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DATE: March 26, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FAMILY LAW AND CHILDREN
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1019

RELATING TO: Marriage

SPONSOR(S): Representatives Bloom and Wise

STATUTE(S) AFFECTED: Sections 61.22, 741.0305, 741.04, 741.05, Florida Statutes.

COMPANION BILL(S): S 1576 (similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) FAMILY LAW AND CHILDREN YEAS 7 NAYS 2

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I. SUMMARY:

HB 1019 adds two requirements for persons who are seeking a marriage license: completing a marriage preparation course of at least 4 hours in length and obtaining a handbook containing those sections of Florida law pertaining to the rights and responsibilities of both parties to the marriage and to any children of the marriage.

The bill also requires that when a couple seeks a divorce, one or both must file a notice of intent to dissolve the marriage. Each party must complete a 12-hour marriage preservation class over a 6-week period within 90 days of filing the notice of intent. After completion of the course or in 90 days, whichever is sooner, a petition for dissolution may be filed.

The bill delineates the eligibility criteria for course providers and specifies curriculum requirements for each course. Each circuit is required to compile a registry of eligible course providers including at least one site in each county that provides the course at a sliding fee scale.

The bill requires for the establishment of a consortium of community organizations for the purpose of preparing and printing a handbook on the rights, responsibilities and requirements under Florida law of married couples to each other and to the children of the parties of the marriage.

The strike everything amendment adopted by the Committee on Family Law and Children and summarized on page 10, significantly amends the bill.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 741.01, F.S. provides that a marriage license must be issued by a county court judge or clerk of the circuit court. The license cannot be granted unless both parties state their ages by affidavit, both parties are over 18, and one party is a male and the other party a female. A license also cannot be issued if it appears there is an impediment because the parties are related as siblings, aunt and nephew, or uncle and niece.

The fee to obtain a marriage license required by the Florida Statutes is \$88.50.

There is no requirement in the Florida Statutes that a couple receive marriage counseling before receiving a marriage license.

To commence a dissolution of marriage proceeding under chapter 61, F.S., the only requirement is that one party must file a petition in circuit court.

Section 61.052(2)(b) allows a judge several alternatives in a dissolution of marriage proceeding if there is a minor child or one party denies that the marriage is irretrievably broken. The judge may order counseling, continue the proceedings for not longer than 3 months to help the parties to be reconciled, or take other steps that are in the best interests of the parties.

Section 61.21(2) allows a judge to require a court-approved parenting course before granting the petition for dissolution of marriage.

To provide counseling and psychological services, a person must be a psychologist licensed pursuant to chapter 490, or a clinical social worker, a marriage and family therapist, or a mental health counselor, licensed pursuant to chapter 491. Family law mediators are trained as "mediators", a legal term defined in Black's Law Dictionary as a "neutral third person who helps disputing parties to reach an agreement."

To practice law in Florida a person must be admitted to the Florida Bar, pursuant to s. 454.012, F.S. The Florida Supreme Court sets the standards for admission. Section 454.23, F.S., prohibits the unauthorized practice of law and describes behaviors which would constitute unauthorized practice.

B. EFFECT OF PROPOSED CHANGES:

This bill would add two requirements necessary to receive a marriage license: (1) completion of at least a 4-hour marriage preparation course and (2) verification that both parties have received a handbook detailing the legal rights and responsibilities of parties to the marriage and to any children of the marriage.

The bill also adds two requirements necessary to initiate a dissolution of marriage action: (1) at least one party must file a notice of intent with a circuit court and (2) within 90 days of filing the notice, each party must complete a court-approved 12-hour marriage preservation course over a period of 6 weeks.

Each circuit must compile a registry of course providers and sites for both the marriage preparation and the marriage preservation courses. Both registries must contain at least one course provider in each county which will offer the course on a sliding fee scale. Persons taking the courses may choose a provider not listed in the registry as long as the provider "meets or exceeds the standards...provided for in this section."

Both the marriage preparation course and the marriage preservation course must be conducted by certain licensed professionals, a person approved by a judge, an "official representative of a religious institution or his or her designee," or a family law mediator.

Topics in the marriage preparation course are to include: the rights and responsibilities under Florida law of marital partners to each other and any children of the union; conflict management; communication skills; financial responsibilities; children and parenting responsibilities; and typical problems of marriage and suggestions for how to solve them.

Topics in the marriage preservation course are to include: ways to build a successful relationship; using mediation and/or counseling to solve marital problems; the negative effects of divorce on children, men, women, and society; the most common causes of divorce and ways these may be overcome; keeping antagonism out of divorce; ways to minimize the effects of divorce on children; and the attorney/client relationship.

Cost for the courses are to be paid by the couple and will vary depending on the provider chosen. Each course must be offered at least one site in each county on a sliding fee scale.

The bill requires the establishment of a consortium of community organizations to work together to prepare and print the handbook and to be responsible for the printing costs. The handbook is to be made available when a couple applies for a marriage license and at provider sites for the marriage preparation course.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. It allows courts to consider refusal to take a marriage preservation course in a final judgment in a dissolution of marriage proceeding. Courts can only consider a petition of dissolution of marriage proceeding if at least one party has taken the marriage preservation course. If neither takes the course, the petition for dissolution cannot be filed.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

This bill will require parties applying for a marriage license to take a minimum 4-hour marriage preparation course and to obtain a handbook on the rights and responsibilities of marriage. Without meeting these two requirements, they cannot receive a marriage license.

The bill will also require one or both parties who want a divorce to file a notice of intent. After filing this notice, at least one of the parties must then take a 12-hour marriage preservation course over a minimum 6-week period.

Court personnel will receive notices of intent to file a dissolution of marriage. They must also ensure that if a dissolution is filed it is filed within 90 days, and document if the marriage preservation course has been taken. When couples are applying for marriage licenses, court personnel must document whether the course has been taken and whether the couple has received the rights and responsibilities handbook.

A consortium of community organizations must prepare handbooks on the rights and responsibilities of married couples.

- (3) any entitlement to a government service or benefit?

No

- b. If an agency or program is eliminated or reduced:

This bill does not eliminate or reduce any agency or program.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No

- b. Does the bill require or authorize an increase in any fees?

No

- c. Does the bill reduce total taxes, both rates and revenues?

No

- d. Does the bill reduce total fees, both rates and revenues?

No

- e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. The cost of the courses are paid for by the parties, as well as any fee that might be charged to file a notice of intent.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

The proposed bill would create two new requirements to get a marriage license -- attending a marriage preparation course and receiving a rights and responsibilities handbook. The bill would also require one or both of the parties in a divorce action to have previously filed a notice of intent and each party to have taken a marriage preservation course within 90 days of the notice.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

To marry persons must take a marriage preparation course and receive a handbook. To divorce under the proposed bill, a party or parties must file a notice of intent and then take a marriage preservation course.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

Section 1. Provides that this act shall be known as and can be cited as the "Marriage Preparation and Preservation Act of 1997."

Section 2. Creates s. 741.0305, F.S., to provide as follows:

(1) Couples who apply for a marriage license must first take a 4-hour court-approved marriage preparation course that will deal with the rights, responsibilities and requirements of Florida law of each party to the marriage with regard to each other and to any children. When applying for a marriage license, the couple must include with the application a certificate of completion received from the course provider.

(2) The marriage preparation course must be conducted by: specified licensed professionals; "a certified social worker, certified family law mediator or such other person approved by the chief judge of the circuit;" or an "official representative of a religious institution or his or her designee."

(3) The marriage preparation course must include information on certain marital responsibilities, training in specific interpersonal skills, and suggestions about how to deal with problems frequently encountered in marriages.

(4) A registry of approved course providers and sites must be established by each judicial circuit. The registry must include a site where the course is offered on a sliding fee scale.

(5) A person can choose an alternative provider for the marriage preparation course as long as the provider "meets or exceeds the standards for the course...provided for in this section."

(6) A consortium of community organizations will be formed to prepare and print a handbook with applicable section of Florida law on the rights and responsibilities of marriage. These handbooks shall then be available when a couple applies for a marriage license. They will also be at course sites. The costs of printing the handbook will be paid for by the community consortium.

Section 3. Amends s. 741.04, F.S. Adds two requirements to receive a marriage license: receiving the rights and responsibilities handbook and completing the marriage preparation course.

Section 4. Amends s. 741.05, F.S. Makes technical and conforming changes.

Section 5. Creates s. 61.22, F.S., to provide that:

- (1) To file a petition for dissolution, one or both of the parties must file a notice of intent to seek a divorce with the clerk of the circuit court. Service can be made by one spouse to another as long as the other spouse signs and dates the acceptance of service, or can be made pursuant to chapter 48, Florida Statutes.
- (2) After the notice of intent has been filed, each party has 90 days to complete a court-approved 12-hour marriage preservation course to be taken over a period of at least 6 weeks.
- (3) The marriage preservation course must be conducted by: certain licensed professionals; "a certified social worker, certified family law mediator, or such other person approved by the chief judge of the circuit;" or an "official representative of a religious institution or his or her designee."
- (4) The marriage preservation course must include as topics ways to solve marital problems, the negative effects of divorce, and ways to minimize the negative effects on each other and children. It also must cover the "attorney relationship."
- (5) A registry of approved course providers and sites must be established by each judicial circuit. The registry must include a site where the course is offered on a sliding fee scale.
- (6) A person can choose an alternative provider for the marriage preparation course as long as the provider "meets or exceeds the standards for the course...provided for in this section."
- (7) A party may file for divorce after the course is completed or after 90 days.
- (8) If a petition for dissolution is not filed 90 days after the notice of intent has been filed, the notice will expire.
- (9) If one party has refused to take the course, a judge can consider that in a final judgment of dissolution.
- (10) This act does not require both parties to take the marriage preservation course together.

Section 6. Provides for an effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Those individuals applying for a marriage license must pay for a marriage preparation course. Those individuals filing for a dissolution of marriage will have to pay any fee associated with filing a notice of intent to divorce as well as paying to take the marriage preservation course. A community consortium must be established which must develop a handbook and must absorb the cost of the printing the handbook.

2. Direct Private Sector Benefits:

This bill would result in increased income for providers of these courses. Many people who might never have taken a marriage preparation or a marriage preservation course will now be incurring the cost to take one.

3. Effects on Competition, Private Enterprise and Employment Markets:

More counseling providers may come into the market and others already in the market may start to specialize in marriage preparation or marriage preservation counseling. With more competition, prices for courses may drop.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not required counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The requirement that the marriage preparation course providers cover the topic of a married couple's rights and responsibilities under Florida law could be interpreted to constitute the unauthorized practice of law. The development of the handbook by a non-law trained community consortium could raise the same concern.

There is no provision for a judicial waiver of marriage counseling in special cases. Examples which might merit such waivers would include the situation in which one prospective party to a marriage lives out-of-state and arrives in Florida immediately before the wedding or when a woman is nine months pregnant and the couple wishes to marry prior to the child's birth.

Some couples may choose to live together rather than have to meet the two additional requirements for obtaining a marriage license. The bill could then have a chilling effect on marriage.

The effective date may not allow sufficient time for a handbook to be compiled and printed.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At the March 25, 1998 committee meeting, the Committee on Family Law and Children adopted a strike everything amendment to HB 1019 and incorporated 8 amendments to the amendment. This substantially amends the original bill. The strike everything amendment provides that:

- a. A handbook be created to explain the sections of Florida law pertaining to the rights and responsibilities of the marital partners to each other and to any children in the event of dissolution. This information may also be made available in videotape or other electronic media format and is to be reviewed and updated annually. The information contained in the handbook will be reviewed for accuracy by the Family Courts Steering Committee of the Florida Supreme Court prior to printing and distribution. A fee of \$1 is added to the charges for filing for a dissolution of marriage to pay for printing and distribution of the handbook. Information to be included in the handbook is specified.
- b. The clerk must verify that both parties have obtained, read, or otherwise accessed the information in the handbook before issuing a marriage license.
- c. The court may order parties to any action between parents in which custody or support of a minor child is an issue to attend a parent education and family stabilization class. The parties must begin to attend the class within 30 days of filing for dissolution of marriage or seeking a modification of a final judgment action involving shared parental responsibility, custody, or visitation.
 - (1) the parties may attend separate sessions of the course;
 - (2) no one shall be excluded from attendance because of inability to pay;
 - (3) each circuit must establish a registry of providers including at least one that provides a sliding fee scale;
 - (4) the court may waive attendance under specified circumstances;
 - (5) the course curriculum must include, but is not limited to, such topics as the legal aspects of deciding child related issues, the emotional aspects of divorce on children and adults, family relationships and dynamics, financial responsibilities to the child or children, spousal or child abuse, and skill-based relationship education;
 - (6) qualifications for providers of both the legal and emotional aspects of divorce are delineated;
 - (7) course providers may not solicit participants from the sessions they conduct to become private clients or patients.
- d. Information on marriage and relationship skill-based education is to be included in the life management skills class required for high school graduation.

The Family Courts Steering Committee has expressed concern that the requirement to review the material in the handbook will require staff time.

The Association of Court Clerks have raised some operational concerns not specifically addressed in the bill relating to receiving the handbooks or videotapes, having sufficient quantities of handbooks to distribute in a timely manner, and the requirement to verify that parties have read or otherwise accessed the material in the handbook or videotape.

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW AND CHILDREN:

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