

**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 Committee on Children, Families, and Elder Affairs

**BILL:** CS/SB 196

**INTRODUCER:** Children, Families, and Elder Affairs Committee; Senator Sobel and others

**SUBJECT:** Families First

**DATE:** April 1, 2013

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Hendon	CF	<b>Fav/CS</b>
2.			JU	
3.			AHS	
4.			AP	
5.			RC	
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 196 creates a process for affording recognition to domestic partnerships and giving statewide application to all rights conferred on the partners as provided in the bill. Specifically, the bill would:

- Provide legislative findings related to establishing and affording recognition to domestic partnerships.
- Create definitions of “correctional facility,” “domestic partner,” “domestic partnership,” “health care facility,” and “mutual residence.”
- Require individuals seeking to establish a partnership to file a declaration with the clerk of court attesting that each is 18 years of age or older; at least one is a Florida resident; both share a mutual residence; and that formation of the partnership is not prohibited as provided by law.
- Make intentional filing of information that is materially false a first degree misdemeanor.
- Require the Department of Health (DOH) to prepare necessary forms.
- Require the clerks of the court to record and issue certificates confirming the creation of a domestic partnership.

- Prohibit partnerships between individuals who are already married to another person or in another partnership; who are blood relatives or siblings; who lack capacity to consent; and when consent was coerced or fraudulent.
- Establish the legal rights of individuals who are in a domestic partnership.
- Establish fees collected by the clerk of courts when a party files a Declaration of Domestic Partnership or Notice of Termination of Domestic Partnership.

The bill will have an indeterminate fiscal impact on the clerks of court and the state courts system and provides an effective date of July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 28.24, 382.009, 394.459, 400.022, 406.50, 408.051, 429.28, 429.85, 446.50, 497.005, 497.152, 741.01, 765.105, 765.401, 765.512, 765.517, and 872.04, Florida Statutes. This bill creates sections 741.501, 741.502, 741.503, 741.504, 741.505, 741.506, 741.507, 741.508, 741.509, and 741.510, Florida Statutes.

## II. Present Situation:

### Marriage

Couples who wish to marry in Florida must obtain a license issued either by a county court judge or clerk of the court, subject to payment of a series of fees.<sup>1</sup> Before a license can be issued, the parties must submit a written affidavit, signed by both parties, providing their social security numbers, or other sworn identification, that indicates their ages; a statement regarding whether they have completed a premarital preparation course; and a statement indicating whether they have read the Family Law Handbook. Subject to limited exceptions, both parties must be at least 18 years, and one party must be male and the other female.<sup>2</sup> Couples must also disclose whether they have children together.<sup>3</sup> A couple must first obtain a marriage license, then solemnize the marriage, whether by civil or religious ceremony.<sup>4</sup> Once the license has been issued, it is recorded by the clerk, then transmitted to the DOH for inclusion in the vital statistics records.<sup>5</sup>

A common law marriage is “[a] marriage that takes legal effect, without license or ceremony, when a couple live together as husband wife, intend to be married, and hold themselves out to others as a married couple.”<sup>6</sup> When recognized in Florida, common law marriages were given the “same dignity and recognition” as was accorded to ceremonial marriages.<sup>7</sup> In 1968, the Florida Legislature created s. 741.211, F.S., which abrogated common law marriages entered into after 1968. Notwithstanding the statute, Florida courts continue to recognize common law marriages when validly entered into in another state.<sup>8</sup>

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<sup>1</sup> Sections 28.24(23), 741.01, and 741.02, F.S.

<sup>2</sup> Section 741.04, F.S.

<sup>3</sup> Section 741.01(1), F.S.

<sup>4</sup> Sections 741.08, 741.041, F.S.;

<sup>5</sup> Section 382.021, F.S.

<sup>6</sup> BLACK'S LAW DICTIONARY 439 (2d Pocket ed. 2001).

<sup>7</sup> *Budd v. J.Y. Gooch Co.*, 157 Fla.716 (1946).

<sup>8</sup> *Johnson v. Lincoln Square Properties*, 571 So.2d 541 (Fla. 2d DCA 1990) (limiting Section 741.211 to marriages occurring in Florida).

In 1997, the Florida Legislature again amended ch.741, F.S., this time to prohibit same-sex marriage. Section 741.212, F.S., states in relevant part:

(1) Marriages between persons of the same sex ... or relationships between persons of the same sex which are treated as marriages...are not recognized for any purpose in this state....

(3) For purposes of interpreting any state statute or rule, the term “marriage” means only a legal union between one man and one woman a husband wife, and the term “spouse” applies only to a member of such a union.

The Legislature passed the bill to implement authority granted states in the Defense of Marriage Act (DOMA), which Congress adopted following a court case in Hawaii that legalized gay marriage. Members of Congress believed at the time that individuals would travel to Hawaii to marry, then return to their home state, where their marriages would be recognized under the Full Faith and Credit Clause of the U.S. Constitution. DOMA included language that removed any obligation of states to give effect to same-sex marriages that were legally entered into in other states.<sup>9</sup> DOMA and Florida’s law were challenged by a same-sex couple who legally married in Massachusetts on the theory that both DOMA and the Florida law violated the Full Faith and Credit, Due Process, Equal Protection, Privileges and Immunities, and Commerce clauses of the U.S. Constitution.<sup>10</sup> In rejecting all claims, the court refused also to elevate the ability to marry someone of the same gender to a fundamental right.<sup>11</sup> Thus, Florida’s law was upheld and the strategy envisioned by Congress succeeded.

At the same time s. 741.212, F.S. was being challenged in the courts, Florida voters passed Amendment 2, which added a DOMA provision to Florida’s constitution. The language states:

Inasmuch as marriage is the legal union of only one man and one woman as husband and wife, no other legal union that is treated as marriage or the substantial equivalent thereof shall be valid or recognized.<sup>12</sup>

Thus, the language of the Constitution not only defines marriage as a legal union between a man and a woman, as does s. 741.212, F.S., but it goes further to prohibit any other legal union “that is treated as marriage” or “the substantial equivalent” of marriage. To date, Florida courts have not interpreted those phrases in any case involving the rights or responsibilities of a relationship. However, the Florida Supreme Court has offered an indication of what its analysis might be as part of the Advisory Opinion it provided to the Attorney General on the amendment’s compliance with the single-subject requirement of the Florida Constitution and the statutory requirements for the ballot summary.<sup>13</sup> In that opinion, the Court rejected the opponent’s claim that the amendment violated the single subject requirement because it impermissibly combined

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<sup>9</sup> House Committee on Governmental Operations, *Staff Analysis of CS/HB 147 – Same Sex Marriage* (March 6, 1997) (on file with the Senate Children, Families, and Elder Affairs Committee).

<sup>10</sup> *Wilson v. Ake*, 354 F.Supp.2d 1298, 1302, (M.D. Fla. 2005).

<sup>11</sup> *Id.* at 1306.

<sup>12</sup> FLA. CONST. art. I, s. 27.

<sup>13</sup> *Advisory Opinion To The Attorney General Re Florida Marriage Protection Amendment*, 926 So.2d 1229 (Fla. 2006). For further discussion of article I, section 27 of the Florida Constitution see the Constitutional Issues section of this report.

two distinct issues - marriage between a man and a woman and legal unions which provide for the benefits and responsibilities of marriage. Under that reading, voters could cast only one vote – for or against – whether or not they had a split opinion about the underlying issues. Proponents argued that the amendment did not have that effect and the Court agreed.

The proposed amendment does not impermissibly force voters to approve a portion of the proposal which they oppose to obtain a change which they support. Rather, the voter is merely being asked to vote on the singular subject of whether the concept of marriage and the rights and obligations traditionally embodied therein should be limited to the union of one man and one woman. The plain language of the proposed amendment is clear that the legal union of a same-sex couple that is *not* the “substantial equivalent” of marriage is not within the ambit of the constitutional provision.<sup>14</sup>

### **Civil Unions & Domestic Partnerships**

A civil union is a separate legal status available in some states that provides nearly all of the rights and responsibilities provided to married couples under state law, but does not provide any of the federal benefits of marriage.<sup>15</sup> While defined slightly differently in different locations, “domestic partnership” is commonly defined as two adults who are parties to a valid domestic relationship and who meet the requirements for a valid domestic partnership, which typically include that the parties are at least 18 years of age, not married or in another relationship, not related by blood, willing and able to consent, and willing to be jointly responsible for each other’s basic food and shelter.<sup>16</sup>

In general, there are few distinctions between civil unions and domestic partnerships. Civil unions generally require solemnization like a marriage. Domestic partnerships often are made available to both same-sex and opposite-sex couples. Depending on the rights conferred, one status may provide more legal rights than the other, but some of the distinctions may be more symbolic than legal. In either case, it is not always certain whether one state will honor a civil union or domestic partnership that is validly created under legislative authority of another state.<sup>17</sup> Domestic partnerships may be formed under the terms of a legislative enactment, however, state laws and local ordinances vary in the extent of the rights and responsibilities conferred. Some are comprehensive with nearly all of the rights and responsibilities of marriage under state law, and some are more limited covering, for example, health care facility visitation, health care decisions, funeral and burial decisions, notification of family members in situations that provide for mandatory or permissible notification, including emergencies, visitation rights at county correctional and juvenile detention centers, pre-need guardian designation, participation in

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<sup>14</sup> *Id.* at 1234.

<sup>15</sup> Nat’l Center for Lesbian Rights, *Marriage, Domestic Partnerships, and Civil Unions: An Overview of Relationship Recognition for Same-Sex Couples Within the United States*, (2012) [hereinafter *Overview*], available at [http://www.nclrights.org/site/DocServer/Relationship\\_Recognition.pdf?docID=881](http://www.nclrights.org/site/DocServer/Relationship_Recognition.pdf?docID=881) (last visited Feb. 12, 2013). In 2004, the U.S. General Accounting Office identified 1,138 federal rights and responsibilities that turn on marital status. U.S. GENERAL ACCOUNTING OFFICE, GAO-04-353R, DEFENSE OF MARRIAGE ACT: UPDATE TO PRIOR REPORT 1 (2004), available at <http://www.gao.gov/new.items/d04353r.pdf> (last visited Feb. 11, 2013).

<sup>16</sup> Broward County, Fla., Code of Ordinances, Section 16 1/2-152(a) (Nov. 27, 2012); Miami-Dade County, Fla., Code of Ordinances, Section 11A-72 (March 6, 2012); Palm Beach County, Fla., Code of Ordinances, Section 2-6 (Feb. 2, 2013).

<sup>17</sup> *Overview*, *supra* note 14.

education, and benefits of public employees. Currently, ten states and the District of Columbia have relationship recognition laws that cover civil unions and/or domestic partnerships.<sup>18</sup>

In Florida, eighteen jurisdictions formally recognize domestic partnerships, including: Orange, Volusia, Pinellas, Palm Beach, Broward, and Miami-Dade Counties, Gainesville, Coral Gables, Sarasota, Clearwater, St. Petersburg, Gulfport, Tampa, Orlando, Key West, North Miami, Miami Beach, and Tavares.<sup>19</sup> According to Equality Florida, a civil rights organization dedicated to securing full equality for Florida's lesbian, gay, bisexual, and transgender community, 6.7 million Floridians currently live within jurisdictions that grant access to domestic partner benefits and protections either through partnership registries or public employee benefits programs.<sup>20</sup> Eleven of the jurisdictions with domestic partnership registry ordinances report a total of 9,228 couples currently registered.<sup>21</sup>

The terms of the Florida domestic partnership ordinances, like the civil union and domestic partnership laws nationwide, vary widely in the extent of the rights conferred. Early ordinances, such as Miami-Dade's, are more limited.<sup>22</sup> Later-adopted ordinances, beginning with the 2012 enactment by the City of Orlando which has become a model for many of the more recently adopted ordinances, cover the broader range of rights as described above.<sup>23</sup>

In 2000, the Broward County ordinance survived a legal challenge that it encroached upon an area of exclusive state authority in violation of article VII, section 1(g) of the Florida Constitution, which states:

CHARTER GOVERNMENT. Counties operating under county charters shall have all power of local self-government not inconsistent with general law, or with special law approved by the vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law....<sup>24</sup>

<sup>18</sup> Oregon, California, Nevada, New Jersey, Illinois, Delaware, Hawaii. Rhode Island, Maine, D.C., Wisconsin, Nat'l Conference of State Legislatures, *Civil Unions and Domestic Partnership Statutes.*, (updated Nov. 2012) <http://www.ncsl.org/issues-research/human-services/civil-unions-and-domestic-partnership-statutes.aspx> (last visited Feb. 12, 2013).

<sup>19</sup> Email from Mallory Wells, Public Policy Director, Equality Florida, to the Senate Children, Families, and Elder Affairs Committee staff (Feb. 11, 2013) (on file with the Senate Children, Families, and Elder Affairs Committee).

<sup>20</sup> Equality Fla. Institute Inc., *Legal Handbook for LGBT Floridians and Their Families*, 24, (Jan. 4, 2012) [hereinafter *Handbook*], available at <http://eqfl.org/sites/default/files/publications/Legal-Handbook-for-LGBT-Floridians-and-Their-Families.pdf> (last visited Feb. 12, 2013).

<sup>21</sup> Ordinances in two jurisdictions are not yet in effect. Data from the remaining jurisdictions were not available in time for this analysis.

<sup>22</sup> The Miami-Dade ordinance extends to county employees and their partners all insurance benefits, leave benefits (including family leave), and other benefits as are available to married employees; and extends to all registered partners health care facility visitation rights and visitation rights at county correctional and juvenile detention centers. .Miami-Dade County, Fla., Code of Ordinances, Sections 11A-75, 11A-76, and 11A-77 (March 6, 2012).

<sup>23</sup> Some rights conferred by these later-adopted ordinances have the effect of codifying rights that are already available from other sources. For example, health care decisions may be directed pursuant to ch.765, F.S. Likewise, rules issued by the Centers for Medicare & Medicaid Services prohibit Medicare- and Medicaid-participating hospitals from denying visitation privileges on the basis of race, color, national origin, religion, sex, sexual orientation, gender identity, or disability. News Release, U.S. Dept. of Health and Human Services, *Medicare finalizes new rules to require equal visitation rights for all hospital patients* (Nov. 10, 2010) <http://www.hhs.gov/news/press/2010pres/11/20101117a.html> (last visited Feb. 12, 2013).

<sup>24</sup> *Lowe v. Broward County*, 766 So.2d 1199, 1203 (Fla. 4th DCA 2000).

While the court agreed that the law of domestic relations is one matter reserved for the state, the court found that the Broward ordinance did not legislate within the zone of domestic issues that would be off limits.

The [ordinance] does not curtail any existing rights incident to a legal marriage, nor does it alter the shape of the marital relationship recognized by Florida law....[T]he Act does not address the panoply of statutory rights and obligations exclusive to the traditional marriage relationship....The Act does not create a legal relationship that, because of the interest of the state, gives rise to rights and obligations that survive the termination of the relationship. Unlike a traditional marriage, a domestic partnership is purely contractual, based on the mutual agreement of the parties.<sup>25</sup>

Following the same line of analysis, the court also rejected an argument that the ordinance was preempted by s. 741.212, F.S., which prohibits marriage between individuals of the same sex, or “relationships between persons of the same sex which are treated as marriages in any jurisdiction....”<sup>26</sup> The court found that the statute is directed at same-sex marriage or its equivalent and that the ordinance neither created a “marriage-like” relationship, nor was it limited to individuals of the same sex.<sup>27</sup>

A registry provides an administrative system that establishes recognition of a domestic partnership. However, a domestic partnership may also be created by executing a civil contract between two unmarried people codifying how they wish to define their property and support rights both during a relationship and when it ends. A partnership agreement, which is a binding contract, may include provisions related to support, expenses, and finances; division of assets and liabilities on separation or termination; and rights in each other’s estate upon death or disability.<sup>28</sup> In the absence of a domestic partnership agreement, separate legal documents, such as a health care proxy or medical power of attorney, durable power of attorney, joint tenancy agreement or co-tenancy agreement, will, burial instructions or declaration as to remains, or cohabitation agreement may also define a relationship with a partner.

Florida courts have affirmed the validity of domestic partnership agreements. The Fifth District Court of Appeal found that an agreement for support between two unmarried people is valid, unless “inseparably based upon illicit consideration of sexual services.” In reaching its holding, the court considered the matter as one of individuals who, in the absence of the recognition of rights that flow naturally from a marital relationship, were exercising their constitutional private property and contract rights, which the court commented would apply to same-sex and opposite-sex unmarried couples alike.<sup>29</sup> The opinion was controversial at the time it was rendered and

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<sup>25</sup> *Id.* at 1205-1206.

<sup>26</sup> Section 741.212, F.S.

<sup>27</sup> *Lowe*, *supra* note 22, at 1208.

<sup>28</sup> *Handbook*, *supra* note 18.

<sup>29</sup> *Posik v. Layton*, 695 So.2d 759, 762 (Fla. 5th DCA 1997). *But see Wakeman v. Dixon* 921 So.2d 669 (Fla. 1st DCA 2006, *reh’g denied* Feb. 28, 2006) (finding that an agreement executed between same-sex partners creates no enforceable rights regarding children).

critics contended it ignored the then recently-passed law creating s. 741.211, F.S., which prohibits marriage between same-sex partners.<sup>30</sup>

### **Unmarried-Partner Households**

The U.S. Census reports that:

Census 2000 enumerated 105 million households in the United States, of which the majority (52 percent) were maintained by married couples (54.5 million. A reflection of changing life styles is mirrored in Census 2000's enumeration of 5.5 million couples who were living together but who were not married, up from 3.2 million in 1990. These unmarried-partner households were selfidentified [sic] on the census form as being maintained by people who were sharing living quarters and who also had a close personal relationship with each other. The majority of these unmarried-partner households had partners of the opposite sex (4.9 million) but about 1 in 9 (594,000) had partners of the same sex.<sup>31</sup>

Of the 6.3 million households in Florida, 56 percent were married couple households. Unmarried-partner households totaled 369,622, or 10.4 percent of all coupled households. The majority of Florida's unmarried-partner households had partners of the opposite sex (328,574, or 9.2 percent of coupled holds), and 41,048 (1.2 percent of coupled households) had partners of the same sex.<sup>32</sup>

### **III. Effect of Proposed Changes:**

**Sections 1** amends s. 28.24, F.S., to create a \$30 court fee for filing a Declaration of Domestic Partnership.

**Sections 2 – 8, 10, 11, and 23 – 27** amend various provisions of the Florida Statutes to add parallel references to “domestic partner” where references to “spouse” or “relative” currently appear. The effect is to establish specific rights of domestic partners with respect to burial and disposition of a partner's remains; visitation in health care facilities; and health care proxy. The effect is to extend the rights of the statute to domestic partnerships; however, the bill does not otherwise change the underlying provision. The new references are added in statutes pertaining to:

- Recognition of brain death (s. 382.009, F.S.)
- Rights of patients under the Baker Act (s. 394.459, F.S.)
- Nursing home residents' rights (s. 400.022, F.S.)
- Disposition of unclaimed bodies (s. 406.50, F.S.)
- Florida Electronic Health Records Exchange Act (s. 408.051, F.S.)
- Assisted living facility residents' rights (s. 429.85, F.S.)

<sup>30</sup> Brett A. Barfield, *Are Same-Sex Prenuptial Agreements Enforceable in Florida? Posik v. Layton, Law and Policy*, 10 ST. THOMAS L. REV. 407, (Winter, 1998).

<sup>31</sup> U.S. Census Bureau, *Married-Couple and Unmarried-Partner Households: 2000, Census Special Reports* (Feb. 2003), available at <http://www.census.gov/prod/2003pubs/censr-5.pdf> (last visited Feb. 12, 2013).

<sup>32</sup> *Id.*

- Adult day care facility residents' rights (s. 429.85, F.S.)
- Definition of "legally authorized person" as used in ch. 497, F.S., relating to funeral, cemetery, and consumer services (s. 497.005, F.S.)
- Prohibited actions in ch. 497 (s. 497.152, F.S.)
- Review of surrogate or proxy's decision (s. 765.106, F.S.)
- Designation of proxy (s. 765.401, F.S.)
- Persons who may make an anatomical gift (s. 765.512, F.S.)
- Disposition of remains following an anatomical gift (s. 765.517, F.S.)
- Required consent for autopsies (s. 872.04, F.S.)

**Section 6** amends s. 446.50, F.S., to create the authority of the Displaced Homemaker Trust Fund to receive funds generated by the fee on filed Declarations of Domestic Partnership.

**Section 12** amends s. 741.01, F.S. to create the authority for the Domestic Violence Trust Fund to receive the fee on filed Declarations of Domestic Partnership.

**Section 13** creates s. 741.501, F.S., to provide legislative findings related to establishing, recognizing, and conferring rights on domestic partnerships.

**Section 14** creates s. 741.502, F.S., to create definitions of "correctional facility," "domestic partner," "domestic partnership," "health care facility," and "mutual residence."

**Section 15** creates s. 741.503, F.S., to require DOH to prepare "Declaration of Domestic Partnership," "Certificate of Registered Domestic Partnership," "Notice of Termination of Domestic Partnership," and "Certificate of Termination of Domestic Partnership" forms.

**Section 16** creates s. 741.504, F.S., to establish the requirements of a domestic partnership that is recognized by the state. Specifically, the individuals must file a declaration that contains a statement attesting that each is 18 years of age or older, subject to reasonable proof of age by the clerk, which may include a driver license; a statement attesting that at least one party is a resident of the state; a statement that both parties share a mutual residence; a statement that formation of the partnership is not prohibited by law; and each person's mailing address. An individual who intentionally provides materially false information commits a misdemeanor of the first degree. A clerk must file a Declaration of Domestic Partnership if it meets the legal requirements and must issue the partners a certificate.

**Section 17** creates s. 741.505, F.S., to set forth circumstances under which a domestic partnership is prohibited. A partnership may not be created if either party is already married to another person or in another partnership; the parties are blood relatives or siblings; either party lacks capacity to consent; or consent was coerced or fraudulent.

**Section 18** creates s. 741.506, F.S., to establish the rights of individuals who are in a domestic partnership. These include: the same visitation right in a health care facility as is given to spouses; the same visitation privilege in a correctional facility as is given to spouses; emergency notification if such notice is provided to spouses or relatives; the right to jointly own property by tenancy by the entirety (which is an undivided legal interest currently arising by virtue of



marriage); the same authority to act as health care proxy when a proxy has not otherwise been designated as is available to a spouse; and the same authority a spouse has to act as patient representative for the disposition of a partner's remains as provided in the bill. A violation of the rights may be enforced by court action.

**Section 19** creates s. 741.507, F.S., to authorize the clerk of court to collect the following fees in connection with filing a Declaration of Domestic Partnership: a \$30 filing fee; \$2 for receiving a declaration of domestic partnership; \$25 to be deposited in the Domestic Violence Trust Fund; \$7.50 for deposit in the Displaced Homemaker Trust Fund; and \$25 for deposit into the General Revenue Fund. The bill allows an applicant who cannot afford a lump sum payment to pay the fees in three installments over a 90-day period. The bill also authorizes a \$7.50 fee for filing a Notice of Termination of Domestic Partnership.

**Section 20** creates s. 741.508, F.S., to allow a domestic partnership to be proved by affidavit if the declaration has not been received or registered; a certificate has been lost; or the certificate cannot be obtained by reason of death or other cause. The affidavit must be made by two witnesses who saw the declaration be executed and before an officer authorized to administer oaths. The affidavit may be filed and recorded with the clerk of the court with the same force and effect as if a certificate had been recorded.

**Section 21** creates s. 741.509, F.S., to set forth procedures for terminating a domestic partnership. A domestic partnership may be terminated by filing a Notice of Termination with the clerk of court and paying a filing fee of \$10. The notice must be signed by one or both parties and notarized. A partnership will also terminate if one or both parties marries either each other or someone else, or one of the parties dies. The bill requires the clerk to file the notice and issue a Certificate of Termination of Domestic Partnership.

**Section 22** creates s. 741.510, F.S., that authorizes a county or municipality to enact a domestic partnership ordinance that is not in conflict with the act.

**Section 28** provides an effective date of July 1, 2013.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**D. Other Constitutional Issues:**

Whether the bill creates “a legal union that is treated as marriage or the substantial equivalent thereof” in violation of article I, section 27 of the Florida Constitution would be a matter of first impression in the courts. However, *Advisory Opinion To The Attorney General Re Florida Marriage Protection Amendment*, 926 So.2d 1229 (Fla. 2006) discussed above, suggests that a domestic partnership is not per se “the substantial equivalent” of marriage.

The plain meaning of these words, according to dictionary definition, is clear that the chief purpose of the amendment is to ensure that unions between same-sex couples that are treated *virtually identically* to marriage will not be recognized in Florida.<sup>33</sup>

Stated differently, the case indicates that all non-traditional unions are not prohibited by the constitution, only those that exceed some as yet legally untested threshold on the continuum of relationships approaching marriage.<sup>34</sup> A recent Wisconsin case sets forth an analytical framework that a Florida court might use in making the determination. Similar to the Florida Constitution, the Wisconsin Constitution recognizes only marriage between a man and a woman and prohibits a “legal status identical or substantially similar to that of marriage” for unmarried partners. To determine whether its domestic partnership law created a status that was substantially similar to marriage, a Wisconsin Court of Appeals compared the requirements for eligibility, formation, rights and obligations, and termination that applied to marriage and domestic partnership.<sup>35</sup> The case is not binding precedent in Florida; it serves only as a model Florida could adopt.

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

The bill imposes 6 fees or other charges on actions required to create or terminate a domestic partnership. The fees for creating a domestic partnership parallel the fees for marriage. The fee to terminate a domestic partnership is less than the fees required to dissolve a marriage, however, the latter requires court action. In effect, the fees are not newly-created. They will, however, impose on citizens who choose to avail themselves of the law a financial obligation they do not have today.

The fiscal impact on revenues to the State Courts Revenue Trust Fund and the Court Education Trust Fund from civil filing fees cannot be accurately determined due to the unavailability of data needed to establish the increase resulting in the addition of dissolutions of domestic partnerships.

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<sup>33</sup> *Advisory Opinion* at 1237 (emphasis supplied).

<sup>34</sup> Proponents of the bill indicate that it confers approximately 1% of the federal and state rights currently conferred on spouses and recognized by Florida law. E-mail from Mary Meeks, volunteer, Equality Florida, (Mar. 6, 2013) (on file with the Senate Children, Families, and Elder Affairs Committee).

<sup>35</sup> *Apling v. Doyle*, Appeal No. 2011AP1572, Wisconsin Court of Appeals, 4th Dist. (Dec. 20, 2012).

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The fiscal impact on expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantify the increase in judicial workload.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Children, Families, and Elder Affairs on April 1, 2013:**

- The CS substantially revised the bill to reduce the scope of rights created from all conferred in marriage to a list of six. These include: the same visitation right in a health care facility as is given to spouses; the same visitation privilege in a correctional facility as is given to spouses; emergency notification if such notice is provided to spouses or relatives; the right to jointly own property by tenancy by the entirety; the same authority to act as health care proxy when a proxy has not otherwise been designated as is available to a spouse; and the same authority a spouse has to act as patient representative for the disposition of a partner's remains as provided in the bill. A violation of the rights may be enforced by court action. The provisions of the bill, in particular the scope of rights, now mirror the majority of domestic partnership ordinances that have been recently enacted in Florida with the addition of the right to hold property by tenancy of the entirety. The CS also removed the role of the Department of Health as a registrar of records related to domestic partnerships.

**B. Amendments:**

None.