

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 Rules

BILL: CS/CS/SB 140

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Benacquisto and others

SUBJECT: Marriage Licenses

DATE: January 11, 2018

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Davis</u> | <u>Cibula</u> | <u>JU</u> | <u>Fav/CS</u> |
| 2. | <u>Preston</u> | <u>Hendon</u> | <u>CF</u> | <u>Favorable</u> |
| 3. | <u>Davis</u> | <u>Phelps</u> | <u>RC</u> | <u>Fav/CS</u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 140 prohibits a county court judge or clerk of the circuit court from issuing a marriage license to any person under the age of 18. Accordingly, a minor is not permitted to marry in the state. The current exceptions that permit a minor to marry, such as parental consent, the fact that a couple already has a child, or a physician's written verification of a pregnancy, are repealed. Under this bill, only a person 18 years of age or older is permitted to marry.

II. Present Situation:

According to the Bureau of Vital Statistics,¹ 1,828 marriage licenses were issued in the last 5 years to a couple in which at least one party was a minor. Of this total, 132 licenses were issued to a couple in which both parties were minors. In that same time period, 1 license was issued in which one party was 13 years old, 7 licenses were issued in which one party was 14 years old, 29 licenses were issued in which one party was 15 years old, and 1,807 licenses were issued in which one party was 16 or 17 years old.² A complete chart of data from the Bureau of Vital Statistics is provided below.

¹ *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 Senate Committee on Judiciary). The Bureau of Vital Statistics is the state repository for all marriage records filed in the state. The licenses are filed with the clerks of courts who are legally bound to report them to the Bureau.

² The sum of these four categories, 1,844, exceeds the total number of licenses issued, 1,828, because 16 minors are represented in more than one category.

Marriage Licenses Issued to a Minor, Years 2012-2016³

| Number of Marriages by Year by Spouse Age. | | 2012 | 2013 | 2014 | 2015 | 2016 |
|---|--------------------|-------------|-------------|-------------|-------------|-------------|
| Party 1 | Party 2 | | | | | |
| 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 | |
| 40-44 years | 16-17 Years | | | | 1 | |
| Totals | | 467 | 364 | 336 | 350 | 311 |

³ Bureau of Vital Statistics, Florida Department of Health.

Marriage Licenses

The authority to issue a marriage license in this state is vested solely in a county court judge or clerk of the circuit court.⁴ No one may marry without a valid license.⁵ In order to obtain a license, the single individuals must appear together in person, bring their valid government issued identification and social security numbers, and complete a marriage license application.

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

Applicants Who are 16 or 17 May Marry With Parental Consent

If an applicant for a marriage license is 16 or 17 years of age, he or she is entitled to a marriage license if both of his or her parents or a guardian provide consent to the marriage. However, the minor does not need parental consent if his or her parents are deceased or if the minor was married previously. The written consent must be acknowledged before a person authorized to take acknowledgments and administer oaths.⁶

Judicial Bypass 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.⁷ 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 and 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.⁸

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.⁹ In these circumstances, the statutes permit a county court judge, in the exercise of his or her discretion, to issue a marriage license when one or both applicants for a license are younger than 16.

Penalty for Violations

Two statutes provide penalties for county court judges and clerks of the circuit court who do not abide by the laws for issuing marriage licenses. Section 741.03, F.S., prohibits a county court judge or clerk of the circuit court from sending blank, signed marriage licenses that will be issued to persons not in the office. Section 741.04(1), F.S., also prohibits a county court judge or clerk from issuing a marriage license before obtaining a signed affidavit containing the applicants' social security numbers or other identifying numbers and their ages.

⁴ Section 741.01, F.S.

⁵ Section 741.08, F.S.

⁶ Section 741.0405(1), F.S.

⁷ Section 741.0405(2), F.S.

⁸ Section 741.0405(3), F.S.

⁹ See s. 741.0405(4), F.S.

Section 741.05, F.S., provides that a county court judge, clerk of the circuit court, or other person who violates sections 741.03 *and* 741.04(1), F.S. is guilty of a first degree misdemeanor. As written, the penalty is only for persons who violate *both* statutes. This is most likely a scrivener's error and should provide a penalty for someone who violates *either* statute.

III. Effect of Proposed Changes:

Under this bill, a person, without exception, must be at least 18 years of age to marry or receive a marriage license in this state. The current exceptions that allow a minor to marry with parental consent or without parental consent when the couple has a child or is expecting a child are repealed.

By the use of "and" instead of "or," existing law suggests that a county court judge, court clerk, or other person must violate two unrelated statutes before having any criminal liability for improperly issuing a marriage license. One statute prohibits the issuance of marriage licenses signed in blank. The other prohibits the issuance of a marriage license without collecting the ages of the parties and their Social Security Numbers or other identifying numbers. By changing the "and" to "or," the bill clarifies that the person issuing the license may have criminal liability for violating either statute.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

If marriage licenses are not issued to minors, the clerks of court might receive less revenue than in the years in which licenses were issued to minors.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 741.02 of the Florida Statutes and repeals section 741.0405 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Rules on January 11, 2018:

The committee substitute changes the word “and” to “or” to correct a scrivener’s error regarding the penalty for improperly issuing marriage licenses. Before this amendment, a judge, clerk, or someone else would have criminal liability only if he or she violated two unrelated statutes. This is corrected to provide that a violation of *either* statute is a first degree misdemeanor.

CS by Judiciary on October 25, 2017:

The committee substitute reorganizes the current bill structure but does not make substantive changes to the bill. The committee substitute removes from s. 741.0405(4), F.S., the new language in the underlying bill which prohibits anyone younger than 18 years of age from marrying, and places it as new subsection (1) in s. 741.04, F.S. Current s. 741.0405, F.S. is then repealed. Section 741.04, F.S., is substantially reworded to modernize the language and break the existing language into shorter paragraphs.

- B. Amendments:

None.