

Department of Legislative Services
 Maryland General Assembly
 2005 Session

FISCAL AND POLICY NOTE

Senate Bill 841 (Senator Britt)
 Education, Health, and Environmental Affairs

Basic Human Rights Act of 2005

This bill establishes domestic partnerships for the purpose of conferring rights to make medical determinations in certain circumstances.

The bill takes effect July 1, 2005.

Fiscal Summary

State Effect: Department of Health and Mental Hygiene (DHMH) general fund expenditures could increase by \$27,900. Future year estimates reflect annualization and inflation.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	27,900	31,600	33,700	36,100	38,700
Net Effect	(\$27,900)	(\$31,600)	(\$33,700)	(\$36,100)	(\$38,700)

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: A domestic partnership may be created between two individuals if: (1) each individual is at least 18 years old; (2) the individuals are not be related to the other individual by blood or marriage within four degrees of consanguinity; (3) the individuals are of the same sex, or opposite sex and at least 62 years old; (4) neither individual is married or a member of a civil union or domestic partnership with another individual; (5) the individuals agree to be in a relationship of mutual interdependence; (6) the individuals share a common residence; and (7) the individuals agree to the certificate of domestic partnership before a notary public.

The Secretary must adopt regulations regarding the design of an official certificate of domestic partnership and a notice of termination of a domestic partnership and the places where the official certificates will be distributed.

A domestic partnership terminates: (1) on the death of a domestic partner; or (2) when a notice of termination of domestic partnership has been signed by the parties before a notary public.

To establish a domestic partnership, both parties must appear before the notary public and under oath, give specified information relating to eligibility to form a domestic partnership and sign the certificate.

The rights and obligations of a domestic partner are only those described in the bill. Entering into a domestic partnership by two individuals who are also married to one another in another state may not be considered evidence, knowledge, awareness, or admission that the domestic partners are lawfully married.

Medical Emergencies: A hospital, related institution, or residential treatment center must allow a patient's domestic 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 domestic 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 domestic partner of the deceased whose human remains have been disinterred or reinterred. A domestic partner may give consent for a postmortem examination of the decedent. A domestic partner of the decedent has the right to arrange for the final disposition of the body. A domestic 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 domestic 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.

An individual may not be transported by ambulance between facilities unless accompanied by specified attendants or a specified family member, including the domestic partner.

A domestic 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 domestic 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 domestic partner is considered “next of kin” for the purposes of making an anatomical gift.

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

Penalties: An individual may not knowingly make any material false statement to obtain or help another to obtain a certificate of domestic partnership in violation of the bill. An individual who violates the bill’s provisions is guilty of perjury and subject to perjury penalties provided by law. A domestic partnership is not established and an individual may not claim the benefits of a domestic partnership unless the individual has been issued

a certificate of domestic partnership. An individual who violates this provision is guilty of a misdemeanor and subject to a fine of \$100.

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.

Six states and the District of Columbia have laws that confer benefits to same-sex or unmarried couples:

California: In 2000, California began a domestic partner registry 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. On January 1, 2005, Governor Arnold Schwarzenegger signed into law a measure that extends nearly all legal rights of married couples to same-sex partnerships.

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.

Maine: In April 2004 Maine enacted a domestic partnership law that provides to unmarried couples who have lived together for longer than one year in a committed relationship many of the benefits that married couples enjoy.

Massachusetts: Massachusetts recognizes same-sex marriage with all marital rights, including making health care decisions for a spouse.

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

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.

Washington, DC: The federal government enacted a domestic partnership law in 2002 that provides registered domestic partners visitation rights in hospitals and nursing homes. The law also extends a number of benefits to district government employees and their domestic partners, including health insurance coverage.

State Expenditures: DHMH general fund expenditures could increase by an estimated \$27,894 in fiscal 2006, which accounts for a 90-day start-up delay. It reflects the cost to hire one part-time administrative specialist to respond to requests for forms, information, and assistance from the public, provide information and assistance to notaries public who are responsible for completing the partnership and termination certificates, and mail certificates to locations throughout the State. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses

Salary and Fringe Benefits	\$20,663
Postage for Mailing Certificates	975
Other Operating Expenses	<u>6,256</u>
Total FY 2006 State Expenditures	\$27,894

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

The bill's penalty provisions are not expected to significantly affect State finances or operations.

Additional Information

Prior Introductions: A similar bill, HB 1284, was introduced in 2004. The bill, as amended, passed the House but was reported unfavorably by the Education, Health, and Environmental Affairs Committee.

Cross File: HB 353 (Delegate Murray, *et al.*) – Health and Government Operations.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene (Vital Statistics Administration), Department of Budget and Management, Department of Legislative Services

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