

**Department of Legislative Services**  
 Maryland General Assembly  
 2004 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 1284

(Delegate Hurson, *et al.*)

Health and Government Operations

Education, Health, and Environmental Affairs

**Medical Decision Making Act of 2004**

This bill requires the Department of Health and Mental Hygiene (DHMH) to issue a Certificate of Life Partnership to a qualifying couple for the purpose of conferring rights to make medical determinations.

The bill takes effect July 1, 2004.

**Fiscal Summary**

**State Effect:** DHMH general fund expenditures could increase by \$288,200 and general fund revenues could increase by \$288,000 in FY 2005. Future year estimates reflect annualization and inflation.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
GF Revenue	\$288,000	\$288,000	\$360,000	\$360,000	\$360,000
GF Expenditure	288,200	288,800	305,500	323,300	342,600
Net Effect	(\$200)	(\$800)	\$54,500	\$36,700	\$17,400

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** Local county clerks could make the life partnership forms available using existing resources.

**Small Business Effect:** None.

## Analysis

**Bill Summary:** To qualify for a certificate of life partnership, a registrant must: (1) be at least 18 years old; (2) not be related to the other individual by blood or marriage within four degrees of consanguinity; (3) be of the same or opposite sex as the other individual; (4) not be married or be a member of a civil union or domestic partnership with another individual; (5) agree to be in a relationship of mutual interdependence; (6) share a common residence; and (7) agree to register with the Secretary of Health and Mental Hygiene.

DHMH must develop and distribute a “Declaration of Life Partnership” form and a “Notice of Termination of Life Partnership” form. The forms must be distributed to each county clerk and must be made available in DHMH, on its web site, and at local health departments. Each county clerk must make the forms available on the county clerk’s web site.

DHMH must set a reasonable fee, based on the costs of processing the forms, to file a “Declaration of Life Partnership” form. DHMH must register the “Declaration of Life Partnership” form and return a copy of the form to the life partners. An individual who has previously registered a life partnership may not register a new life partnership until 90 days after the date that a notice of termination of life partnership was recorded by DHMH.

The establishment of a life partnership registry in Maryland may not be construed to recognize, condone, or prohibit a domestic partnership, civil union, or marriage between two individuals of the same sex entered into in another state or jurisdiction.

Subject to the enactment of HB 557 of 2004, the “Declaration of Life Partnership” form must include a reference to information on an advance directive. If HB 557 does not take effect, this provision is null and void.

*Medical Emergencies:* A hospital, related institution, or residential treatment center must allow a patient’s life partner and other specified relatives to visit the patient unless no visitors are allowed, the facility reasonably determines that the presence of a particular visitor would endanger the health or safety of the patient or member of the facility staff, or the patient tells the facility staff that the patient does not want a particular person to visit.

In the case of a medical emergency, two adults must be treated as life partners if one of the adults in good faith, tells the emergency medical provider or hospital personnel that the adults are in a mutually interdependent relationship for the following purposes only: (1) allowing one adult to accompany the ill or injured adult being transported to a

hospital in an emergency vehicle; and (2) visitation with the ill or injured adult admitted to a hospital on an emergency basis.

*Disinterment, Reinterment, or Burial:* DHMH may not deny inspection of a disinterment or reinterment permit record to a life partner of the deceased whose human remains have been disinterred or reinterred. A life partner may give consent for a postmortem examination of the decedent. A life partner of the decedent has the right to arrange for the final disposition of the body. A life partner is a “person of interest” for the purposes of determining a burial site.

*Health Care Decisions:* The following individuals or groups, in the specified order of priority, may make decisions about health care for a person who has been certified to be incapable of making an informed decision and who has not appointed a health care agent: (1) the patient’s guardian, if one has been appointed; (2) the patient’s spouse or life partner; (3) an adult child of the patient; (4) a parent of the patient; (5) an adult brother or sister of the patient; or (6) a friend or other relative of the patient.

A life partner may petition the circuit court to enjoin the provision or withholding of medical treatment to the patient upon a finding by a preponderance of the evidence that the action is not lawfully authorized by State or federal law.

When an individual dies in a hospital, a representative of an organ recovery agency must request, with sensitivity, that the individual’s representative consent to the donation of all or any of the decedent’s organs, if suitable. The decedent’s representatives are, in the following order of priority: (1) a spouse or life partner; (2) an adult son or daughter; (3) a parent; (4) an adult brother or sister; (5) a guardian; (6) a friend or other relative; or (7) any other person authorized or required to dispose of the body. A life partner is considered “next of kin” for the purposes of making an anatomical gift.

*Nursing Homes:* If feasible, spouses or life partners who are both residents must be given the opportunity to share a room. Each resident who is party to a life partnership must have privacy during a visit by the other life partner. A life partner of a resident may file a complaint about an alleged violation of these provisions.

The provisions of the bill are severable.

**Current Law:** The circumstances that the bill addresses generally apply to spouses or court-appointed guardians.

**Background:** Nationally, many local jurisdictions recognize domestic partnerships for a variety of reasons. Washington, DC permits government employees to register as a domestic partnership in order to obtain family health insurance coverage as well as

family leave benefits. Other municipalities certify domestic partnerships to extend adoption rights and health care decision-making rights. Domestic partnership, depending on jurisdiction, may apply to same-sex couples, unmarried opposite-sex couples over the age of 62, or to any unmarried couple, regardless of sexual orientation or age.

Four states have statewide registries that confer benefits to registered couples:

*Vermont:* Allows same sex couples to enter into civil unions and couples who enter these unions receive the same state-level protection, benefits, and responsibilities as married couples if they reside in Vermont.

*California:* Began a domestic partner registry in 2000 with a handful of state-level rights. The registry is open to all same-sex couples and to different sex couples with one member being at least 62 years old. The rights have been expanded in 2002 and 2003.

*Hawaii:* Hawaii permits two individuals of the same sex to enter into a reciprocal beneficiary relationship. The status confers several state-level rights to couples.

*New Jersey:* In January 2004, New Jersey's domestic partner registration was signed into law. The law, which becomes effective in July 2004, creates a statewide domestic partner registry, open to all same-sex couples and different sex couples over the age of 62.

HB 557 requires DHMH, in consultation with the Office of the Attorney General, to develop a form providing information relating to advance directives and develop a plan to make it widely available. DHMH must implement the plan by June 30, 2005.

**State Expenditures:** DHMH general fund expenditures could increase by an estimated \$288,169 in fiscal 2005, which reflects a 90-day start-up delay. This estimate reflects the cost of hiring one supervisor and five clerks to register life partnerships, terminate life partnerships, and issue certificates. It includes a one-time \$50,000 expenditure to develop a computerized system to collect and maintain records on life partnerships. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses

Salaries and Fringe Benefits	\$193,124
Development of Computer Systems	50,000
Other Operating Expenses	<u>45,045</u>
<b>Total FY 2005 State Expenditures</b>	<b>\$288,169</b>

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

**State Revenues:** DHMH general fund revenues could increase by an estimated \$288,000 in fiscal 2005. In 2000, there were about 110,335 households in Maryland comprised of unmarried partners. Based on California's experience registering domestic partnerships, approximately 6.5% or 7,200 eligible couples in the State would register with DHMH annually. DHMH would set a \$40 registration fee to cover expenditures. Future year estimates assume: (1) the number of annual applicants remains constant; and (2) DHMH increases the registration fee to \$50 beginning in fiscal 2007 to cover increased expenditures.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Register of Wills, Department of Health and Mental Hygiene, Department of Legislative Services

**Fiscal Note History:** First Reader - March 2, 2004  
ncs/jr Revised - House Third Reader - April 1, 2004

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Analysis by: Susan D. John

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510