

**Department of Legislative Services**  
Maryland General Assembly  
2008 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 169

(Senator Greenip, *et al.*)

Judicial Proceedings

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**Maryland's Marriage Protection Act**

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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. The proposed amendment also provides that a civil union or relationship between individuals of the same sex that confers the benefit of marriage is not valid in the 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 2008 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 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 legal status of individuals of the same sex who enter into familial relationships garnered national attention when the Hawaii Supreme Court ruled that its law denying same-sex couples the right to marry violated state constitutional rights. In 1998, voters in Hawaii adopted a constitutional amendment effectively

overturning the decision by authorizing the legislature to reserve marriage to couples of the opposite sex. In 2000, Vermont became the first state to recognize a parallel system of “civil unions,” which provide to same-sex partners the same legal benefits, protections, and responsibilities under State law as married couples. In 2003, the Supreme Judicial Court of Massachusetts held that barring an individual from the rights and obligations of civil marriage solely because that individual would marry a person of the same sex violates the Massachusetts Constitution. In 2004, the court ruled that authorizing civil unions for same-sex couples while prohibiting them from marrying also was unconstitutional. As a result, Massachusetts became the first and only state to issue marriage licenses to same-sex couples.

*Constitutional Amendments and Legislation:* According to the National Conference of State Legislatures, 41 states (including Maryland) have laws that either prohibit same-sex marriages or deny recognition of same-sex marriages solemnized in another jurisdiction. However, because statutory bans have been viewed as providing only minimal protection against a constitutional challenge, after Massachusetts began issuing marriage licenses, many states amended their constitutions to limit marriage to couples of the opposite sex. To date, 27 states have adopted constitutional amendments defining marriage as only between a man and a woman. Only the state of Arizona has rejected a ballot initiative to ban same-sex marriage.

*Maryland Court of Appeals Ruling in Conaway v. Deane, et al.* In July 2004, nine same-sex couples filed suit in Baltimore City against the clerks of the circuit courts from five counties, contending that the State law banning same-sex marriage is unconstitutional. The plaintiffs alleged violation of the prohibition against discrimination based on sex under the Maryland Declaration of Rights, along with violations of due process and equal protection rights.

On January 30, 2006, the Circuit Court for Baltimore City held that the State 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, which the Office of the Attorney General immediately filed with the Court of Special Appeals. Before the intermediate court could decide the appeal, the Court of Appeals issued a writ of *certiorari*, and, on September 18, 2007, issued an opinion reversing the judgment of the circuit court and upholding the State’s marriage statute. (*See Conaway, et. al v. Deane, et. al.* 401 Md. 219 (2007).

The Court of Appeals held that the Equal Rights Amendment was intended to prevent discrimination based on gender, not sexual orientation. The court found that the marriage statute does not discriminate on the basis of gender because it prohibits equally both men and women from marrying a person of the same sex. The court also determined that under constitutional principles, sexual orientation is not a suspect or quasi-suspect classification, nor is same-sex marriage a constitutionally protected fundamental right. Therefore, Maryland's statute will pass constitutional muster so long as it is rationally related to a legitimate governmental interest. The court held that the marriage statute is rationally related to the State's legitimate interest in fostering procreation and encouraging the traditional family structure. However, in conclusion, the court cautioned that the opinion "should by no means be read to imply that the General Assembly may not grant and recognize for homosexual persons civil unions or the right to marry a person of the same sex."

*Domestic Partner Benefits in Maryland:* 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 budgets of local election boards will contain funding for notifying qualified voters about proposed constitutional amendments for the 2008 general election in newspapers or on specimen ballots.

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### Additional Information

**Prior Introductions:** This bill is similar to HB 919 of 2007, which received an unfavorable report from the House Judiciary Committee. It is a reintroduction of SB

262/HB 48 of 2006. SB 262 received no action by the Senate Judicial Proceedings Committee and HB 48 received an unfavorable report from Judiciary. This bill is also similar to HB 1220 of 2005, which received no action from Judiciary. SB 673/HB 16 of 2004 were also similar. SB 673 received no action after being heard in Judicial Proceedings and HB 16 received an unfavorable report from Judiciary.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Legislative Services

**Fiscal Note History:** First Reader - February 12, 2008  
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