-sex marriages performed in other states. Currently, three states (Alaska, Nebraska, and Nevada) have ratified constitutional amendments banning same-sex marriages. Thirty-four other states, excluding Maryland, have passed DOMAs. However, two of those states, California and Hawaii, provide some spousal rights to unmarried couples, including couples of the same sex.

Ohio is expected to enact a DOMA that not only prohibits same-sex couples from entering into marriage or civil unions, but would also prohibit state agencies from extending marriage-like benefits to same-sex couples. In addition to Maryland, other states that are considering DOMAs are Connecticut, New Mexico, New Hampshire, and Wisconsin.

On February 12, 2004, city officials in San Francisco, California began performing civil unions for same-sex couples that wanted to marry. To date, over 3,000 unions have been performed. The legality of these unions is currently being challenged and the California DOMA is also under legal challenge. A county clerk in New Mexico also recently began performing civil unions but later determined that any issued certificates were invalid under the laws of New Mexico.

**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 2005 budgets of local election boards will contain funding for notifying qualified voters about proposed constitutional amendments for the 2004 general election in newspapers or on specimen ballots.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 673 (Senator Colburn, *et al.*) – Judicial Proceedings.

**Information Source(s):** Judiciary (Administrative Office of the Courts), National Conference of State Legislatures, *CQ Weekly*, *Stateline.org*, *The Associated Press*, *The Washington Post*, Department of Legislative Services

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Analysis by: Karen D. Morgan

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510