



Va. benefits law won't help same-sex military couples

By [Bill Sizemore](#)
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There's one group of military spouses who won't benefit from new state legislation aimed at helping couples stay together in the transitory world of shifting duty stations: same-sex spouses.

At least, not yet.

One in a series of measures designed to make Virginia one of the most military-friendly states in the country, state Sen. Mamie Locke's bill (SB18) would provide unemployment benefits to a military spouse who voluntarily gives up a job to follow a service member transferred to another location.

The measure was passed overwhelmingly by the General Assembly, and Gov. Terry McAuliffe has said he will sign it.

The legislation comes at a time when the word "spouse" is in legal limbo in Virginia.

An amendment to the state constitution approved by voters in 2006 says "only a union between one man and one woman may be a marriage valid in or recognized by this Commonwealth and its political subdivisions."

A Norfolk federal judge ruled last month that the amendment violates the U.S. Constitution. But she also issued a stay, delaying implementation of her decision pending an appeal now under way in the 4th U.S. Circuit Court of Appeals. The case could make its way to the U.S. Supreme Court.

In the meantime, "under current state law, there is no such thing as a same-sex spouse," said Michael Kelly, a spokesman for Attorney General Mark Herring. That will remain the case unless and until U.S. District Judge Arenda Wright Allen's decision validating gay marriage is upheld by higher courts and implemented, Kelly said.

Herring, a Democrat, has taken a leading role in challenging Virginia's gay marriage ban.

Locke, D-Hampton, didn't respond to requests for comment.

Her bill was co-sponsored by Sen. Adam Ebbin, D-Alexandria, one of two openly gay members of the Assembly.

Ebbin declined to comment, but his legislative aide, Sam Bosch, agreed that the legislation does not appear to cover gay spouses under current law. The issue of same-sex spouses never came up during committee deliberations on the measure, Bosch said.

The Supreme Court, in its decision last year overturning part of the federal Defense of Marriage Act, declared that the federal government must treat all married couples equally - including gay couples married in states where same-sex unions are legal.

In response to that ruling, the Pentagon has issued directives making legally married same-sex spouses eligible for military spousal benefits.

But last year's Supreme Court decision "has nothing to say about how states define 'spouse' in state law and state constitutions," said Allison Orr Larsen, an associate professor of law at the College of William and Mary.

Since Locke's bill is state legislation, the question of whether it applies to same-sex spouses will not be resolved until the fate of Virginia's gay marriage ban is settled, Orr Larsen said.

The Locke bill specifies that money for the new unemployment benefits will come from the state's unemployment insurance pool, to which all Virginia businesses contribute.

The question comes down to "whose law and whose money. That's who gets to decide - for now," Orr Larsen said.

"Until there's a final judgment or until the stay is lifted, then the Virginia constitutional amendment is good law," she said.

A federally funded study in 2009 found that 2.2 percent of men and 10.7 percent of women in the armed forces identify themselves as gay, lesbian or bisexual. Hampton Roads has one of the highest concentrations of military personnel in the United States.

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