

SUBJECT: Extending time to file a petition claiming a common law marriage

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 8 ayes — Goodman, Cook, Brady, H. Cuellar, De La Garza, Naishtat, Puente, Van De Putte

0 nays

1 absent — Williamson

WITNESSES: None

BACKGROUND: Texas is one of about a dozen states that recognize informal (common law) marriages. Under Family Code sec. 1.91, an agreement to be married can be inferred if a couple lives together after the agreement and holds themselves out to the community as husband and wife. Texas law also allows such an informal marriage to be officially declared by filing with the county clerk or proved in an administrative proceeding. Any such proceeding must be commenced no later than one year after the date on which the relationship ended.

DIGEST: HB 336 would change the deadline for proving that a common law marriage had existed to two years from the date on which the parties separated and ceased living together. Failure to bring a proceeding within the two-year period would yield a rebuttable presumption that the parties did not enter into an agreement to be married. The bill would take effect on September 1, 1995.

SUPPORTERS SAY: CSHB 336 would implement a recommendation of the Joint Interim Committee on the Family Code regarding common law marriages. The current law on proving that such a marriage had existed is unworkable for some couples because it may be unclear exactly when their relationship ended. The bill would make clear that the clock begins ticking toward the hearing deadline, when the parties separate and cease living together, a more definite standard.

The bill would also extend to a more reasonable two years the deadline for commencing a proceeding to prove an informal marriage. The one-year deadline has created a hardship, and could render illegitimate some children

whose parents fail to have an informal marriage validated during the requisite period of time.

**OPPONENTS
SAY:**

Common law marriages should be abolished altogether. Informal marriages became popular in the 1800s when many individuals lived in unpopulated areas, with few persons authorized to conduct marriage ceremonies. The original purpose for allowing these marriages has passed, and most states no longer have such provisions. Common law marriage doctrine as it exists today provides a ripe environment for bigamy, fraud and confusion about the status of a couple's relationship.

NOTES:

CSHB 336 deleted sections of HB 336 pertaining to applications for marriage licenses, transfer of property and debts while a divorce action is pending, prohibiting discrimination in the conducting of marriage ceremonies and the repeal of Family Code secs. 1.83(c) and (d) and 3.57.