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# ISSUE BRIEF

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## CIVIL UNIONS

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In the 2013 legislative session, the General Assembly enacted Senate Bill 13-011, the Colorado Civil Union Act. This issue brief summarizes the provisions of the act and discusses other states' laws concerning same-sex marriage and civil unions. A brief explanation of two same-sex marriage cases pending before the U.S. Supreme Court is also included.

### Definition of Marriage within the Colorado Constitution

In 2006, Colorado voters approved an amendment to the Colorado Constitution specifying that a union between one man and one woman is the only valid and recognized marriage in the state. Colorado had already added similar language to its statutes in 2000.

### Senate Bill 13-011

Senate Bill 13-011, which was signed into law in March 2013, authorizes civil unions in Colorado beginning May 1, 2013, and sets forth the rights, responsibilities, and requirements of individuals entering a civil union. Under the bill, two individuals, regardless of gender, may enter into a civil union if they are not related by blood, not married to or in a civil union with another person, and are over the age of 18. The bill defines the procedures to obtain a civil union license from a county clerk and to petition the court for the dissolution, invalidation, or legal separation of a civil union. The fee to obtain a civil union license is estimated to be \$30.

The bill grants individuals in civil unions the same state benefits, protections, and responsibilities as spouses and specifies that such individuals are covered under the statutory definitions of dependent, spouse, next of kin, and other terms of law indicating a familial or spousal relationship. In addition, the bill applies the laws of domestic relations (such as divorce, child custody, child support, and property division) to individuals in civil unions.

Among other provisions, the bill recognizes same-sex unions from other states as civil unions in Colorado, prohibits individuals in a civil union from filing a joint state tax return, and specifies that its provisions must not be construed to create a marriage between parties to a civil union or to alter the state's policy that marriage is only the union of one man and one woman.

### Other States' Laws

**Same-sex marriage.** As of June 2013, the following 12 states allow same-sex marriage: Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Rhode Island, Vermont, and Washington. Of those states, six legalized same-sex marriage through action by the state legislature, three did so via a state Supreme Court decision, and the remaining three did so through a popular vote.

**Civil unions.** Colorado is one of six states to allow civil unions. However, Delaware and Rhode Island, which currently allow civil unions, will no longer do so when their same-sex marriage laws take

effect later in 2013. Hawaii, Illinois, and New Jersey are the remaining states that allow civil unions.

**Definitions of marriage.** Thirty-six states limit marriage to one man and one woman either through constitutional amendments, state law, or both. Specifically:

- 27 states, including Colorado, have constitutional and statutory provisions banning same-sex marriage;
- 4 states ban same-sex marriage through constitutional amendments only; and
- 5 states ban same-sex marriage through state law only.

### **Federal Law**

In 1996, the U.S. Congress passed the federal Defense of Marriage Act (DOMA), which defines marriage as a legal union between one man and one woman. The act restricts federal marriage benefits to opposite-sex unions and allows states to disregard same-sex marriages performed elsewhere. After the act passed, the U.S. General Accounting Office identified over 1,000 laws and policies, including Social Security, family medical leave, and federal taxation policies, in which personal benefits, rights, and privileges are affected by marital status.

In 2011, the Obama administration announced its determination that the provisions of DOMA concerning the non-recognition of same-sex marriages for all federal purposes was unconstitutional. The administration stated that it would continue to enforce the law, but would no longer defend it in court. In addition, several federal courts have found provisions of DOMA to be unconstitutional.

### **U.S. Supreme Court Cases on Same-Sex Marriage**

In March 2013, the U.S. Supreme Court heard oral arguments in two cases related to same-sex marriage. A brief summary of each case is provided below. The court is expected to rule on both cases in June 2013.

***Hollingsworth v. Perry, No. 12-144.*** In May 2008, the California Supreme Court held that state statutes limiting marriage to opposite-sex applicants violated the California Constitution. As a result, same-sex couples began to marry in California. However, in November 2008, California voters approved Proposition 8, which added language to the California Constitution defining marriage as a union between a man and a woman. In 2010, the U.S. District Court for the Northern District of California ruled that Proposition 8 violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the U.S. Constitution, temporarily halting its enforcement. The Ninth Circuit Court of Appeals subsequently affirmed the District Court's ruling. In this case, according to legal experts, the U.S. Supreme Court's considerations include whether a state can define marriage solely as the union between a man and a woman and whether the proponents of Proposition 8 have standing to bring suit in federal court.

***State v. Windsor, No. 12-307.*** In 2007, two female residents of New York were married in Toronto, where same-sex marriages are legal. When one woman died in 2009, the state of New York legally recognized same-sex marriages performed in other jurisdictions. However, the federal Internal Revenue Service denied the widow the use of a spousal estate tax exemption on the grounds that, under DOMA, the federal government did not recognize same-sex marriages for the purposes of federal benefits. In this case, according to legal experts, the U.S. Supreme Court may consider whether DOMA violates the equal protection component of the Fifth's Amendment's due process clause for same-sex couples who are legally married under state law. The court may also consider whether it has jurisdiction over the case because the Obama administration has elected not to defend DOMA.