

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 919
Judiciary

(Delegate Dwyer, *et al.*)

Maryland's Marriage Protection Act

This bill proposes an amendment to the Maryland Constitution establishing that only a marriage between a man and a woman is valid in this State. The proposed amendment specifies that all rights must be conferred equitably and not based on sexual orientation, and that under no circumstances does the Maryland Constitution permit same-sex relationships to be taught in the K-12 public schools.

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.

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.

Article 43 of the Maryland Declaration Rights states that the Legislature ought to encourage knowledge, virtue, the extension of a “judicious system” of general education, the promotion of literature, arts, sciences, agriculture, commerce and manufactures and

the general improvement of the People. State law has established a Maryland State Department of Education, which is directed by the State Board of Education. The Maryland State Department of Education governs matters of elementary and secondary education that affect the State and the general care and supervision of public and elementary school education. The State Board is responsible for developing the educational policies that affect Maryland elementary and secondary schools and establishes basic policy and guidelines for the program of instruction in public schools.

Background:

Health Education Curriculum in the Maryland Public Schools: The Maryland State Department of Education advises that the goal of health education is for students to acquire the knowledge and skills needed to attain life-long health and wellness, including goal-setting, decision-making, self-advocacy, self-management and interpersonal communication.

The Code of Maryland Regulations requires each local school system to provide an instructional program in comprehensive health education for students in grades K-8. In grades 9-12, each local school system must offer a comprehensive health education program that enables students to meet graduation requirements and select health education electives.

The draft Voluntary State Curriculum for Health Education does not direct local school systems or teachers regarding instruction in same-sex relationships. The relevant standard for family life and human sexuality states that students will demonstrate the ability to use human development knowledge, social skills, and health enhancing strategies to promote positive relationships, health growth, and development throughout the life cycle. In grade 5, students learn how relationships change with peers throughout puberty. In grade 7, students learn how family members influence the development of adolescents and how to identify and describe the components of a healthy relationship. In grades 9-12, students learn how to distinguish between healthy and unhealthy relationships.

Legislative Activity Regarding Same-Sex Marriage: In 1993, the Hawaii Supreme Court ruled that denial of marriage to same-sex couples violated the state's constitution. In 1998, Hawaii became one of the first states to adopt a constitutional amendment that authorizes its legislature to reserve marriage to couples of the opposite sex. In April 2000, Vermont became the first state to recognize civil unions that provide to same-sex couples virtually all the rights and privileges provided to married couples. Connecticut became the second state to approve civil unions in 2005. Pursuant to state court decisions

and legislation, New Jersey became the third state to authorize civil unions that provide state-level spousal rights to same-sex couples in 2006.

In November 2003, the Massachusetts Supreme Judicial Court, that state's highest court, ruled that under the state constitution, same-sex couples have the right to marry. In February 2004, the court ruled that authorizing civil unions for same-sex couples while prohibiting them from marrying was also unconstitutional. As a result, Massachusetts authorized marriage between partners of the same sex in May 2004 and remains the only state that permits such marriages. Efforts are underway in Massachusetts to place a constitutional amendment on the election ballot that defines marriage as a legal union between a man and a woman. Legislation authorizing such an amendment passed in January 2007 and must be approved again before being presented to voters for ratification. Accordingly, the earliest an amendment to the Massachusetts Constitution could be presented to voters is November 2008.

Same-sex marriage is legal in Belgium, Canada, the Netherlands, and Spain. In addition, the highest court of South Africa recently ruled that prohibitions against same-sex marriage are unconstitutional. Denmark, France, Germany, and Great Britain permit civil unions, in varying forms, between same-sex couples.

According to the National Conference of State Legislatures, 41 states (including Maryland) have passed laws that either prohibit same-sex marriages or deny recognition of same-sex marriages solemnized in other jurisdictions. Twenty-seven states have adopted constitutional amendments defining marriage as a union only between a man and a woman. Arizona is the only state to date in which a constitutional amendment to ban same-sex marriage failed in a general election. The proposed Arizona amendment was defeated in the 2006 general election.

Developments Regarding Same Sex Relationships in Maryland: The Maryland law defining marriage as only between a man and a woman was enacted in 1973. In July 2004, nine same-sex couples sued Maryland in the Baltimore City Circuit Court claiming that its 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 Court of Appeals heard oral arguments on the appeal in December 2006 and a decision is pending.

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).

Additional Information

Prior Introductions: This bill is similar to SB 262/HB 48 of 2006. SB 262 received no action after being heard by the Senate Judicial Proceedings Committee and HB 48 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland State Department of Education, National Conference of State Legislatures, *The Washington Post*, *The New York Times*, Department of Legislative Services

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