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By: **Delegate Simmons**

Introduced and read first time: February 2, 2006

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Stay of Enforcement of Appellate Decision**

3 FOR the purpose of setting certain standards for the stay of any final appellate  
4 decision affirming the Circuit Court for Baltimore City in *Gitanjali Deane, et al.*,  
5 *v. Frank Conway, et al.*, Case No. 24-C-04-005390 (January 20, 2006);  
6 requiring the Attorney General to apply for a certain stay under certain  
7 circumstances; providing for the abrogation of this Act under certain  
8 circumstances; and generally relating to the stay of enforcement of any final  
9 appellate decision affirming the Circuit Court decision in *Deane v. Conway*  
10 under certain circumstances.

11 Preamble

12 WHEREAS, In *Gitanjali Deane, et al., v. Frank Conway, et al.*, Case No.  
13 24-C-04-005390 (January 20, 2006), a circuit court declared Maryland's historic  
14 definition of marriage unconstitutional; and

15 WHEREAS, The circuit court stayed the effect of the decision pending further  
16 appellate review and the State immediately appealed to the Court of Special Appeals;  
17 and

18 WHEREAS, The period for briefing, argument, and resolution of the State's  
19 appeal in the Court of Special Appeals, as well as the period for any further review in  
20 the Court of Appeals would ordinarily extend, at the very least, until 2007; and

21 WHEREAS, Those appellate courts in other states that have ruled for plaintiffs  
22 in similar cases, in deference to separation of powers and legislative prerogatives,  
23 have stayed their decisions for periods up to 180 days to permit the legislature to  
24 define the status and rights of same-sex couples or to take such other action as it may  
25 deem appropriate, because "a sudden change in the marriage laws or the statutory  
26 benefits traditionally incidental to marriage may have disruptive and unforeseen  
27 consequences," *Baker v. State*, 744 A.2d 864, 887 (Vt. 1999); and

28 WHEREAS, A temporary and reasonable judicial stay of any final appellate  
29 decision affirming the circuit court's decision in *Deane v. Conway* would enable the  
30 General Assembly to act in an orderly, thorough, and expeditious fashion to enact

1 implementing or remedial legislation or to propose a constitutional amendment for  
2 consideration of the voters; now, therefore,

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
4 MARYLAND, That:

5 Any final appellate decision affirming the circuit court decision in Deane v.  
6 Conway, Case No. 24-C-04-005390 (January 20, 2006), shall be stayed until  
7 December 31, 2008, or such other period as established by a State appellate court in  
8 accordance with Section 2 of this Act.

9 SECTION 2. AND BE IT FURTHER ENACTED, That

10 (1) Upon any final appellate decision affirming the circuit court decision  
11 in Deane v. Conway, the Attorney General shall apply to the appellate court for a stay.

12 (2) The appellate court shall issue a temporary stay of its judgment for a  
13 reasonable period if it finds that:

14 (i) A sudden change in the marriage laws or the statutory benefits  
15 traditionally incidental to marriage may have disruptive and unforeseen  
16 consequences;

17 (ii) A stay would enable the General Assembly to act in an orderly,  
18 thorough, and expeditious fashion to enact implementing or remedial legislation or to  
19 propose a constitutional amendment for consideration of the voters; and

20 (iii) The State meets any additional conditions that the appellate  
21 court considers proper.

22 (3) A stay issued under this section shall extend until the conclusion of  
23 the first General Assembly session that occurs after the appellate court's decision,  
24 unless the court determines that additional time is needed for voters to consider and  
25 vote on a constitutional amendment.

26 (4) In no event shall a stay under this Act extend beyond December 31,  
27 2008.

28 (5) Nothing in this Act shall affect the inherent power of a court to issue  
29 a stay.

30 SECTION 3. AND BE IT FURTHER ENACTED, That if a final appellate  
31 decision reverses the circuit court's decision and remands for the entry of a judgment  
32 declaring Maryland's historic definition of marriage to be constitutional, then with no  
33 further action required by the General Assembly, this Act shall be abrogated and of no  
34 further force and effect.

35 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
36 June 1, 2006.