

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 913
Judiciary

(Delegate Dwyer, *et al.*)

Maryland's Marriage Protection Act

This bill proposes an amendment to the Maryland Constitution that establishes that a marriage between a man and a woman is the only domestic legal union valid or recognized in this State.

Fiscal Summary

State Effect: None.

Local Effect: If approved by the General Assembly, this constitutional amendment will be submitted to the voters at the 2010 general election. It should not result in additional costs for the local election boards.

Small Business Effect: None.

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.

While not altering or affecting the definition of marriage, State law establishes health care decision making rights for domestic partners and specifies that hospitals, nursing homes, and residential treatment centers must allow visitation by a patient's or resident's domestic partner and members of the domestic partner's family. Also, persons in domestic partnerships or former domestic partnerships, as specified, may qualify for an exemption from recordation and State and county transfer taxes for residential property used as a common residence. Evidence of the domestic partnership or former domestic partnership must be submitted to qualify for the exemption.

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 state to issue marriage licenses to same-sex couples. In 2008, the Massachusetts legislature passed legislation preventing a proposed constitutional amendment banning same-sex marriage from appearing on the November 2008 ballot. Also in 2008, the state high courts in California and Connecticut overturned state statutes prohibiting same-sex marriage. In California, voters subsequently approved *Proposition 8*, a ballot initiative that amended the state constitution to limit marriage to one man and one woman. The validity of the proposition is under court challenge. It is also unclear what happens to same-sex marriages licensed by California before *Proposition 8* was approved by the voters. Connecticut issues marriage licenses to same-sex partners.

Constitutional Amendments and Legislation: According to the National Conference of State Legislatures, 40 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, 30 states have adopted constitutional amendments defining marriage as only between a man and a woman. Florida and Arizona adopted constitutional amendments prohibiting same-sex marriage in 2008. **Exhibit 1** shows the status of traditional marriage, same-sex marriage, civil unions, and domestic partnerships.

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: The Department of Budget and Management has proposed amended regulations to extend health insurance benefits to State employees, retirees, and their dependents in same-sex domestic partnerships. The jurisdictions of 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. See *Tyma v. Montgomery County*, 369 Md. 497 (2002). The proposed amendment may affect the ability of the State and local governments to extend benefits to partners of the same sex since the amendment does not allow recognition of any relationship uniting people of the same sex.

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 2010 general election in newspapers or on specimen ballots.

Additional Information

Prior Introductions: HB 1345 of 2008 was heard by the House Judiciary Committee but received no further action. SB 169 of 2008 was heard by the Senate Judicial Proceedings Committee but received no further action. HB 919 of 2007 received an unfavorable report from the House Judiciary Committee. SB 262/HB 48 were considered in 2006. SB 262 received no action by the Senate Judicial Proceedings Committee and HB 48 received an unfavorable report from the House Judiciary Committee. HB 1220 of 2005 received no action from the House Judiciary Committee. SB 673/HB 16 were considered in 2004. SB 673 received no action after being heard in the Senate Judicial Proceedings Committee and HB 16 received an unfavorable report from the House Judiciary Committee.

Cross File: SB 647 (Senator Greenip, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), National Conference of State Legislatures, *Associated Press*, Department of Legislative Services

Fiscal Note History: First Reader - March 9, 2009
mcp/hlb

Analysis by: Karen D. Morgan

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

Exhibit 1
Marriage and Other Unions in the United States

States Authorizing Same-Sex <u>Marriage*</u>	States with Constitutional Language Specifying Traditional <u>Marriage</u>	States Statutes Specifying Traditional <u>Marriage</u>	States With <u>Civil Unions</u>	States With Domestic <u>Partnerships</u>
Connecticut Massachusetts	Alabama Alaska Arizona Arkansas California*** Colorado Florida Georgia Hawaii** Idaho Kansas Kentucky Louisiana Michigan Mississippi Missouri Montana Nebraska Nevada North Dakota Ohio Oklahoma Oregon South Carolina South Dakota Tennessee Texas Utah Virginia Wisconsin	Alabama Alaska Arkansas Arizona California Colorado Delaware Florida Georgia Hawaii* Idaho Illinois Indiana Iowa Kansas Kentucky Louisiana Maine Maryland Michigan Minnesota Mississippi Missouri Montana New Hampshire North Carolina North Dakota Ohio Pennsylvania South Carolina South Dakota Tennessee Texas	New Hampshire New Jersey Vermont	California*** Oregon*** Hawaii Maine Washington

States Authorizing Same-Sex <u>Marriage*</u>	States with Constitutional Language Specifying Traditional <u>Marriage</u>	States Statutes Specifying Traditional <u>Marriage</u>	States With <u>Civil Unions</u>	States With Domestic <u>Partnerships</u>
		Utah Vermont Virginia Washington West Virginia Wisconsin Wyoming		

Source: National Conference of State Legislatures, Department of Legislative Services

*Rhode Island recognizes the same-sex marriages of other states.

**Hawaii's constitutional amendment did not specifically prohibit same-sex marriage but reserved to their legislature the right to define marriage. The Hawaii legislature then passed a statute defining marriage as between one man and one woman.

***Only California and Oregon provide nearly all state-level spousal rights to domestic partnership couples. The other jurisdictions provide only some state-level spousal rights. While the California Supreme Court invalidated the state statute prohibiting same-sex marriage, *Proposition 8*, approved by voters in November 2008, amended the state constitution to limit marriage to one man and one woman.

To date, 30 states have constitutional language regarding how marriage should be defined (29 state constitutions retain traditional definitions of marriage and Hawaii's reserved the power of definition to the legislature); 40 states have statutory definitions of marriage; 3 authorize civil unions; 5 states authorize domestic partnerships; and 2 states authorize same-sex marriage. Five states (Massachusetts, New Jersey, New Mexico, New York and Rhode Island) do not have specific laws prohibiting same-sex marriage.