**OVERVIEW**

In 1996, President Bill Clinton signed the Defense of Marriage Act (DOMA) which bars the federal government from recognizing same-sex marriages.¹ Under DOMA, states are not obligated to recognize same-sex marriages performed in other states.² Since DOMA's enactment, forty-one states passed similar state laws defining marriage between one man and one woman in attempt to prohibit same-sex marriage. Twenty-seven states have passed constitutional amendments defining marriage between one man and one woman, a stricter measure that can withstand potential judicial intervention and permanently bar same-sex marriages. Over half of these amendments contain language that additionally prohibits the recognition of any other form of same-sex relationship, such as civil unions or domestic partnerships. Five states still have no laws prohibiting same-sex marriage.

**RELATIONSHIP RECOGNITION**

Nine states and the District of Columbia offer same-sex couples the option of marriage or an alternative union. Massachusetts and California offer same-sex marriage, which entitles same-sex couples to all of the state-level benefits of marriage without any federal benefit. Four states offer civil unions, an arrangement that offers spousal benefits nearly identical to those of traditional marriage. Civil unions typically require solemnization of the relationship in order to be valid.

Domestic partnerships are offered in five states, including California, and the rights involved can vary greatly. Oregon offers a full set of benefits comparable to marriage, while Maine's domestic partner law can only be used for purposes of inheritance or to make decisions regarding the disposal of a deceased partner's remains. Domestic partnerships are typically established through a registry maintained by a state government agency.

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¹ 1 USC § 7
² 28 USC § 1738C
**RECENT STATE ACTIVITY**

- **CALIFORNIA**
  **OVERTURNING THE BAN**
  In May, 2008, the California Supreme Court ruled that banning same-sex marriage is unconstitutional. The California statute defining marriage between one man and one woman was invalidated and in mid-June, California became the second state to allow same-sex couples to marry. The decision cited a fundamental "right to marry," which extends to same-sex couples and in the majority opinion, the court stated, "that gay individuals and same-sex couples are in some respects 'second-class citizens' who may, under the law, be treated differently from, and less favorably than, heterosexual individuals or opposite sex couples."

- **MASSACHUSETTS**
  **NON-RESIDENT MARRIAGE**
  Massachusetts began allowing same-sex marriage in 2004, after the state supreme court ruled that the constitution guarantees equal marriage rights for same sex couples. Since 2004, over 22,000 same-sex resident couples have been married in Massachusetts. State lawmakers are currently considering a bill that would repeal a 1913 law which prevents out of state couples from receiving a marriage license if the state in which they reside does not recognize the marriage. Proponents of the repeal argue that allowing same-sex couples from other states to marry in Massachusetts would pump $111 million into the state's economy. An estimated 32,000 same-sex couples would come to Massachusetts to marry over the next three years, boosting revenues in tourism and wedding-related services. The legislation has passed in the Massachusetts Senate and is expected to pass the House soon. Governor Deval Patrick has indicated that he will sign the bill.

- **NEW YORK AND RHODE ISLAND**
  **RECOGNIZING MARRIAGES PERFORMED IN OTHER STATES**
  Both New York and Rhode Island recently declared their intent to recognize same-sex marriages performed in other states. New York Governor David Patterson ordered all state agencies to recognize same-sex marriages in May of this year. In February, 2007, Rhode Island Attorney General Patrick Lynch reversed an earlier opinion and advised that same-sex marriage performed in other states should be recognized in Rhode Island.

- **WASHINGTON**
  **EXPANDING DOMESTIC PARTNER BENEFITS**
  Washington's domestic partner law was created in 2007 with limited benefits for same-sex registered partners. This year, Washington legislators significantly expanded the law adding benefits for same-sex partners related to probate and trust law, taxes, judicial process and victim's rights, community property, public assistance, veteran's benefits, guardianship and powers of attorney, dissolution, parenting plans and child support, and public disclosure for public officials. While these benefits are substantial in scope, there are still a number of benefits provided to married couples that remain unavailable to domestic partners.

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For more information about state developments on same-sex marriage, contact Christine Nelson in NCSL’s Denver Office at christine.nelson@ncsl.org or 303.364.7700.

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