
By: **Senators Green, DeGrange, Dyson, Greenip, Hooper, Jacobs, Jimeno,
McFadden, Middleton, Mooney, and Stone**

Introduced and read first time: February 23, 2006

Assigned to: Rules

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

1 General Assembly to act in an orderly, thorough, and expeditious fashion to enact
2 implementing or remedial legislation or to propose a constitutional amendment for
3 consideration of the voters; now, therefore,

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

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

10 SECTION 2. AND BE IT FURTHER ENACTED, That

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

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

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

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

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

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

27 (4) In no event shall a stay under this Act extend beyond December 31,
28 2008.

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

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

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

