

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 693 (Delegate Burns)
Judiciary

Same Sex Marriages - Foreign Jurisdictions - Invalidity

This bill provides that a marriage between two individuals of the same sex that is validly entered into in another state or in a foreign country is not valid in Maryland. Marriages between individuals of the same sex are against the public policy of this State. A foreign marriage is defined as being between a man and a woman.

Fiscal Summary

State Effect: The bill would not affect governmental operations or finances as it reflects current practice.

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Current Law: Only a marriage between a man and a woman is valid in this State. “Foreign marriage” means a marriage ceremony performed outside of Maryland and in which one or both of the parties are citizens of Maryland.

Background: Under the Full Faith and Credit Clause of the U.S. Constitution, states are required to give full faith and credit to the public acts, records, and judicial proceedings of every other state. Therefore, Maryland will recognize foreign marriages that are validly entered into in another state. For example, Maryland will recognize a common law

marriage from a foreign jurisdiction, although common law marriages are not valid in Maryland. *Henderson v. Henderson*, 199 Md. 449 (1952).

However, the Full Faith and Credit Clause does not require a state to apply another state's law in violation of its own legitimate public policy. See *Nevada v. Hall*, 440 U.S. 410 (1979). Similarly, the *Henderson* court stated that Maryland is not bound to give effect to marriage laws that are "repugnant to its own laws and policy." 199 Md. at 459. Since 1973, Maryland law has provided that only a marriage between a man and a woman is valid in this State. The Office of Attorney General has advised that the Maryland law prohibiting same-sex marriage would create a valid public policy exception to the general rule that marriages valid where performed are valid anywhere.

The federal Defense of Marriage Act (DOMA) of 1996 defines marriage as a legal union between a man and a woman and provides that states are not required to recognize same-sex marriages performed in other states. Currently, Massachusetts is the only state that authorizes marriage for couples of the same sex. Approximately 36 states (including Maryland) have passed laws that either prohibit same-sex marriages or deny recognition of same-sex marriages solemnized in another jurisdiction. An additional six states have adopted constitutional amendments defining marriage as a union between a man and a woman. During the November 2004 elections, constitutional amendments to ban same-sex marriage were on the ballot and passed in 10 of the states that already had statutory prohibitions against same-sex marriage and in one additional state.

Local Fiscal Effect: The counties of Montgomery, Prince George's, and St. Mary's advise that the bill will not have a fiscal effect. Montgomery County advises that the bill will not affect county benefits extended to same-sex couples since qualification for the benefits is not contingent on marriage status.

Small Business Effect: A small business could be affected by this bill to the extent that a member of a same-sex marriage is a debtor of or employed by the business.

Additional Information

Prior Introductions: This bill is a reintroduction of HB 728/SB 746 of the 2004 session. HB 728 received an unfavorable report from the Judiciary Committee and SB 746 was heard in the Judicial Proceedings Committee, but received no further action. This bill is similar to HB 531 of the 2001 session, which received an unfavorable report from the Judiciary Committee. HB 1268 of the 1996 session, a prior introduction of this bill, received an unfavorable report from the Judiciary Committee.

Cross File: None.

Information Source(s): Montgomery County, Prince George's County, Harford County, Queen Anne's County, St. Mary's County, Judiciary (Administrative Office of the Courts), Comptroller's Office, Department of Budget and Management, Office of the Attorney General, Carroll County, Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2005
ncs/jr

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