



GOVERNOR'S COMMISSION TO STUDY IMPLEMENTATION
OF THE EQUAL RIGHTS AMENDMENT

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APPLICATION OF THE MARYLAND
EQUAL RIGHTS AMENDMENT



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In 1972, the Maryland General Assembly overwhelmingly voted to ratify the Federal Equal Rights Amendment, and soon thereafter voted to approve an Equal Rights Amendment to the Maryland Constitution. In the November 1972 referendum, the voters of Maryland accepted the State amendment by a 2 to 1 margin, and on December 5, 1972, Governor Mandel signed the amendment into law. Article 46 of the Maryland Declaration of Rights now reads:

"Equality of rights under the law shall not be abridged or denied because of sex" (1)

Since that time, legislative and judicial decisions have reflected the legal equality guaranteed to women and men under the Maryland Constitution. This paper seeks to demonstrate the changes that have been effected since the adoption of the Maryland ERA, and also to assist those who are concerned about the potential impact of the Federal ERA.

Those areas of the law which have been subjected to the scrutiny of the legislature fall into several different types: 1) Statutes which are explicitly discriminatory (giving only persons of one sex a benefit, for example); 2) Statutes which are not necessarily discriminatory on their face, but which operate or are enforced in a discriminatory manner; 3) Broader areas (such as employment or credit) in which the General Assembly felt that affirmative legislation was necessary to safeguard the legal rights of both sexes. An examination of recent changes in the law will show how the ERA has both directly eliminated certain specific instances of sex discrimination and also has indirectly served as a broader impetus for the removal of sex-based legal barriers to equal rights.

EMPLOYMENT

In the area of employment, many changes have been made since 1972 which further prohibit sex discrimination:

- It is now unlawful to classify individuals so as to deprive them of employment opportunities or to adversely affect their status because of sex. ⁽²⁾
- Numerous bills have been passed sex-neutralizing many provisions of the law that deal with pensions and survivors benefits, so that a woman can now provide herself and her family with the benefits of her years of work just as a man can.
- Qualification for competitive examinations in State Employment cannot be limited by the applicant's sex. ⁽³⁾
- State employees cannot be denied opportunities for promotion because they are currently on sick or maternity leave. ⁽⁴⁾
- Official state policy now encourages part-time employment and provides for part-time employment in the state merit system. ⁽⁵⁾
- Domestic workers (82% of whom are women) are included under workmen's compensation ⁽⁶⁾ and receive Maryland's minimum wage. ⁽⁷⁾
- When a Maryland woman is unemployed, she can now claim dependent's allowances for children wholly or partially supported by her, and the presumption that the father is the sole supporter has been removed. ⁽⁸⁾
- A pregnant woman can now be qualified to receive unemployment compensation benefits during time she is physically able to continue her employment. ⁽⁹⁾

CREDIT

Affirmative legislation was passed in 1975 which prohibits sex discrimination in the granting of credit and provides a state remedy for credit discrimination. ⁽¹⁰⁾ Among the discriminatory practices which are now prohibited is the refusal of a creditor to calculate regular alimony and child support payments into the income of the applicant. ⁽¹¹⁾ Sex or marital status is also an illegal basis for discrimination in housing or in mortgage financing. ⁽¹²⁾ Amendments to the Maryland Equal Credit Opportunity Act in 1976 strengthened the state law considerably, and will allow class actions against discriminatory credit practices. ⁽¹³⁾

INSURANCE

Though a number of discriminatory insurance practices have not yet been successfully eliminated, some strides have been made in this area:

-- Health insurance benefits for maternity care must be covered to the same extent as for other illnesses, and maternity benefits cannot be denied because of marital status. ⁽¹⁴⁾

-- Individuals who have had to terminate group hospital and medical policies must be offered the option to convert to an individual policy. ⁽¹⁵⁾

-- There must be an actuarial justification for the difference in rates, premiums or dividends based on sex in health and casualty insurance, ⁽¹⁶⁾ as well as in life insurance. ⁽¹⁷⁾ This has effectively required use of a six-year "setback" reduction in women's life insurance premiums, whereas under the old law only a three-year setback was permitted, despite contradicting data.

-- An insurer's cancellation or refusal to issue a policy must be based only upon standards reasonably related to the insurer's economic and business purpose. ⁽¹⁸⁾

CRIMINAL LAW

In 1974, a man convicted under the Maryland rape law claimed on appeal that the Equal Rights Amendment invalidated that law because of its sexually discriminatory nature (i. e., only men could be convicted under the law). The Court of Appeals subsequently upheld his conviction notwithstanding his claims. ⁽¹⁹⁾ This gives us some evidence of the Court's sensibility in applying the Equal Rights Amendment. Despite the constitutional infirmities of the old rape law, substantial public policy considerations dictate that similar convictions must stand.

In 1976, the General Assembly passed a major revision of the Maryland law on Rape and Sexual Offenses, which sex-neutralizes all of these criminal offenses. ⁽²⁰⁾ A major reform of the law of admissible evidence in rape trials which passed in 1976, should effectively ban irrelevant evidence of a rape victim's prior sexual conduct. ⁽²¹⁾

The criminal Bigamy statute was amended in 1976 to eliminate the sexually discriminatory aspects of the bigamy penalties. ⁽²²⁾ Other criminal statutes have been amended to eliminate sex discrimination.

DOMESTIC LAW

Perhaps the most important area of the law to be undergoing Equal Rights Amendment related change is the Domestic Law. Even so, the dire predictions of some ERA opponents have simply not materialized. The Maryland ERA has not abolished any of the rights and protections afforded women, but has been interpreted to mean that men assuming a supportive role in the marital relationship where the woman is the dominant wage earner should be afforded rights and protections equal to those afforded women in similar positions. Among the changes:

-- Alimony. The ERA did not abolish a woman's right to alimony. (23) In 1974 a Maryland court awarded alimony to a blind husband on a disability income where the adulterous wife earned over \$10,000 a year and had substantial assets. (24) In 1975, Maryland became the 33rd state to give the courts statutory authority to award alimony to either spouse. (25) In 1976, explicit authority was given the courts to award alimony, alimony pendente lite, and counsel fees to either spouse, only upon a showing of insufficient income to care for his or her needs. (26)

-- Custody. Even before passage of the Equal Rights Amendment, there were Maryland cases awarding child custody to the father. (27) It seems that the ERA may function to insure fair and individualized consideration of every situation. The one appellate case dealing with the effects of the ERA on awards of custody preserved the preference for mothers as custodians of the young and immature only as a 'tie breaker' when other factors are equal. (28) Subsequent to the Cooke decision, the legislature amended the statutes to read "in any custody proceeding, neither parent shall be given preference because of his or her sex." (29)

-- Support. Prior to the Equal Rights Amendment a Maryland case awarded a child support contribution from a mother under a 1920 statute. (30) Both parents have been responsible for the support of their children for many years. However, child support payments are notoriously difficult to collect from a recalcitrant spouse. A bill was passed in 1976 which authorizes the court to place a lien on the earnings of a defaulting spouse, subject to certain restrictions. (31)

-- In 1976, the Maryland Court of Appeals held that a homemaker's services could be determined to have a monetary value, for purposes of certain proceedings. (32)

-- Domicile. The 1976 General Assembly passed a bill which

eliminates sex discrimination in the determination of marital domicile, stating:

"The domicile of one spouse does not fix by operation of law the domicile of the other spouse, which shall be determined by reference to the same factors as in the case of any other individual capable of having an independent domicile. "(33)

-- Names. Prior to the ERA, the Maryland Court of Appeals held that a woman is not required to take her husband's surname as her own, but may do so if she chooses. (34) The 1976 General Assembly eliminated the practice of the Board of Elections striking from the list of eligible voters the names of married women who failed to return a notice of intended name use. (35)

CONCLUSION

Maryland's implementation of the Equal Rights Amendment has been systematic and thoughtful. A delicate balance of rights and responsibilities has been maintained and expanded through the amendment. No surprising or unfortunate situations have resulted from legislative, administrative or judicial application of the ERA.

A number of areas still demand change to conform to the constitutional requirements of the ERA -- insurance, pensions, marital property division, criminal non-support, prostitution, employment, etc.; but there is no indication that irresponsible, disruptive solutions would be devised for those or other potential situations.

Maryland's Equal Rights Amendment has been an impetus for change in many laws, practices and procedures, on both state-wide and county levels. Rather than producing a loss of rights or privileges for our citizens, the Amendment has been a stimulus for constructive change and has produced greater equality of rights for both sexes.

S. N.
August 1976

FOOTNOTES

- 1) Article 46, Md. Decl. of Rights.
- 2) Article 49B, Sec. 19(a)(2); Ch. 493, 1973.
- 3) Article 64A, Sec. 18(c), (d); Ch. 272, 1975.
- 4) Article 100, Sec. 77A; Ch. 698, 1974.
- 5) Article 64A, Sec. 51; Ch. 701, 1975.
- 6) Article 101, Sec. 21(b)(9); Ch. 686, 1975.
- 7) Article 100, Sec. 82(e)(2) repealed by Ch. 123, 1975.
- 8) Article 95A, Sec. 3(c); Ch. 708, 1974.
- 9) Article 95A, Sec. 6(f); Ch. 652, 1973.
- 10) Commercial Law Article, Secs. 12-701 to 12-708; Ch. 753, 1975.
- 11) Commercial Law Article, Sec. 12-705; Ch. 753, 1975; Ch. 661, 1975; Ch. 347, 1974.
- 12) Article 49B, Secs. 21, 22, 22A, 23; Ch. 848, 1974; Ch. 557, 1973.
- 13) Commercial Law Article, Sec. 12-707; Ch. 723, 1976.
- 14) Article 48A, Secs. 354F, 354G, 354H, 470H and 470I; Chs. 682, 683, 1975.
- 15) Article 48A, Sec. 477K; Ch. 274, 1976.
- 16) Article 48A, Secs. 223(b), 226(c), 234A(b); Ch. 479, 1975.
- 17) Article 48A, Secs. 83(3)(a-1)(i), 339(g), 414(i), 414(j); Ch. 273, 1975.
- 18) Article 48A, Sec. 234A(a); Ch. 752, 1974.
- 19) Brooks v. State, 24 Md. App. 334, 330 A. 2d 670 (1975).
- 20) Article 27, Secs. 461, 462, 463, 464, 464A, 464B, 464C, 464D, 464E, 465; Ch. 573, 1976.
- 21) Article 27, Sec. 461A; Ch. 574, 1976.
- 22) Article 27, Sec. 18; Ch. 438, 1976.
- 23) Minner v. Minner, 19 Md. App. 154, 310 A. 2d 208 (1973).
- 24) Tignor v. Tignor, Cir. Ct., Anne Arundel County, Divorce No. 21601, Judge Evans, January 29, 1974.
- 25) Article 16, Sec. 3; Ch. 332, 1975.
- 26) Article 16, Sec. 5; Ch. 440, 1975.
- 27) Doehrer v. Doehrer, Cir. Ct. Balto. County, Docket 89, Folio 259, Case No. 66079; October 6, 1971, (unreported).
- 28) Cooke v. Cooke, 21 Md. App. 376, 319 A. 2d 841 (1974).
- 29) Article 72A, Sec. 1; Ch. 181, 1974.
- 30) Doehrer v. Doehrer, *supra*. note 27.
- 31) Article 16, Sec. 5B; Ch. 496, 1976.
- 32) Holmes v. Criminal Injuries Compensation Board, Md. Ct. of Appeals, No. 110, Sept. Term, 1975, Filed, June 23, 1976.
- 33) Article 16, Sec. 29; Ch. 690, 1976.
- 34) Stuart v. Board of Supervisors of Elections, 266 Md. 440, 295 A. 2d 223 (1972).
- 35) Article 33, Secs. 3-8, 3-17, 3-18; Ch. 382, 1976.