

Department of Legislative Services  
 Maryland General Assembly  
 2008 Session

FISCAL AND POLICY NOTE

Senate Bill 290 (Senator Madaleno, *et al.*)  
 Judicial Proceedings

Religious Freedom and Civil Marriage Protection Act

This bill alters the definition of a valid marriage by repealing the reference to a man and a woman and specifying instead that only a marriage between two individuals who are not otherwise prohibited from marrying is valid in Maryland. The bill may not be construed to invalidate any other provision in the Marriage Title of the Family Law Article. An official of a religious institution or body authorized to solemnize marriages may not be required to solemnize any marriage in violation of the right to the free exercise of religion as guaranteed by the United States and Maryland Constitutions.

Fiscal Summary

**State Effect:** General fund revenues increase \$4,600 in FY 2009 due to additional copies of marriage/divorce certificates. Out-years assume stable caseload and fees and include annualization. Total State expenditures increase \$2.2 million (\$1.3 million general fund/\$0.4 million special fund/\$0.4 million federal funds) for additional benefits to State employees. General funds increase \$166,900 in FY 2009 due to additional payroll taxes. Out-years for benefits and tax payments assume a stable number of eligible personnel and include annualization. Minimal general fund expenditure increase to revise forms at the Maryland Insurance Administration.

(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	1,471,900	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	(\$2,337,300)	(\$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 marriages that could be licensed and performed under this bill. Local tax revenues could be minimally affected by the bill. Significant increase in local expenditures to provide health and retirement benefits to additional households.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Current Law:** The Maryland Constitution does not define a valid marriage. Under State law, only a marriage between a man and a woman is valid in this State.

Title 2 of the Family Law Article establishes certain restrictions and requirements governing marriages in this State. Individuals within certain degrees of relationships are prohibited from marrying. An individual under the age of 15 may not marry. An individual 15 years old may not marry without the consent of a parent or guardian and a certificate from a licensed physician that the woman to be married is pregnant or has given birth. An individual 16 or 17 years old must have either parental consent or a physician's certificate. An individual may not marry in this State without a marriage license and must wait a specified period after the license is issued before the ceremony may be performed.

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.

## **Background**

*The Issue of Same-sex Marriage in the States:* 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 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.

*Maryland Court of Appeals Ruling in Conaway, et. al v. Deane et al.:* 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 325.

### **State Fiscal Effect:**

*Department of Health and Mental Hygiene:* 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 marriage certificates and other records related to marriages and divorces. 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 married. Secondly, some people who do get married 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.

Total State expenditures could increase by \$2,175,000 million 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 marriages 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 pre-tax income for married individuals 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 spouse.

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 same-sex persons who are married under this bill, therefore federal Medicaid funding could not be used to provide benefits. For same-sex spouses, 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 married persons of the same sex, 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 same-sex marriage 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 same-sex marriages, State general fund revenues could decline slightly. Revenues could also decline slightly to the extent that a taxpaying person could claim his/her spouse with no income as an exemption on the tax 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 spouse.

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

*Insurance Administration:* Minimal general fund expenditure increase 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 spouses. Contracts would need to be refiled to comply with the bill. Small group contracts would also need to be revised.

**Local Fiscal Effect:** Local expenditures to provide health and retirement benefits to additional households could increase significantly. Local government revenues could minimally increase to the extent that additional same-sex households which do not currently qualify for marriage would apply for marriage licenses. Local governments may be required to expend additional funds to address any increased demand for marriage licenses that could result from this bill. Any such impact is likely to be minimal. Also local tax revenues could be minimally impacted under this bill to the extent individuals alter their tax classification after becoming married.

**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 same-sex marriage 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 those of the same sex who are married and the status of these marriages 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 marriage.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), U.S. Census Bureau, Department of Budget and Management, Comptroller's Office, Maryland Insurance Administration, Department of Legislative Services

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