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BILL ANALYSIS

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Senate Bill 535 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Doug Cruce
Committee: Health Policy

Date Completed: 1-3-90

RATIONALE

The Public Health Code requires that a person applying for a marriage license be counseled by a physician, a local health officer, or a designee of a local health officer regarding the transmission and prevention of venereal disease (VD) and Human Immunodeficiency Virus (HIV) infection. Recently, a church community from southeast Michigan sought permission from the Oakland County Health Department to have a minister from that church serve as the local health department's designee in order to perform the premarital counseling for the church's members. While seeking to comply with the law, church members wanted the designation because they objected on religious grounds to some of the information that would be presented. In addition, church members believed that the information imparted during the counseling session should be presented in a moral context, which they felt could be done only by one of their fellow church members. The policy of the Oakland County Health Department, however, reportedly is to select as designees persons who come under the authority of the local health department. Thus, the local health department denied the church's request to have a minister serve as the health department's designee. Some people believe that the Code should allow for exemptions from the premarital counseling requirement for persons who object to this requirement on religious grounds.

CONTENT

The bill would amend the Public Health

Code to provide that a district or circuit court could issue a written order waiving the counseling requirements for an applicant or a prospective applicant for a marriage license who filed a written objection with the district or circuit court for the county in which the license was to be issued that stated that the counseling requirements violated the applicant's personal religious beliefs. A county clerk could not issue a marriage license to an applicant who did not present and file with the clerk a written court order that waived the counseling requirements, or, as currently required, a certificate indicating that the applicant had received counseling on the transmission and prevention of VD and HIV infection and had been offered VD and HIV testing. The bill specifies that if an applicant were more than 60 years of age, the premarital counseling requirements would be waived.

MCL 333.5119

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS**Supporting Argument**

Certain religious groups have objected to the Public Health Code's provisions that require an applicant or a prospective applicant for a marriage license to be counseled on the

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transmission of VD or HIV infection. Material covered in the counseling session, such as the use of a condom to prevent the spread of HIV infection, is considered by these groups to be objectionable to their religious beliefs. The bill is a reasoned approach to the problem because it would provide a mechanism through the courts whereby persons could seek an exemption from the counseling requirement on religious grounds. These provisions would satisfy persons who have moral difficulty with the counseling requirement and would ease concerns of public health officials that there not be a blanket exemption, since persons would have to go to court for a waiver. Furthermore, the bill would not change the current requirement that a county clerk, at the time a marriage license application is filed, distribute to each applicant educational materials on topics related to VD, HIV transmission, and prenatal care. Thus, persons who were granted a court order waiving the counseling requirement still would be given information on sexually transmitted diseases at the time they filed their marriage license applications.

Opposing Argument

Proponents of the bill site the Code's provision that specifies that a person does not have to undergo medical treatment, testing, or examination if these activities violate a person's religious beliefs (MCL 333.5113) as precedent for allowing other exemptions to the premarital counseling on religious grounds. This provision, however, applies to treatment, while the bill would deal with the imparting of factual information. Thus, the bill would set the troubling precedent of allowing persons to seek a waiver from merely being told medical information. The bill's supporters also point out that even if persons were able obtain a court order that waived the counseling requirement, they still would receive written information on sexually transmitted diseases at the time they filed the marriage license application with a county clerk. While it is true that these persons would receive this written information, the effectiveness of counseling as a public health tool should not be minimized. Counseling is useful because it is an interactive process between people that can help a person determine if he or she has practiced or currently is practicing behavior that could place that person at risk of contracting or transmitting HIV infection or

other sexually transmitted diseases. Furthermore, if the concern about the counseling requirement is that it represents governmental interference in a person's private life, then counseling should be eliminated across the board and not just for religious objections.

Opposing Argument

The bill specifies that if an applicant for a marriage license were over 60 years of age, the premarital counseling requirements would be waived. Public health officials fear that this provision stems from the myth that persons in this age category are not sexually active or have not had previous experiences that could have exposed them to HIV infection or other sexually transmitted diseases. While a recent reported survey of clinics located in southeast Michigan noted that the highest incidence of HIV infection occurred in persons 35-39 years of age, the virus did show up in all age groups from 15 years on up. Statistics reported by the Department of Public Health show that of the total number of Acquired Immune Deficiency Syndrome (AIDS) cases reported from the early 1980s to the present, 10% occurred in people who were 50 years of age or older. Premarital counseling is needed for persons over 60 years of age because many persons in this age group are sexually active, may have had other sexual partners and may have been exposed to sexually transmitted diseases, are hemophiliacs who may have used blood factor to aid in blood clotting prior to the time the factor was screened for the AIDS virus, or may have had been exposed to the AIDS virus through blood transfusions that were administered as part of a surgical procedure prior to 1985 when the screening of blood for the virus began. Premarital counseling is useful for this age group, as well as other age groups, in evaluating the risk of exposure to AIDS and other sexually transmitted diseases.

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