

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 335 Marriage of Minors
SPONSOR(S): Judiciary Committee, Nuñez and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	13 Y, 1 N	Tuszynski	Bond
2) Judiciary Committee	17 Y, 2 N, As CS	Tuszynski	Poche

SUMMARY ANALYSIS

To obtain a marriage license, single individuals must appear before a county court judge or clerk of the circuit court and submit an application for a marriage license. Generally, applicants must be at least 18 years of age to obtain a marriage license. However, there are exceptions:

- A county court judge or clerk *must* issue a marriage license to a minor 16 or 17 years of age with consent of the minor's parents; where both parents are deceased; or the minor has been married previously;
- A county court judge *may*, at his or her discretion, issue a marriage license to a minor of *any age* if both parties swear under oath that they are the parents of a child; or
- If a pregnancy is verified by a written statement of a licensed physician, a county court judge *may*, at his or her discretion, issue a marriage license to:
 - A minor of *any age* upon application of both parties sworn under oath that they are the expectant parents; or
 - Any female under 18 years of age and any male over 18 years of age upon the female's application sworn under oath that she is an expectant parent.

CS/HB 335 creates a narrow exception to the prohibition against issuing a marriage license to persons under 18 years of age. The bill requires a county court judge or circuit court clerk to issue a marriage license to a 16 or 17 year-old, only when all of the following conditions are met:

- One party is no more than 2 years older than the other;
- There is written verification of pregnancy from a treating physician;
- Both parties affirm paternity; and
- The parents or guardian of the minor (or minors, if both are under 18) consent to the marriage, unless the parents of a minor party to the marriage are deceased, the minor party has been married before, or the minor party is emancipated.

An emancipated minor must meet all other conditions before a license to marry shall be issued.

The bill expressly prohibits the issuance of a marriage license to any person under 16 years of age and repeals language that allows otherwise.

The bill will have an insignificant negative fiscal impact on state and local government.

The bill has an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Marriage Licenses

The authority to issue a marriage license is vested solely in a county court judge or clerk of the circuit court.¹ No one may marry without a validly issued marriage license.² To obtain a marriage license, the single individuals must appear before the judge or clerk together and in person, bring valid government issued identification and social security numbers, and complete a marriage license application.

Generally, applicants must be at least 18 years of age to obtain a marriage license. However, there are exceptions under which a minor may be issued a license to marry.

Parental Consent for Applicants Who are 16 or 17 Years of Age

If an applicant for a marriage license is 16 or 17 years of age, he or she may obtain a marriage license if both of his or her parents (or a guardian) provide consent to the marriage. However, parental consent is not required if the minor's parents are deceased or if the minor was married previously. The written consent must be acknowledged before a person authorized by law to take acknowledgments and administer oaths.³

Judicial Discretion in Cases of Pregnancy or Parentage

A minor applicant may receive a marriage license without parental consent in limited circumstances that depend upon the discretion of a county court judge. A county court judge may, in his or her discretion, issue a marriage license to a minor if both parties swear under oath that they are the parents of a child.⁴ Additionally, if a pregnancy is verified in writing by a licensed physician, a county court judge may issue a marriage license to:

- Any male or female younger than 18 years of age where the parties swear under oath that they are expecting a child; or
- Any female younger than 18 years of age and a male older than 18 years of age if the female provides a sworn application that she is expecting a child.⁵

The statutes do not set a minimum age requirement for a marriage license when the applicants for a license have a child together or are expecting a child.⁶

¹ S. 741.01, F.S.

² S. 741.08, F.S.

³ S. 741.0405(1), F.S.

⁴ S. 741.0405(2), F.S.

⁵ S. 741.0405(3), F.S.

⁶ S. 741.0405(4), F.S.

Marriages Involving Minors

According to the Bureau of Vital Statistics, 1,828 marriage licenses were issued in the last 5 years to a couple in which at least one party was a minor.⁷

Number of Marriages by Year by Spouse Age ⁸						
Spouse 1	Spouse 2	2012	2013	2014	2015	2016
13 years	16-17 Years		1			
14 years	15 Years		1			
	18-19 years			1		
	20-24 years	3				
15 Years	16-17 years	4	2	2		1
	18-19 years					3
	20-24 years	2	1		1	
	25-29 years			1		
16-17 Years	35-39 years				1	
	15 Years	3	2			
	16-17 Years	30	21	21	19	25
	18-19 years	195	145	136	128	113
	20-24 years	163	135	118	124	85
	25-29 years	28	25	26	38	18
	30-34 years	7	2	2	3	4
	35-39 years	2	1	2	1	1
18-19 years	40-44 years					1
	90-94 years			1		
20-24 years	15 Years	1	1			
	16-17 Years	19	16	18	21	35
25-29 years	14 years		1			
	15 Years		1			
	16-17 Years	5	7	5	8	21
30-34 years	15 Years	1				
	16-17 Years	2	1	2	2	4
35-39 years	14 years	1				
	15 Years				1	
	16-17 Years	1	1		1	
40-44 years	16-17 Years			1	1	
	16-17 Years				1	
Totals		467	364	336	350	311

⁷ Id.

⁸ Email from Bryan P Wendel, Government Analyst II with the Office of Legislative Planning, Florida Department of Health, RE: SB 140 - Statistics (10/23/2017); *Marriages Under 18 (Years 2012-2016)*, Email attachment supplied by Gary Sammet, Bureau of Vital Statistics, Department of Health (Oct. 25, 2017) (on file with the Judiciary Committee).

Removal of Disabilities of Nonage

A circuit court may remove the disabilities of nonage, commonly referred to as "emancipation," of a 16 or 17 year-old when the minor's natural or legal guardian or a guardian ad litem files a petition containing the following:⁹

- Demographic information, like names, addresses, and important dates related to the minor and parents;
- A statement of the minor's character, habits, income, and how the minor plans to meet his or her needs with respect to food, shelter, clothing, and other necessities; and
- A statement of the reason why the court should remove the disabilities of nonage.¹⁰

The court, after considering the petition and satisfied that it is in the best interest of the minor, may grant the petition and allow the minor to exercise all of the rights and responsibilities of an adult.¹¹

Effect of Proposed Changes

CS/HB 335 repeals the current exceptions to the prohibition against issuing a marriage license to persons under 18 years of age and creates one narrow exception.

The bill requires a county court judge or circuit court clerk to issue a marriage license to a 16 or 17 year-old, only when all of the following conditions are met:

- One party is no more than 2 years older than the other;
- There is written verification of pregnancy from a treating physician;
- Both parties affirm paternity; and
- The parents or guardian of the minor (or minors, if both are under 18) consent to the marriage.

The bill does not require parental consent if the parents of a minor party are deceased, the minor party has been married before, or the minor party is emancipated under s. 743.015, F.S. However, an emancipated minor must still meet all other conditions before a license to marry shall be issued.

The bill expressly prohibits the issuance of a marriage license to any person under 16 years of age and repeals language that allows such issuance.

The effective date of the bill is July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 741.0405, F.S., relating to when a marriage license may be issued to persons under 18 years.

Section 2: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues

The bill may have an insignificant negative impact on state revenue due to the reduction of marriage license fees collected for marriages involving minors. The current total fee for a marriage

⁹ S 743.015, F.S.; A guardian ad litem may only petition for removal of disabilities of nonage when a natural or legal guardian does not exist.

¹⁰ S. 743.015 (1), F.S.

¹¹ SS. 743.015(7) and (8), F.S.

license is \$86, \$54 of which is split between General Revenue and various state entities.¹² Given an average of 366 marriages per year involving minors,¹³ this would result in a reduction of approximately \$19,764.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an insignificant negative impact on local revenue due to the reduction of marriage license fees collected for marriages involving minors. The current total fee for a marriage license is \$86, \$32 of which is kept by the county clerk.¹⁴ Given an average of 366 marriages per year involving minors, this would result in a reduction of approximately \$13,176.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

No applicable. The bill does not appear to affect county or municipal governments.

2. Other:

The Due Process clause of the United States Constitution prohibits the government from infringing a fundamental right unless such is necessary to further a compelling governmental interest. The Supreme Court of the United States has held the "freedom to marry . . . resides with the individual, and cannot be infringed by the State,"¹⁵ that "[T]he decision to marry is a fundamental right."¹⁶ and most recently, "the Court has long held the right to marry is protected by the Constitution."¹⁷

The Supreme Court has also found that that the States may validly limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious

¹² \$25 - Domestic Violence Trust Fund, \$25 - General Revenue, and \$4 - Department of Health; Florida Court Clerks & Comptrollers, Distribution Schedule of Court-Related Filing Fees, Service Charges, Costs and Fines, Including a Fee Schedule for Recording, available at: http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/publicationsanddocuments/2017_Distribution_Schedule_7.pdf (last accessed January 30, 2018).

¹³ 1,828 marriages over the past 5 years.

¹⁴ \$30 for a certified copy and a \$2 license fee to the clerk or judge; Florida Court Clerks & Comptrollers, Distribution Schedule of Court-Related Filing Fees, Service Charges, Costs and Fines, Including a Fee Schedule for Recording, available at: http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/publicationsanddocuments/2017_Distribution_Schedule_7.pdf (last accessed January 30, 2018).

¹⁵ *Loving v. Virginia*, 87 S.Ct. 1817, 1824 (1967).

¹⁶ *Turner v. Safley*, 107 S. Ct. 2254, 2265 (1987)

¹⁷ *Obergefell v. Hodges*, 135 S.Ct. 2584, 2589 (2015)

consequences.¹⁸ These rulings have been grounded in the recognition that, during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.¹⁹

There is no case law challenging or overturning current age-based restrictions on marriage.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2018, the Judiciary Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Created a narrow exception to the 18 year-old minimum-age requirement for marriage, allowing 16 and 17 year-olds to marry only if:
 - One party is no more than 2 years older than the other;
 - One of the parties is pregnant and both parties have affirmed paternity; and
 - The minor's parents or guardians have consented, unless the parents are deceased, the minor party has been married before, or the minor is emancipated.
- Prohibited issuing a marriage license to anyone under 16 years of age.
- Prohibited issuing a marriage license to an emancipated minor unless all requirements in the exception are met.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.

¹⁸ *Bellotti v. Baird*, 99 S.Ct. 3035, 3044 (1979)

¹⁹ *Id.*