

STORAGE NAME: h0873.jo.doc

DATE: February 18, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 873

RELATING TO: Marriage Licenses

SPONSOR(S): Representative Davis

TIED BILL(S): none

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT
- (2) CHILD & FAMILY SECURITY
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill requires any individual who is not a citizen of the United States and who has not been issued a social security number or an alien registration number, to provide a valid, current, and unexpired passport, and, when required by federal law, a valid visa, to the county court judge or clerk of the circuit court in order to obtain a marriage license. The bill also eliminates provisions allowing a judge or clerk of court to issue a marriage license to individuals who are not citizens of the United States and who do not provide the required identification or documentation.

There are constitutional concerns regarding this bill.

This bill will have an indeterminate fiscal impact on state government and no fiscal impact on local governments.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain: The sociological literature generally considers marriage to be virtually a universal institution. In recent years, a considerable body of social science research has emerged on the negative consequences of family fragmentation and the importance of marriage for children, for adults, and for society at large. Denying marriage licenses to individuals who are not citizens of the United States solely because their documentation is not in order creates an additional state government function, fails to support the choice of an individual to marry, prevents an individual from making a commitment that is typically viewed as being personally responsible, and does not support family formation.

B. PRESENT SITUATION:

Identification and Marriage Licenses

Prior to July 1, 1997, documentation was required to verify only the age and sex of applicants for a marriage license in Florida. Section 741.04(1), Florida Statutes (1996), provided:

No county court judge or clerk of the circuit court in this state shall issue a license for the marriage of any person unless there shall be first presented and filed with him or her an affidavit in writing, signed by both parties to the marriage, made and subscribed before some person authorized by law to administer an oath, reciting the true and correct ages of such parties; unless both such parties shall be over the age of 18 years, except as provided in s. 741.0405; and unless one party is a male and the other party is a female.

In 1996, the federal government enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), or welfare reform, which abolished the Aid to Families with Dependent Children (AFDC) program and replaced it with Temporary Assistance to Needy Families (TANF). Under AFDC, all families meeting federal eligibility criteria were entitled to receive cash assistance. Under TANF, eligibility was determined by state rule, no family was entitled to assistance, and federal funding for such assistance was limited. As a result of this federal initiative, public assistance and child support have come to be increasingly interrelated. The federal legislation served, among other things, to increase awareness of the importance of child support collections as a means of either keeping families from entering, or helping them leave, the public assistance system.

Section 317 of PRWORA included a provision that states require any applicant for a professional license, commercial driver's license, occupational license, or marriage license to provide his or her social security number, to be recorded on the application. The child support enforcement process was, and continues to be, a social security number based system, and increasing the number of

documents that contained an individual's social security number enhanced the ability to locate child support obligors and enforce child support orders.

During the 1997 legislative session, ' 741.04(1), Florida Statutes, was amended to incorporate the federal mandate related to the collection of social security numbers and to limit the use of those numbers to Title IV-D purposes (See Chapter #97-170, Laws of Florida). Section 741.04(1), Florida Statutes (1997), provided:

No county court judge or clerk of the circuit court in this state shall issue a license for the marriage of any person unless there shall be first presented and filed with him or her an affidavit in writing, signed by both parties to the marriage, **providing the social security numbers of each party**, made and subscribed before some person authorized by law to administer an oath, reciting the true and correct ages of such parties; unless both such parties shall be over the age of 18 years, except as provided in s. 741.0405; and unless one party is a male and the other party is a female. **Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number in accordance with this section. Disclosure of social security numbers obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement.** (new language in bold).

In 1998, ' 741.04(1), Florida Statutes, was once again amended to permit the use of other identification numbers in lieu of social security numbers by those non-citizens without social security numbers who applied for a marriage license (See Chapter #98-397, Laws of Florida). This was in response to equal protection concerns being raised to the legislature, primarily by immigration attorneys, that individuals legally residing in the United States, but who had not been issued a social security number, were being denied a license to marry by court clerks. Section 741.04(1), Florida Statutes (1998), provided:

No county court judge or clerk of the circuit court in this state shall issue a license for the marriage of any person unless there shall be first presented and filed with him or her an affidavit in writing, signed by both parties to the marriage, providing the social security numbers **or other identification numbers** of each party, made and subscribed before some person authorized by law to administer an oath, reciting the true and correct ages of such parties; unless both such parties shall be over the age of 18 years, except as provided in s. 741.0405; and unless one party is a male and the other party is a female. Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number in accordance with this section. **However, when an individual is not a citizen of the United States and does not have a social security number, alien registration documentation, or other proof of immigration registration from the United States Immigration and Naturalization Service that contains the individual's alien admission number or alien file number, or such other documents as the state determines constitutes reasonable evidence indicating a satisfactory immigration status, shall be provided in lieu of the social security number.** Disclosure of social security numbers **or other identification numbers** obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement. (new language in bold).

In 1999, ' 741.04(1), Florida Statutes, was further amended to clarify that the state has a compelling interest in promoting marriage, responsible parenting, and the payment of child support, and that a marriage license could not be denied to any individual due to a lack of identification or documentation. Once again, this was in response to concerns being raised to the legislature, not only by immigration attorneys, but also by the Governor's Office and the Florida Catholic Conference, that individuals who were not citizens of the United States and who could not provide proof of their immigration status, were being denied marriage licenses by clerks of court. Chapter #99-375, Laws of Florida, provided:

No county court judge or clerk of the circuit court in this state shall issue a license for the marriage of any person unless there shall be first presented and filed with him or her an affidavit in writing, signed by both parties to the marriage, providing the social security numbers or any other available identification numbers of each party, made and subscribed before some person authorized by law to administer an oath, reciting the true and correct ages of such parties; unless both such parties shall be over the age of 18 years, except as provided in s. 741.0405; and unless one party is a male and the other party is a female. Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide his or her social security number in accordance with this section. The state has a compelling interest in promoting not only marriage but also responsible parenting, which may include the payment of child support. Any person who has been issued a social security number shall provide that number. However, when an individual is not a citizen of the United States and does not have a social security number, alien registration documentation, or other proof of immigration registration from the United States Immigration and Naturalization Service that contains the individual's alien admission number or alien file number, or such other documents as the state determines constitutes reasonable evidence indicating a satisfactory immigration status, shall be provided in lieu of the social security number. Disclosure of social security numbers or other identification numbers obtained through this requirement shall be limited to the purpose of administration of the Title IV-D program for child support enforcement. Any person who is not a citizen of the United States may provide either a social security number or an alien registration number if one has been issued by the United States Immigration and Naturalization Service. Any person who is not a citizen of the United States and who has not been issued a social security number or an alien registration number is encouraged to provide another form of identification. Nothing in this subsection shall be construed to mean that a county court judge or clerk of the circuit court in this state shall not issue a marriage license to individuals who are not citizens of the United States if one or both of the parties are unable to provide a social security number, alien registration number, or other identification number.

Federal Immigration Law Related to Marriage

The Immigration and Nationality Act (INA) was created in 1952. Before that time, a variety of statutes governed immigration law, but were not organized in one location. The McCarren-Walter bill of 1952 (Public Law No. 82-414), collected and codified many existing provisions and reorganized the structure of immigration law. The Act has been amended many times in subsequent years, but it remains as the basic body of immigration law.

To prevent perceived marriage fraud, the Immigration Marriage Fraud Amendments of 1986 established a two-year conditional resident status based on marriage to a U.S. Citizen or Lawful Permanent Resident. Aliens were subject to deportation if the Attorney General determined within that two-year period that the marriage was entered into to evade the immigration laws, the marriage has been judicially annulled or terminated, or a fee or some other consideration was paid to secure such a marriage. In addition, the amendments provided that any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than \$250,000, or both.

Federal law permits the marriage by Immigration and Naturalization Service (INS) detainees. The Detention Operations Manual establishes uniform policies and procedures for the safe, secure and humane treatment of foreign nationals in INS custody. These standards state INS expectations applicable to every facility that houses INS detainees and all such facilities are required to have implemented and be in compliance with all INS detention standards by December 31, 2002. One of the issues addressed in the standards is marriage requests. The procedures provide:

M All facilities shall have in place policy and procedures to enable eligible INS detainees to marry;

M A detainee's request for permission to marry will be granted unless he or she is not legally eligible to be married, is not mentally competent, the intended spouse has not affirmed in writing his or her intent to marry the detainee, the marriage would present a threat to the security or orderly operation of the facility or compelling state interests exist for denying the request. "Compelling interests" ordinarily do not include administrative inconvenience or the possibility that the marriage may allow a detainee to pursue a new avenue of relief from deportation; and

M A marriage request will have no effect on regular or scheduled processing or action in a detainee's legal case. That is, the marriage request will neither interrupt nor stay any hearing, transfer to another facility, or removal from the United States.

Passports and Visas for Entering the United States

A passport is an official government document that certifies an individual's identity and citizenship and allows him or her to travel abroad, to gain entry into the country being visited and to regain entry into the country of citizenship.

A visa is a permit to apply to enter the United States. If needed, it is normally obtained at an American consulate outside the United States. A visa classifies the visit as business, tourism, etc., and it is usually valid for multiple visits to the United States during a specified time period.

M An **immigrant visa** is given to someone who intends to live and work permanently in the United States. In most cases, a relative or employer sends an application to the INS on behalf of an individual wishing to become an immigrant. Certain applicants such as workers with extraordinary skills and investors can petition on their own behalf. Anyone who is traveling to the United States to become an immigrant must have an immigrant visa.

M A **nonimmigrant visa** is granted to an individual who lives in another country and wishes to come temporarily to the United States for a specific purpose. Nonimmigrant visas are granted to tourists, business people, students, temporary workers, and diplomats. Most people who wish to travel to the United States as nonimmigrants require a visa.

Many countries other than the United States require a visa to gain entry. The visa usually is in the form of a stamp in the passport (Russia is the exception and issues a separate document) and is obtained from the country being visited. There are over 270 countries that offer visas and literally thousands of different types of visas available based upon country, type of visit, and length of visit.

Once an immigrant or nonimmigrant visa has been issued, an individual is authorized to travel to the United States. A visa does not guarantee, however, that such an individual will be allowed to enter the United States. The INS retains authority to grant or deny any admission. The INS also determines the length of stay for any individual appearing and seeking entry.

At a minimum, an individual will need a valid passport to obtain a visa. When the visa is issued, the passport will be stamped indicating the visa was issued and expiration date of the visa. Many countries require there be in excess of 6 months of validity on the passport before granting the visa. Additional requirements for visas vary greatly depending on the visa required and the region you reside in. Visas are temporary in nature and depending upon your requirements and the country being visited, visas can be obtained with validity anywhere from 2 weeks to 10 years. When a visa expires, a new visa is required to gain entry to the foreign country again. Also, in many countries the visa expires when the passport expires.

An Arrival/Departure Record is created by the INS when the traveler is inspected upon arrival in the United States. The inspector endorses such record with the date, place of arrival the "class of admission" (which corresponds to the visa class), the length of time the traveler may remain in the United States, and any special conditions which may apply to the visit. The inspector keeps the

arrival portion of the form and returns the endorsed departure portion to the traveler who must keep the card in his possession until he leaves the United States. When the traveler leaves the United States, he must surrender the departure portion of the record to the airline representative, if he travels by air, or to the immigration or customs officer if he departs across the border to Canada or Mexico. Any individual wishing to stay longer than the date authorized by the INS, must apply for an extension with the INS. The decision to grant or deny a request for extension of stay is made solely by the INS. Most foreign travelers will receive an Arriva/IDeparture Record when arriving at a U.S. port-of-entry.

Aliens, Immigrants, Green Cards

An "alien" is defined by INS as, any person not a citizen or national of the United States. An "immigrant" or "permanent resident alien" is an alien who has been admitted to the United States as a lawful permanent resident. Lawful permanent aliens may be issued immigrant visas by the Department of State or adjusted to permanent resident status by the INS once in the United States.

Individuals wanting to become an immigrant must typically do three things:

- M have INS approve an immigrant petition which is usually filed by an employer or relative;
- M obtain a visa number that must be immediately available through the Department of State;
- and
- M if they are already in the U.S., they must apply to adjust to permanent resident status after a visa number becomes available.

Federal law limits the number of immigrant visa numbers that are available every year. Even if INS has approved an immigrant visa petition, it may be several years before an individual receives an immigrant visa number. In addition, federal law limits the number of visa numbers available by country so waits may be longer for aliens from certain countries. A Permanent Resident Card, commonly known as a Green Card, is evidence of an individual's status as a lawful permanent resident with a right to live and work permanently in the United States. It also is evidence of registration in accordance with United States immigration laws.

Section 264 of the Immigration and Nationality Act provides that, "Every alien in the United States shall be issued a certificate of alien registration or an alien registration receipt card in such form and manner and at such time as shall be prescribed under regulations." It also states, "Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him. Any alien who fails to comply with [these] provisions shall be guilty of a misdemeanor." The specific requirements and procedures for applying to renew an expiring permanent resident card are set forth in the Code of Federal Regulations [CFR] at 8 CFR § 264.5.

An individual's permanent resident status will be conditional if it is based on a marriage that was less than two years old on the day permanent residence was granted. The conditional residence status is effective either on the date of lawful admittance to the United States on an immigrant visa or the date of a status adjustment. Permanent resident status is conditional in these cases because the immigrant must prove the marriage did not occur to evade United States immigration laws.

C. EFFECT OF PROPOSED CHANGES:

This bill would prevent a marriage license from being issued to any individual who is not a citizen of the United States and who has not been issued either a social security number or an alien

registration number, unless they provide a valid, current, and unexpired passport, and when required by federal law, a valid visa, as identification.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends ' 741.04, Florida Statutes, relating to marriage licenses, to require that any individual who is not a citizen of the United States and who has not been issued a social security number or an alien registration number must provide a valid, current, and unexpired passport, and, if required by federal law, a valid visa, in order to obtain a marriage license. The bill also eliminates provisions allowing a judge or clerk of court to issue a marriage license to individuals who are not citizens of the United States and who do not provide the required identification or documentation.

Section 2. Provides for an effective date of upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The fee for obtaining a marriage license is currently \$88.50 and a decrease in the number of licenses issued would result in a loss of revenue.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditures of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

It is unclear whether this bill would withstand a constitutional challenge.

The right to marry is a fundamental constitutional right, it is one of those rights that the courts have identified as "so deeply rooted in our history and traditions, or so fundamental to our concept of constitutionally ordered liberty, that they are protected by the Fourteenth Amendment." Washington v. Glucksberg, 521 U.S. 702, 727 (1997) (Rehnquist, C.J.). See also, Moore v. East Cleveland, 431 U.S. 494, 503, 97 S.Ct. 1932, 1937-1938, 52 L.Ed.2d 531 (1977) ("[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation's history and tradition" (emphasis added)); Griswold v. Connecticut, 381 U.S. 479, 485-486, 85 S.Ct. 1678, 1682- 1683, 14 L.Ed.2d 510 (1965) (intrusions into the "sacred precincts of marital bedrooms" offend rights "older than the Bill of Rights"); id., at 495-496, 85 S.Ct., at 1687-1688 (Goldberg, J., concurring) (the law in question "disrupt[ed] the traditional relation of the family--a relation as old and as fundamental as our entire civilization"); Loving v. Virginia, 388 U.S. 1, 12, 87 S.Ct. 1817, 1823-1824, 18 L.Ed.2d 1010 (1967) ("The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness"); Turner v. Safley, 482 U.S. 78, 95, 107 S.Ct. 2254, 2265, 96 L.Ed.2d 64 (1987) ("[T]he decision to marry is a fundamental right"); Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655 (1942) ("Marriage and procreation are fundamental"); Pierce v. Society of Sisters, 268 U.S. 510, 535, 45 S.Ct. 571, 573-574, 69 L.Ed. 1070 (1925); Meyer v. Nebraska, 262 U.S. 390, 399, 43 S.Ct. 625, 626- 627, 67 L.Ed. 1042 (1923) (liberty includes "those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men").

The Equal Protection Clause of the Fourteenth Amendment prohibits state discrimination against illegal aliens in state programs and services. Plyer v. Doe, 457 U.S. 202 (1982) (finding unconstitutional a state law banning illegal alien children from attending public schools).

This bill raises the constitutional concerns that, to extent that this bill interferes with the fundamental right of persons to marry, it may be found unconstitutional under the Fourteenth Amendment to the United States Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Increase in Marriages, Citizenship Requests

A letter to Representative Crow from the Orange County Clerk of Courts' Office states:

... From September 2001, to January 31 of this year, our documentation shows we have issued 4,192 marriage license applications. 237 Licenses have been issued to people holding expired or questionable visa and/or passports. We are seeing the beginning of a very disturbing trend here.

It is unclear what is meant by “disturbing trend”, however, increases in marriages, increases in dissolution dismissals, and increases in citizenship requests have been reported nationwide since the events of September 11, 2001. An overwhelming majority of those reports reflect these increases as positive, rather than disturbing. Those include the following types of comments:

M “Nick Stinnett, a University of Alabama professor of marriage and family studies, said he expects weddings because of the terrorist attacks likely ‘made many people very aware of the importance of family and friends, and that will likely prompt many to go ahead with wedding plans in order to start their own family’... “(Birmingham Times-Journal, January 2, 2002).

M “After the world turned upside down for Americans following the September 11 terrorist attacks, some residents in North Florida responded by making plans to tie the knot, marriage license figures show ... Of six counties reporting figures for issued marriage certificates, three showed increases over the previous September ranging from 22 to 91 percent ... Columbia County had the highest percent increase in September over the same time the previous year. In 2000, the county issued 32 marriage certificates in September. That number almost doubled in 2001 with 61 ... The figures echo a trend reported anecdotally around the country of couples rushing to wed after the September 11 terrorist attacks ... but the reverend Kenneth Westbrook of the Northwest Baptist Church on NW 23rd Avenue said he believes the terrorist attacks renewed some Americans’ respect for religion and morality, prompting them to head for the alter.” (Gainesville, Florida Sun, January 2, 2002).

M “Chris Molnar, who also works as a Lutheran pastor in the San Luis Obispo, said, ‘the events have interjected a greater sense of urgency. Many have had long relationships but they were just putting it off. Now, they feel they need to make that commitment’ ...”.(LA Times, September 25, 2001).

M “Driven by post-9/11 uncertainty – including the mixed feelings of vulnerability in and solidarity with their new homeland – immigrants across the US are rushing to apply for citizenship ... Applications for naturalization in October and November were up 61 percent over the same time period last year, the most recent INS data show ... ‘Traditionally, we see in times of national crisis a sharpening in the recognition of the difference between citizens and immigrants, and a greater recognition of what citizenship means,’ says Russ Bergeron, an INS spokesman in Washington. ‘So it’s not surprising to see a large number of people motivated to apply right now’ ...”. (Christian Science Monitor, February 11, 2002).

M “Estela Riccio has lived in the United States for more than three decades, but it was after September 11 that she finally decided to become a citizen ... ‘that day I realized this is my country,’ said Riccio, an Argentine woman who lives in Houston and submitted her citizenship application two weeks ago’ ... A mixture of patriotism and insecurity has spurred many immigrants to do the same since the attacks, immigration attorneys and advocates say”...”. (Tallahassee Democrat, February 18, 2002)

Benefits of Marriage

The sociological literature has long defined marriage as the most basic and universal of human institutions. The institution of marriage has moved to the forefront of American policy debate as states begin rethinking laws and policies in many areas and the body of research and literature has mushroomed. The benefits to individuals – better physical and emotional health, less substance abuse, higher standards of living – have long been documented, while some of the more recent studies have reported many advantages of marriage to the larger society as well:

M "Marriage is a social institution, not just a private relationship: Getting married doesn't merely certify a preexisting love relationship. Marriage actually changes people's goals and behavior in ways that are profoundly and powerfully life enhancing". (Waite, L. and Gallagher, M. (2000), *The Case for Marriage*, p. 17).

M "When men fail to become good husbands, notes George Akerlof, they often fail to be good men. In a recent prestigious lecture, Akerlof argued that declines in marriage and parenthood for men have led to social problems such as crime and substance abuse. Akerlof argues that "men settle down when they get married: if they fail to get married they fail to settle down. When men delay or avoid marriage, they continue with the often antisocial and destructive behaviors of single men. And it's the role of husband – not boyfriend or father – which seems to be the key: Having children by itself does not work the same transformation in men's lives." (George A. Akerlof, "Men without Children," *The Economic Journal* 108 (1998), p. 290.

An argument could be made that marriage may serve to increase stability and reduce violent tendencies in individuals, which could become increasingly important when considering security issues.

Federal Law

The letter to Representative Crow from the Orange County Clerk of Courts' Office further states,

"...Every public agency must look at their policies and laws that mandate their existence and have them changed to coincide with Federal laws ...".

It is unclear how the changes proposed in this legislation would mirror requirements in federal law, since federal law places no restrictions on marriage per se, only on the resident status of the immigrant if that status is based on a marriage under certain circumstances.

In his budget presentation to the U.S. Congress on February 28, 2001, entitled "A Blueprint For New Beginnings: A Responsible Budget for America's Priorities", President Bush outlined the administration's priorities related to immigrants:

M The United States is a Nation of immigrants. Unfortunately, today when new immigrants arrive on our shores, their first experience is often one of frustration and anxiety. The Administration believes that legal immigrants should be greeted with open arms, rather than endless lines. We must be responsive to those who seek to immigrate to this country by legal means, and to those who have emigrated and now seek to become U.S. citizens ...

M ... In order to accelerate INS processes pertaining to citizenship and benefits, the Administration is committed to building and maintaining an immigration services system that ensures integrity, provides services accurately and in a timely manner, and emphasizes a culture of respect. It often takes three years or more for INS to process immigration applications and/or petitions. At times, in some areas of California, Federal delays in processing adjustment of status applications have averaged 52 months; in some areas of Texas, delays have averaged 69 months; in some areas of Arizona, 49 months; in some areas of Illinois, 37 months.

M To improve INS' focus on service and to reduce the delays in INS processing of immigration applications, the Administration proposes a universal six-month standard for processing all immigration applications. To meet this standard, the Administration supports a five-year, \$500 million, initiative to fund new personnel, introduce employee performance incentives to process cases quickly and accurately, and make customer satisfaction a priority. The \$100 million proposed in 2002 is the first installment in this effort to provide quality service to all legal immigrants, citizens, businesses, and other INS customers.

General Comments

The letter to Representative Crow from the Orange County Clerk of Courts' Office also states,

..."While I understand this may not appear to be a 'high security' issue, we in the trenches at home consider this to be extremely important. A legal marriage can serve to legitimize alien status!" This implies that such legitimization is undesirable. Federal law appears to support the notion that legitimizing alien status is a positive event.

There appears to be some lack of clarity related to the provisions of this bill, their impact on current law, and the possibility of unintended consequences. Much of this confusion may perhaps be eliminated if the reasoning behind the progression of ' 741.40(1), Florida Statutes, from 1996 to 1999 is understood:

M Prior to 1997, everyone applying for a license to marry had to provide proof of his or her age and sex. No distinction was made between United States citizens and aliens because citizenship was not required for issuing a marriage license.

M In 1997, the federal government required that social security numbers be recorded on applications for marriage licenses as a child support enforcement tool. There was no intent to keep individuals without social security numbers from getting married and no intent to eliminate the requirement for proof of age and sex for everyone applying for a license.

M In 1998, because individuals without social security numbers were being denied marriage licenses, and because those individuals were typically aliens, alternative, immigration related, "numbers" were required to be used in lieu of the absent social security number for purposes of child support enforcement. As in 1997, the intent was not to differentiate between citizens and aliens when issuing a marriage license – the requirement for everyone to provide proof of age and sex remained.

M In 1999, because individuals were still being denied licenses to marry, the Legislature required that no one could be denied a marriage license because they did not have a "number". There was no intent to remove the requirement that those individuals without a "number" not provide proof of age and sex. There has been no indication since the 1999 changes were made that the clerks were having difficulty interpreting the law and that they were troubled by issuing licenses to individuals without documentation.

M It has reported that current law has created a double standard; that clerks or court are issuing marriage licenses to aliens who provide no documentation, whereas citizens are required to provide proof of their age and sex. If section 741.04(1), Florida Statutes, is being interpreted to mean that individuals with no documentation, not even proof of age or sex, can be issued license to marry, and there is no intention to restrict individuals from getting married, then perhaps the solution would be to clarify the existing statute, rather than institute new requirements.

M It has been represented that denying non-citizens a license to marry if they cannot provide the documentation requested in ' 741.04(1), Florida Statutes, somehow increases the security of the public at large. It could be argued that the opposite is in fact true. Any individual who is denied a license to marry will simply leave the office of the clerk and disappear back into the general population. If the individual was allowed to complete an application for and receive a marriage license, a paper trail would be created that may prove beneficial at some time in the future.

M The argument has been made that the provisions of this bill will keep only illegal aliens from marrying. The provisions of the bill, however do not appear to distinguish between individuals who came into the country illegally and those who arrived and entered legally and for whatever reason have failed to keep their documentation in order and up to date.

M Provisions of the bill would also appear to prevent U. S. citizens from marrying an individual of their choice without the possibility of long and complicated delays.

STORAGE NAME: h0873.jo.doc

DATE: February 18, 2002

PAGE: 12

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

Carol Preston

Nathan L. Bond, J.D.