

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 2310

INTRODUCER: Senators Storms and Baker

SUBJECT: Premarital Preparation

DATE: April 14, 2009

REVISED: 04/16/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Maclure	JU	Fav/1 amendment
2.			FT	
3.			HA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
 B. AMENDMENTS..... Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

This bill provides for an additional fee of \$100 for issuance of a marriage license that is to be deposited into the Marriage Education Trust Fund. This fee may be waived upon completion of a premarital preparation course. The bill raises the minimum number of hours required for a premarital preparation course from four to eight hours. Additionally, the bill adds the option of a premarital inventory as part of the premarital preparation course.

This bill substantially amends the following sections of the Florida Statutes: 741.01, 741.011, and 741.0305.

II. Present Situation:

It is estimated that between 40 and 50 percent of first marriages, and approximately 60 percent of second marriages, end in divorce in the United States.¹ Concern regarding divorce may relate to its impact on children. Research shows that divorce places children two to three times more at risk for psychological and behavioral problems and that “a stable, healthy, two-parent family is

¹ Alan J. Hawkins, *Will Legislation to Encourage Premarital Education Strengthen Marriage and Reduce Divorce?*, 9 J. L. & FAM. STUD. 79, 80 (2007).

the optimal environment for children’s development and well-being.”² Additionally, some maintain that the public indirectly benefits from strong marriages in the form of lower crime rates and lower economic costs.³ No studies have put a definitive price tag on the public costs of divorce, but, based on two studies, the estimate ranges between \$33 billion and \$112 billion a year.⁴

Research has indicated that premarital preparation can be effective in supporting healthy marriages and reducing divorce. Premarital education is often defined as “education to help individuals and couples explore relationship strengths and weaknesses, learn what it takes to have a successful marriage, and develop and practice relationship skills and virtues that sustain healthy marriages.”⁵ Premarital preparation courses usually involve a couples-group format and include discussions about the expectations of marriage, effective communication, problem-solving skills, and managing finances.⁶

To encourage couples to participate in premarital preparation, some states have created incentives in state law. One such incentive is a reduction in the marriage license fee for couples who participate in a premarital preparation course. As of July 2007, seven states have enacted marriage license fee reduction laws. See Figure 1 below.

Figure 1. Overview of State Marriage License Fee Reduction Laws⁷

State	Marriage License Fee	Fee with Premarital Preparation	Number of Hours Required	Statute/Details
Florida	\$93.50 ⁸	\$61	4 hours	Fla. Stat. s. 741.0305. Specifies qualified providers. Allows instruction delivered over “electronic medium.”
Georgia	Varies	Varies	6 hours	Georgia Code Ann. s. 19-3-30.1. License fee varies by county and although the marriage license fee is waived, other fees may apply.
Maryland	Varies	Varies	4 hours	MD Code, Family Law, s. 2-404.1. License fee varies by county.
Minnesota	\$100	\$30	12 hours	Minn. Stat. s. 517.08. Requires use of premarital inventory.
Oklahoma	\$50	\$5	4 hours	43 Okl. St. Ann. s. 5.1. Must be conducted by a “health professional.” Encourages use of Prevention and Relationship Enhancement Program (PREP).
Tennessee	Varies	(Reduced by	N/A	Tenn. Code Ann. s. 36-6-413. Fee reduction only

² *Id.* at 81.

³ *Id.* at 82.

⁴ See David Schramm, *Individual and Social Costs of Divorce in Utah*, 27 J. FAM. ECON. ISSUES 133, 146 (2006) (estimating that divorce will cost the United States \$33 billion annually based on extrapolations from Utah, where divorce cost the state nearly \$300 million in 2001); Institute for American Values et al., *The Taxpayer Costs of Divorce and Unwed Childbearing*, 17 (2008) (estimating that family fragmentation costs U.S. taxpayers approximately \$112 billion each year, or over \$1 trillion per decade).

⁵ Alan J. Hawkins, *supra* note 1, at 84.

⁶ *Id.* at 84-85.

⁷ Nat’l Healthy Marriage Resource Ctr., *Fact Sheet, Premarital Preparation Requirements in State Law*, 1 (Sept. 4, 2007), available at <http://www.healthymarriageinfo.org/docs/stmarriagelicfs.pdf> (last visited April 7, 2009).

⁸ The National Healthy Marriage Resource Center website lists the marriage license fee for Florida as \$88.50, and with the marriage preparation course as \$56.00. However, these numbers are outdated and are not current law. Currently, the marriage license fee in Florida is \$93.50, and the fee is reduced by \$32.50 if the couple completes a premarital preparation course.

State	Marriage License Fee	Fee with Premarital Preparation	Number of Hours Required	Statute/Details
		\$40)		applies to state residents.
Texas	\$60	Free	8 hours	Tex. Code Ann., Family Code s. 2.013. Must be a skills-based and research-based curriculum; the Health and Human Services Commission must maintain a public Web site with information on premarital preparation.

A premarital preparation course usually ranges from 4 to 12 hours of education and must be offered by a qualified professional.⁹ Although some premarital education is offered for free (usually in religious settings), most of the time the couple is required to pay for the course, which can cost between \$20 and \$2,000.¹⁰

At this time, it appears that no known research has been done to document the effectiveness of reducing marriage license fees to encourage premarital education.

In 1996, the Temporary Assistance for Needy Families (TANF) was created with the purpose of “encourag[ing] the formation and maintenance of two-parent families.”¹¹ Funds that are dedicated to promoting two-parent families are not limited to needy families and states are free to create a reasonable definition of a “two-parent family.” In 2005, Ohio became the first state to dedicate 1 percent of its TANF funds to the promotion of healthy marriages, in what has become known as the “one percent solution” campaign. One of the programs funded in Ohio through this campaign is Enriching Lives through Lasting Marriages, which provides premarital education for engaged couples. Since 2005, Texas and Utah have also dedicated 1 percent of their TANF funds to promoting marriage. Additionally, at least 10 other states – Alabama, Arizona, Colorado, Georgia, Louisiana, Michigan, New Mexico, New York, Oklahoma, and Virginia – have committed funds, TANF and non-TANF, to marriage-related programs. As of February 2008, Florida had not adopted the one-percent solution to donate TANF funds to the promotion of marriage.

However, Florida has taken several other steps related to promoting healthy marriages. In 1998, the Legislature enacted the “Marriage Preparation and Preservation Act of 1998 (Act).”¹² With the passage of the Act, Florida became the first state to pass marriage education legislation, including implementation of a reduction in the marriage license fee for couples who participate in a premarital preparation course and of a provision related to marriage and relationship skill-based education classes in high school. In 1999, Governor Jeb Bush became the first governor to

⁹ Nat’l Healthy Marriage Resource Ctr., *supra* note 7, at 2.

¹⁰ *Id.* (a marriage preparation workshop can cost up to \$500); *see also* Alan J. Hawkins, *supra* note 1, at 85 n. 42 (many programs commonly cost \$20, but depending on the provider, can cost between \$1,000 and \$2,000 for package deals).

¹¹ Comm’n on Marriage & Family, *The One-Percent Solution: Using TANF Funds to Empower Families and Promote Healthy Marriages in Florida*, 1 (Feb. 2008), available at <http://www.floridafamilies.org/pdfs/2008TANFOnePercentBrief.pdf> (last visited April 7, 2009) (quoting T. Ooms et al., Ctr. for Law and Social Policy, *Beyond Marriage Licenses: Efforts in States to Strengthen Marriage and Two-Parent Families* (2004)).

¹² Ch. 98-403, Laws of Fla.

sign a Community Marriage Policy,¹³ and in 2003, Florida created the Commission on Marriage and Family Support (Commission).¹⁴ The goal of the Commission is to strengthen marriages, support parents and families, and promote child well-being.¹⁵ Finally, in 2007, Governor Charlie Crist signed a proclamation declaring February 14 as Florida Healthy Marriage Day.¹⁶

In 2007, there were 155,998 marriages in the state of Florida.¹⁷ The current cost of a marriage license in Florida is \$93.50. The breakdown of this cost is as follows:¹⁸

Description of Fee	Amount
County clerk or court	\$2.00
Domestic Violence Trust Fund	\$25.00
Displaced Homemaker Trust Fund	\$7.50
General Revenue	\$25.00
Administrative Fee	\$30.00
Department of Health	\$4.00
Total	\$93.50

Section 741.0305, F.S., provides for a reduction in the marriage license fee if a couple completes a premarital preparation course. The course must be four hours and taught by one of the following qualified instructors:

- A psychologist licensed under chapter 490, F.S.;
- A clinical social worker licensed under chapter 491, F.S.;
- A marriage and family therapist licensed under chapter 491, F.S.;
- A mental health counselor licensed under chapter 491, F.S.;
- An official representative of a religious institution which is recognized under s. 496.404(19), F.S., if the representative has relevant training; or
- Any other provider designated by a judicial circuit.¹⁹

The premarital preparation course may provide instruction on:

- Conflict management;
- Communication skills;
- Financial responsibilities;
- Children and parenting responsibilities; and

¹³ See Smart Marriages, The Coalition for Marriage, Family, and Couples Education, *Legislation*, <http://www.smartmarriages.com/legislation.html> (last visited April 7, 2009).

¹⁴ Ch. 2003-122, Laws of Fla.

¹⁵ See s. 383.0115, F.S.; Comm'n on Marriage & Family, *About the Commission*, <http://floridafamilies.org/aboutus.html> (last visited April 8, 2009).

¹⁶ Charlie Crist, Governor, *Florida Healthy Marriage Day*, available at <http://www.healthymarriageinfo.org/docs/floridaproclamation.pdf> (last visited April 8, 2009).

¹⁷ Fla. Vital Statistics Annual Reports, Fla. Dep't of Health, *Marriages and Dissolutions of Marriage*, 173 (2007), available at <http://www.flpublichealth.com/VSBOOK/pdf/2007/Marriage.pdf> (last visited April 8, 2009).

¹⁸ See ss. 28.24(23), 741.01, and 741.02, F.S.

¹⁹ Section 741.0305(3), F.S.

- Data compiled from available information relating to problems reported by married couples who seek marital or individual counseling.²⁰

The costs of the course shall be paid by the couple, and, upon furnishing a certificate of completion, the couple will have their marriage license fee reduced by \$32.50.

III. Effect of Proposed Changes:

This bill amends provisions in ch. 741, F.S., to provide an additional financial incentive for couples to pursue premarital education prior to getting married. Specifically, the bill increases the fee associated with the issuance of a marriage license by \$100, to a total fee of \$193.50. The additional \$100 is to be deposited into the Marriage Education Trust Fund, which is created in a companion bill, SB 2306.

The bill amends s. 741.0305, F.S., to provide that if a couple completes a premarital preparation course, their marriage license fee will be reduced by \$132.50 (currently, the fee is reduced by \$32.50). The bill also increases the minimum length of the premarital preparation course from four to eight hours in order to qualify for the marriage license fee reduction.

The bill also provides that the premarital preparation course may include the use of a premarital inventory, which is defined as “a survey or questionnaire that a couple takes or completes which is [to] be scored and evaluated for each couple’s relationship to one another. The premarital inventory may address such relationship issues as communication, conflict resolution, personality types, marriage expectations, family-of-origin, children and parenting, and financial habits. Inventories may offer customized versions for couples who have been married before and couples who have children from a previous marriage. The purpose of the premarital inventory is to help couples better understand each other, understand each other’s expectations in marriage, understand the common reasons for divorce, and discover potential problems that might develop in their marriage before they enter into the relationship.”

The bill makes technical and conforming changes.

The bill provides an effective date of July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²⁰ Section 741.0305(2), F.S.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Fourteenth Amendment provides, in part, that no state shall “deprive any person of life, liberty, or property, without due process of law.”²¹ The United States Supreme Court has recognized that this clause guarantees “more than fair process” and, instead, also “provides heightened protection against government interference with certain fundamental rights and liberty interests.”²² Specifically, the Court has said that the Due Process Clause of the Fourteenth Amendment protects “a right of personal privacy,” which includes the right to independently make certain important decisions without governmental interference.²³ Moreover, the Court has found it “clear that among the decisions that an individual may make without unjustified government interference are personal decisions ‘relating to marriage, procreation, contraception, family relationships, and child rearing and education.’”²⁴ In *Loving v. Virginia*, 388 U.S. 1, 12 (1967), the Court held that “[t]he freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.”

While an implicit right of privacy is recognized under the United States Constitution, Floridians enjoy an explicit right of privacy under article I, section 23 of the Florida Constitution. Specifically, Florida’s right to privacy provision states: “Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein.”²⁵ Accordingly, Florida has also recognized the fundamental right to marry.²⁶

Any attempt to circumvent or impose unreasonable barriers on the fundamental right to marry may face constitutional scrutiny. However, the barrier imposed on marriage via this bill (*i.e.*, an increased marriage license fee) does not appear to violate a person’s constitutional right to marry. All states have requirements for the issuance of a marriage license. For example, some states require a blood test and others impose a waiting period. As of 2002, all states imposed a marriage license fee.²⁷

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

²¹ U.S. CONST. amend. XIV, s. 1.

²² *Washington v. Glucksberg*, 521 U.S. 702, 719-20 (1997).

²³ *Carey v. Population Servs., Int’l*, 431 U.S. 678, 684 (1977) (quoting *Roe v. Wade*, 410 U.S. 113, 152 (1973)).

²⁴ *Id.* at 684-85 (quoting *Roe*, 410 U.S. at 152-53) (internal citations omitted).

²⁵ FLA. CONST. art. I, s. 23.

²⁶ See *In re Donner’s Estate*, 364 So. 2d 742, 753 (Fla. 3d DCA 1978).

²⁷ Karen N. Gardiner et al., *State Policies to Promote Marriage, Final Report*, 4 (Sept. 2002), available at <http://aspe.hhs.gov/hsp/marriage02f/report.htm#IIIC> (last visited April 8, 2009).

B. Private Sector Impact:

This bill increases the cost of a marriage license by \$100, although this additional fee is waived upon completion of a premarital preparation course. However, couples who do not choose to take a premarital preparation course will now have to pay \$193.50 for a marriage license, rather than \$93.50.

Additionally, the bill increases the minimum length of the premarital preparation course from four to eight hours. Section 741.0305, F.S., currently provides that the costs of the course are to be paid by the applicant. Couples who choose to participate in a premarital preparation course may have to expend more money on the cost of the course, due to the increased length requirement, if they are not able to find a location that provides premarital education for free.

C. Government Sector Impact:

The additional \$100 fee imposed by the bill for issuance of a marriage license is to be deposited into the Marriage Education Trust Fund. This trust fund will provide grants to organizations statewide for the “purpose of funding marriage education programs that prepare, strengthen, and restore healthy marriage relationships.”²⁸ The fiscal impact of the bill is indeterminate since it is not known how many couples will qualify for the reduced marriage license fee due to taking premarital education. If a couple qualifies for the reduced fee, they will not have to pay the additional \$100 and, therefore, the money will not be transferred into the trust fund.

VI. Technical Deficiencies:

On line 106 of the bill, the word “to” needs to be inserted between “is” and “be.”

VII. Related Issues:

Under current law, s. 741.01, F.S., provides for additional fees to be paid for the issuance of a marriage license. For example:

- Subsection (1) requires a \$2 additional fee to be paid to the county court judge of clerk of the circuit court for receiving the marriage license application.
- Subsection (2) provides that the marriage license fee shall be increased by \$25, which is to be deposited into the Domestic Violence Trust Fund.
- Subsection (3) provides for a \$7.50 increase in the marriage license fee to be deposited into the Displaced Homemaker Trust Fund.
- Subsection (4) provides that an additional fee of \$25 shall be paid and deposited into the General Revenue Fund.

²⁸ The Fla. Senate, *CS for SB 2306* (April 2, 2009), available at <http://www.flsenate.gov/data/session/2009/Senate/bills/billtext/pdf/s2306c1.pdf> (last visited April 14, 2009).

Additionally, s. 741.02, F.S., requires the county court judge or clerk of the circuit court to collect an additional fee of \$4 to be deposited to the Department of Health to defray the cost of maintaining marriage records.

However, ch. 741, F.S., does not prescribe the actual cost of a marriage license. It appears that the \$30 “administrative fee” is prescribed in s. 28.24(23), F.S.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

Barcode 274286 by Judiciary on April 15, 2009:

Addresses the issue discussed in the Technical Deficiencies section of this analysis by inserting the word “to” between “is” and “be.”