

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 570
Judiciary

(Delegates Simmons and Dumais)

Family Law - Civil Unions

This bill establishes civil unions as the legally recognized union of two eligible individuals of the same sex.

The bill also establishes a Maryland Civil Union Review Commission which is charged with studying the impact of civil unions and is required to report to the General Assembly by December 1 of each year. The bill is effective June 1, 2008. The part of the bill that establishes the Maryland Civil Union Review Commission terminates December 31, 2010.

Fiscal Summary

State Effect: General fund revenues increase \$4,600 in FY 2009 due to providing civil union certificates. Out-years reflect annualization and a stable caseload and fees. State expenditures increase \$2.2 million (\$1.3 million general funds/\$0.4 million special funds/\$0.4 million federal funds) for the State Employee Health and Retirement Benefits plan. General fund expenditures increase \$166,900 in FY 2009 due to additional payroll taxes. Out-years for benefits and tax payments reflect annualization and a stable number of eligible personnel. General fund expenditure increase of \$480,200 for FY 2009 only in the Department of Health and Mental Hygiene to modify computer programming for the collection, storing, and issuance of civil union and dissolution records. Minimal general fund expenditure increase to revise rates and forms in the Maryland Insurance Administration. Any expense reimbursements for commission members and staffing costs are assumed to be minimal and absorbable within existing resources.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
GF Revenue	\$4,600	\$6,100	\$6,100	\$6,100	\$6,100
GF Expenditure	1,952,100	1,962,500	1,962,500	1,962,500	1,962,500
SF Expenditure	435,000	580,000	580,000	580,000	580,000
FF Expenditure	435,000	580,000	580,000	580,000	580,000
Net Effect	(\$2,817,500)	(\$3,116,400)	(\$3,116,400)	(\$3,116,400)	(\$3,116,400)

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

Local Effect: Minimal increase in revenues due to additional civil union licenses and performance of ceremonies. Significant increase in local expenditures to provide health and retirement benefits to additional households. Minimal increase in expenditures to provide civil union licenses. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: This bill authorizes two parties to enter into a civil union in Maryland if each party is not party to another civil union or marriage, both parties are at least age 18 and are of the same gender. Except as otherwise provided, the provisions that apply to marriages apply to civil unions. A civil union entered into in another jurisdiction that is valid in that jurisdiction is valid in Maryland under this bill.

In this bill, the General Assembly finds and declares that same-sex couples live together in committed relationships without the benefits and rights afforded to heterosexual couples. Promotion of stable relationships and eliminating the obstacles faced by same-sex couples is necessary and proper and reaffirms the State obligation to assure equality for all State citizens. The civil union provisions may not be construed to require a religious official to solemnize any civil union in violation of the free exercise of religion guaranteed by the U.S. and Maryland constitutions.

The bill establishes that State and local laws that apply to spouses apply to parties to a civil union. A party to a civil union is included in any definition of terms in State law that indicate a spousal or familial relationship. Parties to a civil union must be responsible for each other to the same degree and in the same manner as required under the law for married individuals. Parties to a civil union are subject to the law of domestic relations, including divorce, annulment, separation, divorce, child custody and visitation, child support, alimony, and property disposition. The rights of parties to a civil union with respect to a child of whom either partner becomes the natural parent are equivalent to the rights for a married couple with a child. Parties to a civil union may also modify

the terms and conditions of their civil union to the same extent as those married individuals who executed a prenuptial or other recognized agreement.

The bill provides a nonexclusive list of legal benefits, protections, and responsibilities of spouses that apply in the same manner to parties to a civil union. This nonexclusive list includes those rights, protections, and responsibilities that relate to title, succession, causes of action, adoption, domestic violence, medical care and treatment, advance directives, public assistance benefits provided by the State, immunity from compelled testimony, assignment of wages, and homestead protection rights.

The Maryland Civil Union Review Commission is charged with:

- evaluating the implementation, operation, and effectiveness of the provisions establishing civil unions;
- collecting information about the effectiveness of civil union provisions;
- determining whether additional protections are needed;
- collecting information about the recognition and treatment of civil unions by other states and jurisdictions including dissolution procedures;
- evaluating the effect of civil unions rather than marriage on same-sex couples and their families;
- evaluating the financial impact on the State of civil unions rather than marriage; and
- reviewing civil union provisions and making recommendations concerning the modification or repeal of the provisions.

The Office of Attorney General is required to provide staff to the commission. A chair and vice chair are elected from among the members. A member of the commission may not receive compensation but is entitled to reimbursement for expenses as provided in the State budget.

Current Law: Under State law, only a marriage between a man and a woman is valid. State law does not establish provisions for civil unions or any other domestic partnership that could involve individuals of the same sex.

State law establishes the requirements for parties to be married, establishes the elements of a valid license application and the fee, the effective period of a license, designates those officials that are authorized to perform marriage ceremonies and sets the fee for performance of a marriage ceremony, and provides for the recording of a marriage. A clerk may discount the license fee if the parties complete a premarital preparation course as specified in statute.

Once parties are legally married, many rights, responsibilities, and benefits accrue to the married couple due to the federal and State governments' interest in encouraging and promoting marriage. In *Deane v. Conaway*, 401 Md. 219 (2007) the Court of Appeals observed:

...we are directed to 339 Maryland laws that provide for benefits, conditioned on marital status, which grant rights and responsibilities to married couples, to the effective exclusion of same-sex couples. They include, but are not limited to, the areas of taxation, business regulation, secured commercial transactions, spousal privilege and other procedural matters, education, estates and trusts, family law, decision-making regarding spousal health care, insurance, labor and employment, child care and child rearing, pensions, and the responsibilities attendant to spousal funeral arrangements. This is but a partial list of the benefits provided in Maryland to married couples and denied to same-sex couples prohibited from marriage. *Id.* at 239, *fn .6.*

The Court of Appeals also noted that the Government Accounting Office compiled a list of 1,138 federal laws that grant rights, responsibilities, and privileges to married heterosexual couples that are not provided to same-sex couples.

That the Maryland General Assembly may affirmatively establish civil unions or provide for same-sex marriage was confirmed by the Court of Appeals in *Deane v. Conaway*, although the court upheld the constitutionality of the State's definition of a valid marriage. In that decision, the Court of Appeals stated:

In declaring that the State's legitimate interests in fostering procreation and encouraging the traditional family structure in which children are born are related reasonably to the means employed by Family Law § 2-201, our opinion should by no means be read to imply that the General Assembly may not grant and recognize for homosexual persons civil unions or the right to marry a person of the same sex. *Id.* at 325.

Background: In 1993, the legal status of individuals of the same sex who enter into familial relationships garnered national attention when the Hawaii Supreme Court ruled that its law denying same-sex couples the right to marry violated state constitutional rights. In 1998, voters in Hawaii adopted a constitutional amendment effectively overturning the decision by authorizing the legislature to reserve marriage to couples of the opposite sex. In 2000, Vermont became the first state to recognize a parallel system of "civil unions," which provide to same-sex partners the same legal benefits, protections, and responsibilities under state law as married couples. In 2003, the Supreme Judicial Court of Massachusetts held that barring an individual from the rights and obligations of

civil marriage solely because that individual would marry a person of the same sex violates the Massachusetts Constitution. In 2004, the court ruled that authorizing civil unions for same-sex couples while prohibiting them from marrying also was unconstitutional. As a result, Massachusetts became the first and only state to issue marriage licenses to same-sex couples.

Spurred by the decisions in Hawaii and Massachusetts, legislatures and courts around the country grappled with the issue of whether to grant the right to marry or the protections of marriage to same-sex couples.

State Court Decisions: State courts that have considered challenges from same-sex couples claiming that matrimony is a constitutional right have yielded conflicting results. For example, the New Jersey Supreme Court recently determined that same-sex couples are constitutionally entitled to receive the same benefits and protections as married couples. On the other hand, the highest courts in Washington and New York found no constitutional right to marriage or its benefits. Legal challenges are currently pending in California, Connecticut, and Iowa.

Constitutional Amendments: According to the National Conference of State Legislatures, 41 states (including Maryland) have laws that either prohibit same-sex marriages or deny recognition of same-sex marriages solemnized in another jurisdiction. However, because statutory bans have been viewed as providing only minimal protection against a constitutional challenge, after Massachusetts began issuing marriage licenses, many states rushed to amend their constitutions to limit marriage to couples of the opposite sex. To date, 27 states have adopted constitutional amendments defining marriage as only between a man and a woman. Only the state of Arizona has rejected a ballot initiative to ban same-sex marriage.

Civil Unions and Domestic Registries: In 2005, Connecticut became the second state to enact a law establishing civil unions. Similarly, in response to the state's high court ruling, the New Jersey legislature adopted legislation in 2006 authorizing civil unions. New Hampshire passed similar legislation, which will take effect January 1, 2008. California enacted a law in 1999 authorizing couples to register as domestic partners and claim all the state benefits conferred on husbands and wives. Oregon has also adopted a domestic registry. Hawaii, Maine, and Washington have domestic registries that allow same-sex couples to claim only certain benefits, including hospital visitation rights and inheritance without a will. Unlike traditional marriages, civil unions, and domestic registries do not provide the marriage benefits available under federal law in numerous areas, such as Social Security, family medical leave, federal taxation, and immigration policies.

Maryland law does not address civil unions. However, the Court of Appeals has held that the extension of health insurance benefits by a county to same-sex domestic partners of

the county's employees is valid under State law. *Tyma v. Montgomery County*, 369 Md. 497 (2002).

Federal Law: The federal Defense of Marriage Act of 1996 defines marriage as a legal union between a man and a woman only and allows a state to deny recognition of a public act, record, or judicial proceeding of any other state respecting a relationship between persons of the same sex that is treated as a marriage under the laws of the other state.

Appellate Ruling Upholds Traditional Marriage in Maryland: In July 2004, nine same-sex couples filed suit in Baltimore City against the clerks of the circuit courts from five counties, contending that the State law banning same-sex marriage is unconstitutional. The plaintiffs alleged violation of the prohibition against discrimination based on sex under the Maryland Declaration of Rights, along with violations of due process and equal protection rights. On January 30, 2006, the Circuit Court for Baltimore City held that the State statute defining marriage is unconstitutional and violates Article 46 of the Maryland Declaration of Rights because it discriminates based on gender against a suspect class and is not narrowly tailored to serve any compelling governmental interests. Article 46 of Maryland's Declaration of Rights is commonly referred to as Maryland's "Equal Rights Amendment" and prohibits abridgment of equal rights under State law because of sex. The ruling was stayed pending an appeal, which the Office of the Attorney General immediately filed with the Court of Special Appeals. Before the intermediate court could decide the appeal, the Court of Appeals issued a writ of *certiorari*, and, on September 18, 2007, issued an opinion reversing the judgment of the circuit court and upholding the State's marriage statute. *See Conaway, et. al v. Deane, et. al.*, 401 Md. 219 (2007).

The Court of Appeals held that the Equal Rights Amendment was intended to prevent discrimination based on gender, not sexual orientation. The court found that the marriage statute does not discriminate on the basis of gender because it prohibits equally both men and women from marrying a person of the same sex. The court also determined that under constitutional principles, sexual orientation is not a suspect or quasi-suspect classification, nor is same-sex marriage a constitutionally protected fundamental right. Therefore, Maryland's statute will pass constitutional muster so long as it is rationally related to a legitimate governmental interest. The court held that the marriage statute is rationally related to the State's legitimate interest in fostering procreation and encouraging the traditional family structure. However, in conclusion, the court cautioned that the opinion "should by no means be read to imply that the General Assembly may not grant and recognize for homosexual persons civil unions or the right to marry a person of the same sex." *Id.* at p. 325.

State Fiscal Effect

Department of Health and Mental Hygiene: General fund expenditures could increase \$480,246 in fiscal 2009 only for the computer programming changes required for creating civil union records and the collection, indexing, storage, and issuance of civil union and dissolution of civil union records. The Vital Statistics Administration would be required to receive a copy of each civil union license recorded by a clerk of the circuit court and receive a copy of each dissolution of a civil union granted by the circuit court.

State general fund revenues could increase by \$4,554 in fiscal 2009, accounting for the bill's October 1 effective date and \$6,072 annually thereafter to issue certified copies of civil union certificates and other records related to domestic partners civil unions. The estimate assumes no changes in caseload or fees. The Vital Statistics Administration in the Department of Health and Mental Hygiene advises that each certified copy costs \$12.

State Employee Health and Retirement Benefits: The 2006 American Community Survey from the U.S. Census Bureau indicates there are 1,523 same-sex households in Maryland where at least one of the members is employed by State government. Not all of these households would cause additional State expenditures through the increased use of State benefits. First, not all individuals who cohabit would elect to become parties to a civil union. Secondly, some people who do enter into a civil union may opt to switch from State benefits to the benefits issued by a private employer. This estimate assumes that 506 additional households could be added to State benefits plan enrollment due to the provisions of this bill, which represents 0.5% of November 2007 health insurance plan enrollment, according to DBM.

The bill could have a significant impact on State finances due to employee and retiree benefits provided to State employees.

State expenditures could increase by \$2,175,000 in fiscal 2009 (\$1,305,000 general funds/\$435,000 special funds/\$435,000 federal funds) for additional households that qualify for health insurance and retirement benefits, accounting for the bill's October 1 effective date. DBM advises that the addition of same-sex civil unions and children to the State health insurance plan would cost about \$7,007 per family unit. The State would subsidize 82% of the total cost per household; accordingly, State expenditures for health insurance would be about \$5,745 per household. Annualized costs would be \$2,900,000 (\$1,740,000 general funds/\$580,000 special funds/\$580,000 federal funds).

DBM advises that State general fund expenditures for FICA taxes would increase by \$166,871 in fiscal 2009 for an additional 506 households. On an annualized basis, State general fund expenditures would increase by \$222,495. While health insurance premiums for State employees are taken out of pre-tax income for those who are married

and claim spousal benefits, the premiums would not be taken out of pretax income for civil union partners of the same sex as they would still not be recognized as married under federal law.

Legislative Services also advises that additional liabilities could be contributed by new beneficiaries added to the State Employee and Retiree Health and Welfare Benefits Program. Although a precise estimate of the additional liabilities contributed by a single new retiree or beneficiary is not available, the actuary for the Blue Ribbon Commission on Funding Health Care for State Retirees has estimated that a new member adds approximately \$280,000 in liabilities to the State plan, assuming the retiree also covers a domestic partner.

State expenditures could also increase for sick leave to the extent that individuals, who do not qualify under current law for family sick leave, would qualify under the provisions of this bill.

Medicaid: Under this bill, an uncertainty would arise with regard to the issuance of Medical Assistance. Federal law would not recognize civil union partners of the same sex; therefore, federal Medicaid funding could not be used to provide benefits. For same-sex civil union partners, Medicaid could possibly be provided with State-only dollars. However, since Medicaid is financed through an equal partnership with the federal government, it is unclear whether the federal government would authorize the issuance of Medicaid benefits to civil union partners, even if entirely financed by the State.

State Taxes: While this bill could cause some fluctuations in the attainment of State general fund revenues from income taxes, any such impact is assumed to be negligible. Individuals who enter into a civil union under this bill would be entitled to file a joint State income tax return, but could choose to continue filing individual returns. The State receives about \$7.4 billion in income tax revenues annually. To the extent that joint income tax filings increase due to civil unions, State general fund revenues could decline slightly. Revenues could also decline slightly to the extent that a taxpaying civil union partner could claim his/her partner with no income as an exemption on the joint return. The decline in State tax revenues could be offset to the extent that individuals with large losses who pay no taxes end up paying more taxes if the losses are combined with the income from a civil union partner.

Any effect on Maryland inheritance and estate tax collections cannot be reliably estimated at this time but is assumed to be insignificant.

Insurance Administration: General fund expenditure could increase minimally to revise rates and forms under the bill. Certain continuing insurance benefits that are extended

under current law to surviving spouses of deceased employees and divorced spouses would be extended to same-sex civil union partners. Contracts would need to be refiled to comply with the bill. Small group contracts would also need to be revised. The Workers' Compensation Commission advises that some increase in claims could occur due to additional people that would be considered beneficiaries under this bill. The impact would be absorbable within existing resources. WCC advises that in 2007, 35 awards were issued to dependents as a result of workplace fatalities.

Department of Natural Resources: DNR advises that parties to a civil union would not be required to obtain a hunting license and certain stamps before hunting on the resident property of one member of the civil union. Both parties would still need to obtain a hunting license prior to hunting on any other property within the State. Any changes in DNR procedures caused by the bill could be absorbed within existing resources.

Local Fiscal Effect: Local government expenditures to provide health and retirement benefits to additional households could increase significantly. Also, local government revenues could minimally increase to the extent that additional same-sex households which do not currently qualify for marriage would apply for civil union licenses. Clerks of the circuit courts would be provide civil union license applications and certificates. Coordination with the Vital Statistics Administration in DHMH would be required to ensure that licenses are adequately recorded. Local governments may be required to expend additional funds to address any increased demand for civil union licenses that could result from this bill. Circuit courts would also incur additional expenses to create civil union marriage licenses. Any such impact is likely to be minimal.

Small Business Effect: Those businesses that are eligible for coverage under a small employer contract would incur additional expenses to the extent that same-sex households would apply for coverage after becoming eligible under the provisions of this bill.

Additional Comments: It should be noted that the creation of civil unions at the State level would not affect eligibility for benefits at the federal level. The Federal Defense of Marriage Act defines marriage as a union between a man and a woman. The Act also authorizes states to refuse to recognize partnerships that do not conform to their public policies regarding marriage. Accordingly, federal health and retirement benefits may not be available to same-sex civil union partners and the status of civil union partners may or may not be recognized in other states.

The Maryland Higher Education Commission advises that the eligibility of students applying for financial aid could be affected to the extent that they are members of same-sex households. If joint income returns are filed, then the combined incomes could be considered when determining eligibility for financial aid. Some students could qualify

for less aid, while some may become ineligible due to any additional financial resources from the civil union.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Department of Human Resources, Judiciary (Administrative Office of the Courts), Workers' Compensation Commission, Department of Natural Resources, Comptroller's Office, Department of Housing and Community Development, Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Budget and Management, Office of the Attorney General, Department of Legislative Services

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Analysis by: Karen D. Morgan

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