



## States Continue to Disagree on Same-Sex Unions

By Todd A. Solomon and Brian J. Tiemann

National attention first focused on the issue of same-sex marriage when Massachusetts legalized the unions in 2004. The heated debates between vocal advocates on both sides of the issue have intensified in recent years as more states have taken action to legalize or ban marriage and other forms of recognized unions between same-sex couples.

The conflicting approaches that different states have taken in response to the issue have created a complex mix of state laws that can be confusing not only for same-sex couples, but also for employers that seek to understand their obligations and options with respect to providing benefits for their employees' same-sex spouses or partners.

The majority of states have taken action to ban same-sex marriage by enacting state laws or passing state constitutional amendments that define marriage as a union between one man and one woman. On the other hand, Connecticut, Iowa, Massachusetts, New Hampshire, Vermont and the District of Columbia have legalized same-sex marriage.

California also recognizes same-sex marriages performed in the state between June 16, 2008 and Nov. 5, 2008, the brief period of time during which same-sex marriage was legal in the state before voters approved an amendment (Proposition 8) to the state constitution limiting marriage to opposite-sex couples. New York will also recognize same-sex marriages performed in states where such unions have been legalized, even though same-sex couples cannot legally marry in either state.

Other forms of same-sex unions are recognized in many states. New Jersey recognizes civil unions. California, Nevada, Oregon, Washington and the District of Columbia recognize domestic partnerships that extend all of the rights afforded to opposite-sex spouses under state law. Maine, Maryland and Wisconsin recognize limited forms of domestic partnerships that extend only certain rights and benefits under state law. New Jersey also recognizes domestic partnerships registered in the state before February 19, 2007, the date on which civil unions became legal in the state.

Same-sex marriage was nearly legalized in Maine in 2009 after the state legislature enacted a law providing for same-sex marriage. However, the law did not take effect after a slight majority of voters rejected a referendum on the issue in November 2009. Nevertheless, the state's domestic partnership laws remained in place allowing same-sex couples in Maine to continue to register as domestic partners in order to receive certain rights and benefits that state law extends to spouses through marriage.

A bill was introduced to the state legislature last year proposing to extend all of the rights and benefits afforded to opposite-sex spouses under Maine law to domestic partners, but died when it failed to pass before the end of the legislative session. Advocates of same-sex marriage have vowed to continue to fight for the legalization of same-sex marriage in the state, while those against same-sex marriage are now seeking to amend the state constitution to restrict marriage to opposite-sex unions.

Efforts to legalize same-sex marriage in New Jersey were defeated earlier this year after both houses of the state legislature rejected bills proposing to legalize same-sex marriage in the state. Although a study conducted by the state concluded that its civil union laws were not equivalent to marriage and were in essence not working, registering as partners in a civil union remains the only option available for same-sex couples in New Jersey.

Maryland may be the next state at the forefront of the national debate over same-sex marriage. In addition to a case moving through a Maryland courts regarding whether a Maryland state law stipulating that only marriage between a man and a woman will be valid in the state is constitutional, Maryland Attorney General Douglas F. Gansler issued a legal opinion earlier this year in which he concluded that the Maryland Supreme Court would likely find that same-sex marriages performed in states where same-sex marriage is legal are valid and recognized under Maryland state law.

The opinion statement directs that, until such time as the Maryland legislature or courts decide otherwise, state agencies should recognize out-of-state same-sex marriages and provides that the Attorney General's office will defend any state agency in court for doing so. Same-sex couples in Maryland will still not be permitted to legally marry; however, they can register as domestic partners with the state and obtain limited rights such as the ability to make medical and burial decisions and exemption from state inheritance taxes.

Illinois is also considering legalizing some form of same-sex union. A bill proposing to legalize civil unions has been introduced to the state legislature several times in recent years. If enacted, partners to a civil union would be entitled to all of the rights and benefits that Illinois state law affords to opposite-sex spouses.

Separate bills to legalize same-sex marriage were introduced to both houses of the state legislature last year. However, another bill introduced at the same time would amend the state constitution to limit marriage to opposite-sex couples and would prohibit the state or any political subdivision thereof from creating or recognizing a legal status for same-sex couples similar to that of marriage.

Hawaii state law permits same-sex couples in the state to register as reciprocal beneficiaries in order to obtain a

limit set of the rights and benefits of marriage. The Hawaii legislature has considered legalizing civil unions for same-sex couples but any action on the bill was indefinitely postponed by the state House of Representatives earlier this year even after the bill was approved by a veto-proof majority of the state Senate. Hawaii has enacted state laws that limit marriage to opposite-sex couples.

Although it is difficult to predict which states will be next to take action to legalize or ban same-sex marriage or other forms of same-sex unions, the debate over this issue is far from over and state laws are likely to become more complex as additional states consider what action to take in response to the ongoing pressure for change on both sides of the issue.

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