

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Judiciary Committee

BILL: SB 2536

INTRODUCER: Senator Atwater

SUBJECT: Marriage Licenses

DATE: April 18, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Chinn	Maclure	JU	Pre-meeting
2.			CF	
3.				
4.				
5.				
6.				

I. Summary:

The bill repeals all provisions relating to the ability of a minor to obtain a marriage license without the consent of parents due to pregnancy. Judges will no longer have the discretion to grant a marriage license to a minor under the age of 16 in situations involving pregnancy or the birth of a child—regardless of whether there is parental consent to the marriage. Minors under the age of 18 seeking a marriage license will no longer be able to obtain a license under any circumstances without providing written permission from the parents, except where both parents are deceased or the minor has previously been married.

This bill substantially amends section 741.0405, Florida Statutes.

II. Present Situation:

Section 741.0405, F.S., provides the conditions under which minors may obtain a marriage license. If either of the parties seeking to be married is under the age of 18 but at least 16, the issuing authority¹ must issue a marriage license if there is a written consent of the parents or guardian of the minor, acknowledged before some officer authorized by law to take acknowledgments and administer oaths. The license must be issued without parental consent when both parents of the minor are deceased at the time of application or when the minor has been married previously.²

¹ The issuing authority is either a county court judge or clerk of the circuit court.

² Under s. 743.01, F.S., a minor is emancipated when he or she marries and that the minor remains emancipated even if the marriage is dissolved or she is widowed. Thus, if the minor has been married previously, the minor may perform all acts that he or she could do if not a minor, including remarry.

Current law authorizes a county judge, in his or her discretion, to issue a marriage license without parental consent under limited circumstances. A county court judge may issue a license to any male or female under 18, when both parties swear under oath that they are the parents of a child. When the pregnancy is verified by the written statement of a physician, the county court judge may issue a marriage license:

- To any male or female under 18 upon a sworn application of both parties that they are the expectant parents; or
- To any female under 18 and male over 18 upon the female's sworn application that she is an expectant parent.

These exceptions to the parental consent requirement apply to any minor under the age of 18, including minors under the age of 16. No license to marry may be granted to any person under the age of 16 years, with or without the consent of the parents, except when such person is a parent or expectant parent of a child.³

III. Effect of Proposed Changes:

The bill repeals all provisions relating to the ability of a minor to obtain a marriage license without the consent of parents due to pregnancy. Judges will no longer have the discretion to grant a marriage license to a minor under the age of 16 in situations involving pregnancy or the birth of a child—regardless of whether there is parental consent to the marriage. Minors under the age of 18 seeking a marriage license will no longer be able to obtain a license under any circumstances without providing written permission from the parents, except where both parents are deceased or the minor has previously been married.

The bill provides an effective date of July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³ 25 Fl. Jur. 2d *Family Law* s. 27 (2006).

D. Other Constitutional Issues:

Except as limited by constitutional provision,⁴ the legislature of each state has the authority to regulate the matrimonial contracts of its own citizens and to regulate the qualifications of the contracting parties.⁵ So long as regulations are reasonable and do not significantly interfere directly and substantially with decisions to marry, they are not invalid.⁶

The right to marry is fundamental,⁷ however, and any statute enacted to regulate marriage that significantly interferes with a person's right to marry would be subjected to "rigorous scrutiny" if the regulation were challenged in court.⁸ To be upheld, the regulation would have to be supported by sufficiently important state interests and closely tailored to effectuate only those interests.⁹ If the complete inability to marry under the age of 16 were considered a significant interference with one's right to marry, it would be subject to this rigorous level of scrutiny.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

It is assumed that few minors under 16 and minors without parental consent marry, thus there would be little, if any, fiscal impact as a result of decreased issuance of marriage licenses.

B. Private Sector Impact:

Minors under the age of 16 would not be permitted to marry under any circumstances, and minors between the ages of 16 and 18 would only be allowed to marry with written parental consent.¹⁰

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

⁴ For example, the equal protection and due process clauses of the Fourteenth Amendment of the federal constitution limit states from regulating marriage based upon race or ethnicity. *See Loving v. Commonwealth of Virginia*, 388 U.S. 1 (1967).

⁵ 55 C.J.S. *Marriage* s. 4 (2005).

⁶ *Id.*

⁷ *Washington v. Glucksberg*, 521 U.S. 702, 720 (citing *Loving*, 388 U.S. 1).

⁸ *See Zablocki v. Redhail*, 434 U.S. 374, 386 (1978).

⁹ *Id.* at 388.

¹⁰ Except where the minor between the ages of 16 and 18 has been married before or both of the minor's parents are deceased.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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