

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 536

(Senator Kagan)

Judicial Proceedings

Divorce and Annulment - Removal of Barriers to Remarriage

This bill requires parties in an action for an absolute divorce or annulment to affirm that “all steps” within the affiant’s control have been taken to remove all “barriers to remarriage” under specified circumstances. The bill’s provisions apply only to a marriage solemnized by an official of a religious order or body authorized by the rules and customs of that order or body to perform a marriage ceremony. **The bill takes effect June 1, 2020;** it applies only to cases pending or filed on or after that date.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations.

Local Effect: The bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: “Barrier to remarriage” means any conscientious restraint or inhibition, secular or religious, affecting remarriage according to principles known by the parties to the marriage to have been held by the person who solemnized the marriage of the parties.

“All steps” does not include an application to a marriage tribunal or other similar organization or agency of a religious denomination that has authority to annul or dissolve a marriage under the rules of the religious denomination.

A party who files a complaint for an absolute divorce or annulment must file an affidavit stating that (1) the affiant has taken, or will take before the entry of a final judgment, all steps within the affiant's control to remove all barriers to remarriage by the other party or (2) the other party waived, in writing, the submission of the affidavit.

A party may request that the other party to the marriage file an affidavit stating that the other party has taken, or will take before the entry of final judgment, all steps within the other party's control to remove all barriers to remarriage by the party who made the request. If a party makes such a request, a court may not enter a final judgment of divorce or annulment until the other party has filed the affidavit.

A person who knowingly submits a false affidavit is guilty of perjury and subject to specified penalties on conviction.

A court may not enter a final judgment of divorce or annulment if the individual who solemnized the marriage certifies in an affidavit that (1) the individual solemnized the marriage of the parties and (2) to the individual's knowledge, a party to the marriage failed to remove a barrier to remarriage of the other party.

The party who requests the removal of barriers to the remarriage must pay the reasonable costs, if any, associated with the removal. The bill may not be construed to authorize a court to inquire into or determine any ecclesiastic or religious issue or order a party to remove a barrier to remarriage.

Current Law: Parties to absolute divorce or annulment proceedings are not required to take steps to remove barriers to remarriage by the other party.

Background: New York has a similar statute that seeks to address a problem for people who obtain a civil divorce but still face religious barriers to remarriage if the party wishes to remarry within the faith.

For example, under traditional Jewish law, a civil divorce does not dissolve the marriage. Only a religious divorce, provided by a signed writ of divorce called a "*get*," completely dissolves the marriage for a person who wishes to remarry within the Orthodox Jewish religion. By tradition, only the husband has the power to grant or withhold the *get*. The rabbinic authorities may not compel the husband to grant the *get* if he does not wish to do so. Until a woman receives a *get*, she may not remarry within her religion. If she does remarry without the *get*, the new marriage is not considered valid. The woman is considered an adulterer, and any children from the new marriage are considered illegitimate.

As a result, remarriage is not a practical option for these women. They have been referred to as “*agunah*” or “chained wives,” a term that comes from the Hebrew word for women without a *get*. Because the husband has the sole power to grant a *get*, Orthodox Jewish women who want the option to remarry in the faith at a future time could be forced to give up property rights, alimony, and child custody by their husbands.

Additional Information

Prior Introductions: SB 533 of 2007, a similar bill, failed on third reading in the Senate. Its cross file, HB 324, received a hearing in the House Judiciary Committee but was subsequently withdrawn. SB 374 of 2000, a similar bill, passed the Senate as amended but received an unfavorable report from the House Judiciary Committee. Its cross file, HB 1099, received an unfavorable report from the House Judiciary Committee. Similar bills were also introduced in prior sessions.

Designated Cross File: HB 833 (Delegates Attar and Rosenberg) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2020
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