

STORAGE NAME: h1019.flc
DATE: March 27, 1997

**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 1178 (similar)

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

- (1) FAMILY LAW AND CHILDREN
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

This bill adds two requirements for persons who are seeking a marriage license: completing a 4-hour marriage preparation course and receiving a handbook about the rights and responsibilities of 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. At least one party must complete a 12-hour marriage preservation class over a 6-week period. If only one person takes the course, only that party can petition for a dissolution of marriage. The judge can take into consideration that the other party did not take the course in the final judgment for dissolution. If neither party completes the course, the petition for dissolution of marriage cannot be filed.

The bill defines the eligibility for providing the courses required by the bill and which topics must be covered in each course. Each circuit is required to compile a registry of eligible providers. Parties may choose the course provider as long as the instructor meets the "standards...provided for in this section." Each circuit must identify at least one site in each county where the required courses may be taken on a sliding fee scale.

The bill requires that a consortium of community organizations be established to put together 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 group of organizations must pay for the handbook to be printed. The bill does not define what geographical areas the community consortium or consortiums will operate in nor outline the membership or structure of the consortium.

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 \$68.50, s. 741.01 and s. 741.02.

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 proceedings for not longer than 3 months to help 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. For example, Leon County offers several 4-hour courses ranging from \$17-\$30. The Family Law Section of the Florida Bar has developed pamphlets for the public which give information on divorce. The Family Law Section of the Florida Bar is a possible resource to help in developing more extensive material.

To provide counseling and psychological services, a person must meet the requirements of chapter 490 to be a licensed psychologist, or meet the requirements of chapter 491 to be a clinical social worker, a marriage and family therapist, or a mental health counselor. Persons may also be designated certified master social workers under s. 491.0145, but their function is basically administrative and they are not to be viewed as authorized to provide clinical social work services. 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, s. 454.012, F.S. The Florida Supreme Court sets the standards for admission. To be admitted, a person must graduate from an accredited law school, pass the Florida Bar and an ethics exam, and satisfy a background check. Section 454.23, F.S., prohibits the unauthorized practice of law and describes behaviors which would constitute unauthorized practice.

The definition of the unauthorized practice of law has been held to not be confined to this statute. Its definition also includes "decisional law and court rules as well as common understanding and practices." (*State v. Foster*, 674 So.2d 747 (Fla. App. 1 Dist.

1996).) In *The Florida Bar re Advisory Opinion*, 681 So.2d 1119, 1123 (Fla. 1996), the Florida Supreme Court quoted *State ex re. The Florida Bar v. Sperry*, 140 So. 2d 587, 591 (Fla. 1962), *vacated on other grounds*, 373 U.S. 379 (1963) when it said that:

It is generally understood that the performance of services in representing another before the courts is the practice of law. But the practice of law also includes the giving of legal advice and counsel to others as to their rights and obligations under the law...

Sperry went on to say that when determining whether an action constitutes the unauthorized practice of law a court should look at whether:

the giving of such advice...affect[s] important rights of a person under the law, and if the reasonable protection of the rights and property of those advised and served requires that the persons giving such advice possess legal skill and a knowledge of the law greater than that possessed by the average citizen.

B. EFFECT OF PROPOSED CHANGES:

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

The bill also adds two requirements to begin 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, at least one party must complete a court-approved 12-hour marriage preservation course over at least 6 weeks. If 90 days passes after the notice of intent has been filed and no petition for dissolution has been made, the notice expires. If a party continues to seek a divorce after the expiration of the notice, that party must file another notice of intent and wait to file a petition for dissolution until at least one party has taken the course. The bill provides that a party or parties may file for divorce after completion of the course or 90 days, whichever is sooner. Filing for dissolution is impossible at 90 days unless at least one party has taken the course since if neither party takes the course, they must wait to file until after 90 days but the notice expires at day 90. If at least one party takes the course, that party can file for divorce. The judge can take into consideration that the other party did not take the course in the final judgment of dissolution of the marriage.

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. Of the counseling professionals the bill designates to teach the courses, a licensed professional counselor and a limited licensed psychologist are not mentioned in

chapters 490 and 491, F.S. Certified social workers are also not mentioned, although s. 491.015 refers to certified master social workers. The function of certified master social workers is administrative, however, rather than clinical.

Once a course provider has been approved, the bill requires both courses to include specified topics. The course topics for the marriage preparation course are: 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. It can be predicted that the portion of the course addressing the rights and responsibilities under Florida law of the marital partners to each other and to any children will address legal issues.

The mandatory topics for the marriage preservation course are: 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 relationship.

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

The primary cost not assigned to the married or divorcing couple in the bill is the cost of preparing and printing a handbook with applicable sections of Florida law on the rights and responsibilities of married couples to each other and their children. The bill requires the establishment of a consortium of community organizations to work together to prepare and print this handbook and to be responsible for the printing costs. The handbook is to be available when a couple applies for a marriage license and at course provider sites. The term "community" is not defined.

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 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 at least one of

the parties 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?

The bill requires all persons contemplating marriage or divorce to attend educational courses.

(2) Who makes the decisions?

The Legislature

(3) Are private alternatives permitted?

Parties seeking a marriage license or a divorce may choose their own course providers.

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

Persons seeking a marriage license are required to take the marriage preparation. At least one party in a divorce action must have taken a marriage preservation course.

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

The penalty for not taking a marriage preparation course will be not to receive a marriage license. The penalty for not taking a marriage preservation course will be the inability to obtain a divorce.

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?

No

(2) service providers?

Those who teach the courses will have broad leeway as to what to teach and as to the manner of presentation as long as the required topics are included.

(3) government employees/agencies?

Courts and the clerks of court have the responsibility to ensure that those who seek a marriage license have taken the course and received the handbook. They also have the responsibility of correctly documenting the party or parties filing a notice of intent to seek a divorce, when the notice was filed, and whether a marriage preservation course has been taken.

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 want a marriage license must first take a 4-hour court-approved marriage 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 as topics 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 the 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. Makes technical and conforming changes.

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.

(2) After the notice of intent has been filed, one or both of the parties have 90 days to complete a court-approved 12-hour marriage preservation course over 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 the 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.

Section 6. Establishes 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 seeking a marriage license must pay for a course. Those seeking a divorce 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 paying 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:

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:

Florida law does not recognize a licensed professional counselor, a limited licensed psychologist, or a certified social worker.

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, as well as the pobbibility of inaccurate or incomplete information.

The provision that allows couples to choose the course providers as long as the provider "meets or exceed the standards...provided for in this section" is not clear. There is no indication which standards are being referenced.

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 aspiring spouse 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. Provision for a videotape which meets the bill's requirements could address these issues.

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Such a videotape would also help parties whose work schedules might conflict with time courses in their area are offered.

There is also no provision for a judicial waiver for the requirement that at least one spouse must take the marriage preservation course. In cases involving domestic violence or child abuse, or when a spouse has been abandoned, taking such a course might present an unreasonable delay in obtaining a dissolution of marriage.

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:

VII. SIGNATURES:

COMMITTEE ON FAMILY LAW AND CHILDREN:

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