

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 566
Finance

(Senators Garagiola and Kelley)

Health and Government Operations

Health Care Facility Visitation and Medical Decisions - Domestic Partners

This bill defines domestic partnerships and confers rights regarding health care facility visitation and medical decisions in certain circumstances.

The bill may not be construed to have any effect on specified provisions of law that provide that only a marriage between a man and a woman is valid in the State.

The bill takes effect July 1, 2008.

Fiscal Summary

State Effect: The bill would not directly affect governmental finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: A “domestic partnership” is a relationship between two individuals who are • at least age 18; • not related by blood or marriage; • not married or in a civil union or domestic partnership with another individual; • and agree to be in a relationship of mutual interdependence in which each individual contributes to the maintenance and support of the other individual and the relationship. An individual who asserts a domestic partnership may be required to provide • an affidavit signed under penalty of perjury by two individuals stating that they have established a domestic partnership; and • proof of any two of an enumerated list of documents.

Health Care Facility Visitation: Hospitals, nursing homes, and residential treatment centers must allow visitation by a patient's or resident's domestic partner, the children of the domestic partner, and the domestic partner of the patient's or resident's parent or child, with specified exceptions.

Nursing Homes: Domestic partners who are both residents of a nursing home must be given the opportunity, if feasible, to share a room. Each nursing home resident who has a domestic partner must have privacy during a visit by the other domestic partner. A domestic partner of a nursing home resident may file a complaint about a violation of these provisions.

Medical Emergencies: 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 provider or hospital personnel that they are in a mutually interdependent relationship for the following purposes only: • allowing one adult to accompany the ill or injured adult to a hospital in an emergency vehicle; and • visitation with the ill or injured adult admitted to a hospital on an emergency basis.

Health Care Decisions: A domestic partner can 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 or whose health care agent or appointed guardian is unavailable. If a domestic partner has a health care agent, that health care agent retains the authority to make any decisions for a domestic partner until the health care agency is revoked. An individual may not be transferred to or from any mental health facility by the Mental Hygiene Administration unless accompanied by an authorized ambulance attendant or specified family member, including a 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.

Tissue and Organ Donation: A domestic partner may have priority to consent to the donation of the decedent's organs or tissues. A hospital may not bill a domestic partner for the costs associated with the removal of the decedent's organs or tissues. Any remaining parts of a body after an anatomical gift must be returned to a domestic partner for final disposition.

Final Disposition of a Body: A domestic partner may • provide consent for a postmortem examination of the decedent; • have priority in arranging for the final disposition of a body; and • request reasonable access to a burial site for restoring, maintaining, or viewing. A domestic partner who arranges for the final disposition of a body is liable for the reasonable costs of preparation, care, and disposition of the decedent. The Department of Health and Mental Hygiene 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.

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 purposes such as health insurance coverage, family leave, adoption rights, and health care decision making. Nine states and the District of Columbia have laws that confer state-level benefits to same-sex or unmarried couples: California; Connecticut; Hawaii; Maine; New Hampshire; New Jersey; Oregon; Vermont; and Washington.

Additional Information

Prior Introductions: This bill is similar to SB 796 of 2005, the Medical Decision Making Act of 2005, which was enacted but vetoed by the Governor. In addition to conferring medical decision-making rights, SB 796 would have required the Department of Health and Mental Hygiene to issue a Certificate of Life Partnership to qualifying couples.

Cross File: HB 733 (Delegate Hubbard) – Health and Government Operations.

Information Source(s): Comptroller’s Office, Department of Health and Mental Hygiene, Maryland Insurance Administration, Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2008
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