

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 728 (Delegate Burns, *et al.*)
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: In November 2003, the Massachusetts Supreme Judicial Court, that state’s highest court, ruled that under the state constitution, same sex-couples have the right to marry. Massachusetts state officials were given 180 days to implement the ruling, which is scheduled to go into effect in May 2004. Efforts are underway in Massachusetts to place a constitutional amendment on the election ballot which defines marriage as a legal union between a man and a woman. However, for a proposed amendment to be put to

voters for ratification, an amendment would have to be passed this year and next year by the Massachusetts legislature. The earliest an amendment to the Massachusetts Constitution could be presented to voters for ratification is November 2006. Same-sex marriage is legal in the Canadian provinces of Ontario and British Columbia and in the countries of Belgium and the Netherlands. Vermont is the only state that currently permits civil unions between members of the same sex. The countries of Denmark, France, and Germany also permit civil unions between same-sex couples.

New Jersey has recently enacted a law that would recognize some domestic partnerships, including same-sex couples, and would confer some legal rights on same-sex couples that married couples now enjoy. However, the law does not establish the authority for same-sex civil unions. According to the National Conference of State Legislatures, California, Connecticut, New York, Vermont, and Washington provide insurance benefits to the domestic partners of state government employees. In addition, Delaware, Massachusetts, and Oregon provide limited benefits, such as bereavement leave, for domestic partners of state employees. In Maryland, Montgomery County, Baltimore City, Greenbelt, and Takoma Park offer employees domestic partner benefits.

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 three states (Alaska, Nebraska, and Nevada) have ratified constitutional amendments banning same-sex marriages. Thirty-four other states, excluding Maryland, have passed DOMAs. However, two of those states, California and Hawaii, provide some spousal rights to unmarried couples, including couples of the same sex.

Ohio is expected to enact a DOMA that not only prohibits same-sex couples from entering into marriage or civil unions, but would also prohibit state agencies from extending marriage-like benefits to same-sex couples. In addition to Maryland, other states that are considering DOMAs are Connecticut, New Mexico, New Hampshire, and Wisconsin.

On February 12, 2004, city officials in San Francisco, California began performing civil unions for same-sex couples that wanted to marry. To date, over 3,000 unions have been performed. The legality of these unions is currently being challenged and the California DOMA is also under legal challenge. A county clerk in New Mexico also recently began performing civil unions but later determined that any issued certificates were invalid under the laws of New Mexico.

Small Business Effect: A small business could be affected by this bill to the extent that any members of same sex marriages are debtors of or employed by the business.

Additional Information

Prior Introductions: This bill is similar to HB 531 of the 2001 session. HB 531 was referred to the Judiciary Committee, where it received an unfavorable report. This bill is a reintroduction of HB 1268 from the 1996 session. HB 1268 was referred to the Judiciary Committee, where it received an unfavorable report.

Cross File: SB 746 (Senator Haines, *et al.*) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Comptroller's Office, Department of Budget and Management, National Conference of State Legislatures, *CQ Weekly*, *Stateline.org*, *The Associated Press*, *The Washington Post*, Department of Legislative Services

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