

SUBJECT: Restricting application for a marriage license by proxy

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 5 ayes — Swinford, R. Cook, Farrar, Gattis, Wong
0 nays
4 absent — Miller, J. Keffer, Martinez Fischer, Villarreal

WITNESSES: For — Beth Ann Rothermel, County and District Clerks Association
Against — None

BACKGROUND: A marriage license may be obtained through a county clerk's office, and the license is valid for a marriage that occurs between 72 hours and 30 days from the time the license is issued. An attorney general's opinion (GA-0024), issued in 2003, confirms that that under current law, two individuals can receive a marriage license issued by a county clerk even if neither individual appears in person.

Under Family Code, sec. 2.006, any adult person may apply for a marriage license before the county clerk on behalf of an absent applicant by presenting an affidavit from each applicant declaring the required information for obtaining a license, along with proof of age and identity for each applicant, and proof of parental consent when necessary.

DIGEST: HB 858 would prohibit a clerk from issuing a marriage license if both applicants were absent unless the person applying on behalf of the applicants also presented an affidavit demonstrating that each applicant was either on active duty with the armed forces or confined in a correctional facility.

The bill would take effect September 1, 2005, and would apply to applications for marriage licenses submitted on or after this date.

SUPPORTERS SAY: HB 858 would prevent absent applicants from obtaining fraudulent marriage licenses by requiring that at least one of the persons requesting a

license be present at the time of application. In a recent example of such fraud, a woman was discovered to have obtained more than 150 marriage licenses to help foreign citizens illegally obtain U.S. citizenship. It should not be a burden for at least one marriage license applicant to be available to apply in person. This would assist county clerks in ensuring that marriage licenses were issued only to couples who intended to participate in marriages conforming to state law.

HB 858 contains provisions to accommodate incarcerated individuals and those in the armed services who cannot appear in person. Current law already allows certain individuals — those who study abroad or travel frequently, for example — to obtain waivers from judges to expedite the process of obtaining a license and getting married immediately. Clerks also can travel within the county to receive an application from a homebound person. In any case, HB 858 would not require that both applicants be present to obtain a license — only one would suffice. As a result, couples would have no trouble obtaining marriage licenses in the vast majority of cases involving unavailability related to illness, confinement to home, or travel.

OPPONENTS
SAY:

Military duty and incarceration are not the only circumstances that prevent people from going to a county clerk to obtain a marriage license. Other circumstances can include study-abroad programs, working out of the state or country, or being ill and confined to the home. Although potential fraud may be a problem, the solution is not to cause added hardships to people in difficult circumstances who wish to get married. Instead, a system should be instituted in which clerks could search an applicant's history of obtaining marriage licenses in order to ensure that the applicant was not attempting to obtain a license for fraudulent purposes.