

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 760
Judiciary

(Delegate Dumais)

Family Law - Out-of-State Civil Unions - Applicability of Domestic Relations
Laws

This bill establishes that parties to a civil union validly entered into in another state or country are subject to the law of domestic relations of this State, including annulment; separation and divorce; alimony; property disposition; and child custody, visitation, and support to the same degree and in the same manner as prescribed under the law of this State for married individuals.

Fiscal Summary

State Effect: Any change in State activities does not materially impact State finances or the workload of the Judiciary.

Local Effect: The bill does not materially impact the workload of the circuit courts.

Small Business Effect: None.

Analysis

Current Law/Background: Equity courts in the State have jurisdiction over domestic relations matters, including annulment; separation and divorce; alimony; property disposition; and child custody, visitation, and support. Civil unions are not referenced in statutory provisions.

According to the National Conference of State Legislatures, as of February 14, 2014, 17 states, including Maryland and the District of Columbia allow same-sex couples to marry. Three states (Colorado, Hawaii, and Illinois) allow civil unions, which provide

state-level spousal rights to same-sex couples. Same-sex marriage has replaced civil unions in Connecticut, Delaware, New Hampshire, Rhode Island, and Vermont. Prior to legalizing same-sex marriage through a court decision, New Jersey also authorized civil unions. Chapter 2 of 2012 legalized same-sex marriage in Maryland.

Prior to enactment of Chapter 2 of 2012, the Maryland Court of Appeals examined whether a valid out-of-state same-sex marriage (specifically a same-sex marriage recognized in California) could be recognized for purposes of the State's divorce laws. In that case, *Port v. Cowan*, 426 Md. 435 (2012), the Court of Appeals determined that under the common law doctrine of comity, the marriage was recognized for purposes of applying Maryland's divorce laws. In its analysis, the court recognized that Maryland has a long history of applying the doctrine of comity, a doctrine in which State courts will give effect to the laws and opinions of other states because of deference and respect. The court noted, however, that State courts have not honored valid foreign marriages if a foreign marriage is (1) prohibited expressly by the General Assembly or (2) repugnant to Maryland public policy. The court reviewed a number of cases demonstrating Maryland's liberal recognition of valid foreign marriages and further noted that it could not find a case decided by the Court of Appeals voiding a valid foreign marriage that was prohibited from being formed in Maryland.

The court analyzed whether the marriage was prohibited expressly by statute or repugnant to Maryland public policy. The court concluded that the foreign same-sex marriage was not prohibited expressly by the General Assembly, finding that there was no clear statutory mandate voiding foreign same-sex marriages. The court then discussed whether recognizing the marriage was repugnant to Maryland public policy. The court observed that public policy, although not well defined, may be understood as a concept prohibiting conduct that damages the public good. The court reasoned that recognizing valid foreign same-sex marriages is actually consistent with Maryland public policy.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Comptroller's Office, Judiciary (Administrative Office of the Courts); Dorchester, Garrett, and Montgomery counties; National Conference of State Legislatures; Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2014
mc/kdm

Analysis by: Jennifer K. Botts

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