



**House
Legislative
Analysis
Section**

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**PRE-MARRIAGE EDUCATION/
COUNSELING**

**House Bill 5635 (Substitute H-4)
First Analysis (5-28-96)**

**Sponsor: Rep. Roland Jersevic
Committee: Judiciary and Civil Rights**

THE APPARENT PROBLEM:

According to written testimony presented to the House Judiciary and Civil Rights Subcommittee on Divorce and Friend of the Court Issues, premarital counseling has been available to couples since the 1930s and 1940s. Premarital counseling programs are offered through a variety of sources, including university research or counseling centers, religious institutions, and family institutes, as well as through individual mental health care providers. Couples may participate in "one-on-one" counseling, group sessions, or a combination of the two, and although the design of specific programs varies, reportedly most share similar goals (including enhancement of communication skills, development of problem-solving skills, and development of couple intimacy and commitment to the relationship) and content (communication and problem-solving skills, marital roles and expectations, sexuality, decision making, and financial management). Programs also vary in length and number of sessions (anywhere from one hour to 120 hours) and on method of delivery, which may be through skills practice or lecture/information sharing. Some religious denominations require premarital counseling. Some people believe that the state also should offer incentives for premarital education as part of a more general attempt to reduce the number of divorces. Legislation has been introduced to do this.

THE CONTENT OF THE BILL:

The bill would amend the marriage license act (Public Act 128 of 1887) to require premarital education or counseling in order to receive a marriage license after the current three day waiting period. If a couple did not undergo the required premarital education or counseling, they would have to wait 60 days instead of three days to receive their marriage license.

Marriage license application requirements. Current state law requires applicants for marriage licenses to be at least 18 years old (though people as young as 16 years old may marry with the written consent of their parents or legal guardians), to undergo counseling regarding the transmission and prevention of venereal

disease and HIV infection, and to pay a \$20 application fee (though the probate court can order the county clerk to waive the marriage license fee in cases in which the fee would result in undue hardship).

Applicants must state their ages on the marriage license application and, if requested by the county clerk, provide a birth certificate or other proof of age. (When it appears from the age affidavit that one or both of the applicants aren't 18, the clerk must require that there first be produced the written consent of one or the parents or legal guardians of the underage applicant. Unless the underage applicant doesn't have a living parent or guardian, the consent must be given personally in the presence of the county clerk or be acknowledged before a notary public or other officer authorized to administer oaths.)

Those providing counseling for VD and HIV transmission (who can be a physician, his or her designee, a physician's assistant, a certified nurse midwife, a certified nurse practitioner, or a local health officer or his or her designee) also must offer the applicant (or refer him or her for) tests for VD and HIV. Moreover, when someone applies for a marriage license, the county clerk must give the applicant educational materials (prepared by the state) on topics related to VD, HIV transmission, and prenatal care, including a list of locations where HIV counseling and testing services funded by the state are available. A county clerk also cannot issue a marriage license unless the applicant files either a certificate indicating that he or she has had the required VD and HIV counseling or a written objection stating that the counseling requirements violate the applicant's personal religious beliefs. If an applicant files a written objection to the VD and HIV counseling requirements, the county clerk can charge a fee -- up to the amount charged by the local health department for providing the required VD and HIV counseling -- for the administrative costs associated with filing the written objection.

The bill would require, in addition to the existing requirements, that people intending to apply for a

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marriage license together complete a program in premarital education or counseling as specified by the bill. If either or both of the people intending to apply for a marriage license are under 18, both parties and at least one parent or guardian of each would have to complete and verify a prescribed program of premarital education or counseling.

Applicants for marriage licenses would have to verify completion of a prescribed program in premarital education or counseling by a statement to that effect in the application affidavit and by filing with the application a certificate of completion from the premarital program administrator.

The bill also would exempt emancipated minors from the current consent requirements by parents or legal guardians.

Marriage license waiting period. Currently, there is a three-day wait for marriage licenses after application, unless the county clerk ("for good and sufficient cause shown") decides to deliver the license immediately after application.

People applying for marriage licenses could choose not to comply with the bill's prescribed premarital education or counseling requirements, but if either applicant didn't comply, both would have to wait at least 60 days to receive their marriage license.

Premarital education or counseling programs. The required premarital education or counseling could be conducted only by: (1) a licensed professional counselor, licensed marriage and family therapist, or licensed or limited licensed psychologist; (2) a registered social worker or certified social worker; (3) a psychiatrist; or (4) an official representative of a religious institution or his or her designee.

The bill would require that required premarital programs include, at a minimum, a list of specified topics unless the program was provided by a religious representative and training on the topic would violate a tenet of the religious institution. The topics would include:

- (1) Conflict management;
- (2) Communication skills;
- (3) Financial responsibilities; and
- (4) Children and parenting responsibilities.

In addition, if one or both of the parties was a minor, the premarital program would have to include training on (a) minors and marriage and (b) extended family roles and the marriage.

Premarital education or counseling programs would be required to offer a sliding scale fee schedule ("a fee schedule that accommodated families of various financial means"), including offering the program for free to indigent people. Payment, where applicable, would be made directly to the program provider.

Tie-bar. The bill is tie-barred to House Bills 4432 (which would amend the divorce statute), 5634 (which would consolidate certain provisions of several acts dealing with child support into the Support and Parenting Time Enforcement Act), and 5637 (which would establish the Parenting Plan Act).

MCL 551.103 and 551.103a

BACKGROUND INFORMATION:

Public Act 4 of 1980 amended the marriage license act to increase the license application fee from \$5 to \$20, and allocated the increase to the circuit court for family counseling services, which must include counseling for domestic violence and child abuse. If family counseling services aren't established in the county, the circuit court can use the money to contract with public or private agencies providing similar services.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill has no fiscal implications. (5-24-96)

ARGUMENTS:

For:

The impact of divorce on society has been a subject of much discussion recently. As a recent article in Governing (May 1996) notes, "There has always been a great deal of anger and frustration surrounding the whole subject of divorce. There always will be. But at the moment, there is something more -- a mounting crusade to do something about it. Talk radio, network television, the op-ed pages of the New York Times -- all are filled with conversation about the effects of divorce and the conviction that they need to be addressed." The article characterizes the contemporary debate over divorce as occurring "between those who argue that divorce, in and of itself, has been harmful to families and communities and needs to be curtailed, and those who believe that changing the process [emphasis

in original] can remedy, or at least lessen, its more damaging effects. It is an argument that pits those who believe society must again begin thinking of divorce in moral terms against those who argue that the real issue is the way divorce is conducted." Regardless of which position in the debate is assumed, however, most people would agree that one of the best ways to deal with the harmful effects of divorce would be to prevent it in the first place rather than trying to limit its harmful effects once divorce appears inevitable. Thus, while some legislative measures are being directed to make divorces harder to get or to force divorcing parents to pay more attention to the needs and future prospects of their children (through, for example, pre-divorce "parenting" plans), these approaches address the problem of divorce once it has arisen. Many people believe, however, that prevention, in the form of premarital education or counseling, can be an effective deterrent to divorce. And just as is true in the case of medical care, prevention can be much more cost effective than waiting for the problem to arise and then trying to minimize its deleterious effects. A number of religious denominations have required some form of premarital counseling before permitting religious marriages, and given that counseling and education can be helpful in successfully negotiating other major life transitions (such as childbirth education classes, for example, or grief counseling) it makes a great deal of sense to require that education or counseling be provided to people who are considering the major life transition embodied in marriage. State law currently requires people to take driver's education classes (or, failing that, to wait until they are at least 18 years old) before obtaining a driver's license. State law also currently already requires at least one form of premarital counseling, namely, about the transmission and prevention of venereal disease and HIV infection. Surely if these kinds of education or counseling are desirable, then there should be some kind of education or counseling required before people take the momentous step of becoming married. Marriage and families are the foundation and building blocks of society, and any measures that would help strengthen marriages and families should be adopted and actively promoted.

Against:

The bill raises a number of questions. For example, unlike the premarital VD and HIV counseling requirements, which apply to individuals applying for marriage licenses, the bill would impose premarital education or counseling requirements, not on marriage license applicants, but on people who merely "intend to apply for a marriage license." Then "individuals applying for a marriage license" must meet certain requirements, including verifying completion of the

required program by a statement to that effect in the application affidavit and by filing a certificate of completion from the program administrator. Does this mean that the state would impose certain education or counseling requirements on citizens at a point when they intend to do something, but haven't yet acted on that intention? How would this be enforced? Secondly, the bill allows, as one of the possible providers of the required premarital education or counseling, not only representatives of religious institutions, but their designees as well. There is no requirement that either the religious representative or the designee be trained to provide such counseling, nor does the bill define "official representative of a religious institution." While many religious representatives or their designees no doubt would be qualified by similar kinds of education and experience to provide counseling services, the bill does not require this. Further, could someone merely claim to be a representative of a religious institution or a designee of such a person, thereby qualifying as an authorized provider under the bill? Who would decide? Finally, the bill requires that the premarital education or counseling cover a minimum of four topics that, presumably, would be at the heart of a good program. However, any or all of these topics could be eliminated if the person conducting the program were a religious representative (or his or her designee) and the topic violated a tenet of the religious institution. But it would seem that if these topics are important enough that state law would require its citizens, who otherwise would be subject to a penalty waiting period, to learn about them, is it fair to exempt some citizens from these requirements solely on the basis of the type of program provider?

The bill also, in effect, would impose pro bono requirements on private practitioners by requiring all of the listed authorized providers -- not just the representatives of religious institutions -- to provide a sliding scale fee for the required premarital program, and even free programs to indigents. While religious organizations may well be able to provide these services for free or for a nominal fee, is it right for the state to require private practitioners, who make their living by providing counseling services, to provide these services for free? And who would make the determination of indigence? No criteria are provided in the bill; does this mean that the free services would have to be provided whenever someone claimed indigence? If the state is going to require services provided by private practitioners that normally are fee-for-service, shouldn't the state pay for these services rather than passing the costs off on either the private citizens required to obtain the services or the professionals required to provide the services (or both)? If religious institutions turned out to be the only authorized

providers who could provide free services, would this mean that in order to avoid the 60-day waiting period people would be forced to receive counseling from religious groups regardless of the individuals' religious beliefs? The Public Health Code's VD and HIV counseling requirements do not require health professionals in private practice to provide such counseling for free, nor does the health code impose a longer waiting period on marriage license applicants who do not undergo such counseling because of their personal religious beliefs. And yet, the possibility of VD or HIV infection transmission surely is at least a serious concern as having marriage applicants who haven't had premarital education or counseling regarding conflict management, communication skills, financial responsibilities, and children and parenting responsibilities. The health code also requires the county clerk to provide marriage applicants with information that includes "a list of locations where HIV counseling and testing services funded by the department [of Community Health]" are available. No comparable provision for premarital education or counseling programs exists in the bill. Shouldn't people required to undergo premarital education or counseling also be given such a list of locations where state-funded education or counseling was available?

The purpose of requiring premarital education or counseling would appear to be to prevent, or at least lessen the likelihood of, divorce once a couple got married, and, perhaps, to discourage certain couples from marrying in the first place. Aside from the question whether this is a proper role for the state to play in people's lives, shouldn't there be some way to determine whether the requirement is effective? Should people, in order to avoid a two-month waiting period, have to undergo education or counseling programs that can't be or haven't been shown to be effective? Is a premarital program effective if a couple decides not to marry as a result of attending it? Is a program successful if the participants express a certain level of satisfaction with it, regardless of other outcomes? If a couple undergoes a premarital program and later divorces, does that mean that the program was a failure? And is education or counseling that is required rather than chosen freely truly effective?

Written testimony provided by professors from Western Michigan University notes that research seems to suggest that marital and family educational programs typically meet some of their stated goals on improvement in family capabilities, such as the couple learning to use particular communication skills, but the length of the impact of such programs is unclear. Reportedly, there are few follow-up studies of premarital education or counseling programs, and those

that do exist often include only limited times, such as six to twelve months after program completion, and focus on participants' levels of satisfaction with the program and its features rather than, apparently, statistics regarding rates of marriage or divorce prevention. One exception pointed out in the testimony notes that one program, which has a format of six groups sessions, shows a statistically significant lower divorce/separation rate for participating couples (8 percent) than for non-participating couples (19 percent) after five years; however, after 12 years, the participating couples had a lower but no longer statistically significant (emphasis in testimony) rate of divorce/separation than the control group (19 percent versus 28 percent). Researchers also reportedly are suggesting that "booster" sessions might be helpful after a couple is married for a few years, which might indicate a need for ongoing family life education throughout the life span of the individuals, especially during significant family transitions (such as the addition of a child, the "launching" of members, illness, and death). For couples who do marry, the testimony suggests that post-wedding sessions might be more helpful than pre-wedding sessions. The testimony states that premarital education can work but that does not mean that all (emphasis in original) premarital programs work. As the testimony further points out, a program may not be effective for everyone who attends; couples could benefit from programs adapted to their ages and family life cycle stage (for example, information on children and parenting responsibilities may not be relevant to couples who marry in their sixties or seventies), and more research is needed on cultural, ethnic, and religious factors.

While the bill would stipulate a minimum content for the proposed programs, the Western Michigan University testimony indicated that research seems to indicate that three factors are important in such programs: content, format, and length of the program. The testimony notes that without a stipulation of the length of programs, there is a risk that a program of minimal content and length, and thus effectiveness, could sabotage the intent of the bill. The testimony goes on to note that programs that are more structured with skills practice, for example, show more effectiveness than less structured lecture/information based programs, and programs that extend over longer periods of time are more effective than short seminars or single weekend programs. One day programs reportedly are inadequate, and programs need to take place well in advance of the wedding. One study on marriage preparation in the Catholic Church revealed that participants' perceived value of marriage preparation decreased with either too few or too many sessions.

Finally, the bill could involve constitutional issues. While the state may have substantial interests in regulating marriages, would the requirement that couples undergo -- and pay for, unless they are indigent -- premarital education or counseling in order to avoid a two-month delay in their right to get married impose an unconstitutional burden on people's fundamental right to marriage? Given that the state could provide optional premarital education or counseling, or could provide positive incentives for such education or counseling (such as a tax credit, for example), would the bill's provisions hold up to constitutional challenges?

Response:

Premarital programs conducted by religious representatives or their designees must be given the exemptions allowed under the bill if separation of church and state is to be maintained. Under separation of church and state, religion may not dictate state policy, and the state may not dictate religious tenets. Religious counselors have long been recognized as being exempted from state regulation, at least insofar as they act strictly in their religious roles, and this policy shouldn't be changed. With respect to the bill's proposed 60-day waiting period for people who did not undergo the proposed premarital education or counseling, it should be noted that similar measures already exist in law in other situations. In the case of driver's education, it is possible to obtain a driver's license without such education, but without driver's education people have to wait until they're 18 before they can apply for a license. In the case of premarital VD and HIV counseling currently required of marriage license applicants, applicants who object to this counseling on personal religious grounds may be exempted from the requirement but still can be charged an additional application fee equal to the amount charged for such counseling by the local health department. Finally, it should be emphasized that the premarital education or counseling is not mandatory; it is only required if the applicants wish to obtain their license without waiting for 60 days. Surely 60 days is not an unreasonable burden, and it could even be argued that every applicant for a marriage license should be required to wait for a longer period of time. That way, even if they didn't undergo formal premarital education or counseling, they at least would have some specified length of time in which to consider seriously their intent to marry.

POSITIONS:

The Michigan Catholic Conference supports the bill. (5-22-96)

The Michigan Family Forum supports the bill. (5-22-96)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.