

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 973
Judicial Proceedings

(Senator Green, *et al.*)

Stay of Enforcement of Appellate Decision

This bill requires that any final appellate decision that affirms the circuit court decision in *Deane v. Conaway* (Case No. 24-C-04-005390 January 20, 2006) be stayed until December 31, 2008 or until another date established by a State appellate court as provided by the bill.

The bill is effective June 1, 2006.

Fiscal Summary

State Effect: None. The requirements of the bill could be implemented with existing resources.

Local Effect: None. The requirements of the bill could be implemented with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: This bill requires that if any final appellate decision is issued affirming the court decision in *Deane v. Conaway*, the Attorney General must apply to the appellate court for a stay. The appellate court must issue a temporary stay of its judgment for a reasonable period if it finds that:

- a sudden change in the marriage laws or the statutory benefits incidental to marriage may have disruptive and unforeseen consequences;

- a stay would enable the General Assembly to pass legislation that either implements or remedies the court decision or to propose a constitutional amendment for voter consideration; and
- the State meets any additional conditions that the appellate court considers proper.

A stay of an appellate decision in *Deane v. Conaway* must extend until the conclusion of the first General Assembly session that occurs after the appellate court's decision, unless the court determines that additional time is needed for consideration of a constitutional amendment. However, a stay may not extend beyond December 31, 2008.

The bill's provisions do not affect the inherent power of a court to issue a stay.

The bill further provides that if a final appellate judgment reverses the circuit court's decision in *Deane v. Conaway* and remands for entry of a judgment that the State's historic definition of marriage is constitutional, then the bill's provisions are abrogated and have no further force and effect.

Current Law: Maryland Rule 8-422 generally provides that an appellant may stay the enforcement of a civil judgment from which an appeal is taken by filing a "supersedeas bond" in the lower court. A "supersedeas bond" promises full satisfaction by the appellant of the judgment from which the appeal is taken and payment of court costs if the appeal is dismissed or the judgment is affirmed.

Under Maryland Rule 2-632, in the circuit court's discretion, and considering the conditions for the security of the adverse party that the court considers proper, upon motion of a party, the court may stay enforcement of a judgment pending disposition of a motion for a new trial, a motion to alter or amend a judgment, a motion to revise judgment, or a motion for a judgment notwithstanding the verdict. If the court determines that due to the nature of the action, enforcement of the judgment should not be stayed by the filing of a supersedeas bond or other security, the court may enter an order denying a stay or permitting a stay that is conditioned on the terms stated in the court order. If a party files a motion under Maryland Rule 2-632 and the motion is denied by the circuit court, or it is not practical for the party to file a motion under this rule, then under Maryland Rule 8-425, the Court of Special Appeals or the Court of Appeals is authorized to issue an order staying, suspending, modifying, or restoring an order entered by the lower court. The appellate courts may also issue an injunction if injunctive relief was sought and denied in the lower court.

Background: In July 2004, nine same-sex couples sued Maryland in the Baltimore City circuit court claiming that the State law prohibiting marriage between individuals of the

same 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.

When the Massachusetts Supreme Judicial Court ruled that Massachusetts laws denying same-sex marriage were unconstitutional in *Goodridge, et al. v. Department of Public Health* 78 N.E. 2d (941) (2003), enforcement of the decision was stayed for 180 days to allow the Massachusetts legislature to take any supportive or remedial actions. The Vermont decision authorizing civil unions for same-sex couples, *Baker v. State* 744, A. 2d 864 (1999) also postponed enforcement of its decision for a "reasonable period." According to the Supreme Court of Vermont, the U. S. Supreme Court decision of *Linkletter v. Walker* 381 U.S. 618 (1965) upholds the broad discretion of courts to stay enforcement of their rulings because no constitutional rule limits the court's discretion to postpone the operative date of its ruling if circumstances make a postponement prudent.

The Office of Attorney General advises that it is generally required to appeal any court decision that holds a State law to be unconstitutional.

Additional Information

Prior Introductions: None.

Cross File: None, although HB 646 is identical.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Attorney General, *The Washington Post*, Department of Legislative Services

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nas/jr

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