

SUBJECT: Requiring marriage education courses for certain couples seeking divorce

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Hunter, Hughes, Branch, Hartnett, Jackson, Leibowitz

3 nays — Alonzo, Lewis, Martinez

2 absent — Madden, Woolley

WITNESSES: For — Jonathan Saenz, Free Market Foundation; Edwin Brown; Jessica Brown; Lauren Burnett; Charles Dillon; Norman Goode; Michael Hiller; Erin Kincaid; Tonya McGee; Cecilia Wood; (*Registered, but did not testify*: Albert Black; Mike Thompson, Jr.)

Against — Martha Beard-Duncan, Texas Advocacy Project; Joan Jenkins, Texas Family Law Foundation; Angela Lee; (*Registered, but did not testify*: Erika Andarza; Bronwyn Blade; Heather Busby; Emily Garza; Blair Hodgkins; Annette Lamoreaux; Angela Saad; Rachel Sonstein

On — Jeff Johnson, Texas Health and Human Services Commission, Family and Community Services

BACKGROUND: Under Family Code, sec. 6.001, a court may grant a divorce without regard to fault if the marriage has become insupportable because of conflict that destroys the legitimate ends of a marriage and prevents any reasonable expectation of reconciliation.

Sec. 6.505 allows, but does not require, a court to direct the parties to a divorce proceeding to receive marriage counseling from a person named by the court. The counselor is required to issue a report to aid the court in determining whether the divorce suit should proceed or whether there is a reasonable expectation that the parties can reconcile their differences. If the court believes that there is a reasonable chance of reconciliation, the court may order the parties to undergo further counseling for a period of up to 60 days.

Sec. 6.702 states that a court may not grant a divorce until 60 days after the suit was filed.

DIGEST:

CSHB 480 would prohibit a court from granting a divorce on the grounds of insupportability to a married couple with a child under 18 years of age, a child 18 years of age who was attending high school, or an adult disabled child unless the divorce petition contained a completion certificate for attendance of a crisis marriage education course.

The bill also would add a provision to the Family Code encouraging each party to a divorce petition to attend a marriage course of at least 10 hours within a 30-day period. This provision would apply to all married couples seeking divorce, regardless of whether the couple had any children.

Timeframe for completing marriage education course. The party petitioning for the divorce would have to have completed a marriage education course not more than 60 days before filing the petition. After the responding party received notice of the divorce petition, the respondent could file a completion certificate with the court for attendance of a marriage education course. The respondent would have to file the certificate not more than the 60th day after the date the respondent received notice of the divorce.

Not applicable to victims of family violence. A party to a divorce proceeding would not have to complete a marriage education course nor submit a completion certificate if the party presented evidence to the court that the other party had committed family violence against the party or had mentally, emotionally, verbally, or psychologically abused the party. The evidence could include:

- a copy of a protective order issued against the other party because of family violence;
- a police record documenting family violence by the other party against the party submitting the evidence;
- a statement by a physician or other medical evidence indicating that the party submitting the evidence was a victim of family violence; or
- a sworn statement by a counselor or advocate in a family violence program that the party submitting the evidence was a victim of family violence or mental, emotional, verbal, or psychological abuse.

If a party presented evidence of family violence or abuse by the other party, a court could not consider the completion of a marriage education course as a factor in rendering any order affecting the rights and responsibilities of the parties. These orders would include those related to:

- dividing the marital estate;
- setting spousal maintenance (alimony);
- appointing a party as a sole or joint managing conservator; and
- determining the application of child support payment guidelines.

Marriage education courses. A marriage education course would have to address conflict management, communication skills, and forgiveness skills. A course could be provided by marriage educators, clergy or their designees, licensed mental health professionals, faith-based organizations, and community-based organizations. The bill would require instructors to issue a signed and dated completion certificate to each person who completed the course.

Payment for marriage education course. A person who took a marriage education course would be responsible for paying any fee charged for the course.

Court consideration of completion of marriage education course. A court could consider whether a party had filed with the court a completion certificate for attendance of a marriage education course in dividing a marital estate, setting spousal maintenance, appointing a party as a sole or joint managing conservator, or determining the application of child support payment guidelines. This provision would not apply to a party who demonstrated to a court that the party was a victim of family violence by the party's spouse.

Internet database for marriage education courses. CSHB 480 would require the Health and Human Services Commission to maintain an Internet website on which individuals and organizations could electronically register with the commission to indicate the curriculum in which the registrant was certified. The executive commissioner would have to notify all county and district clerks about the website.

The clerk of the court that received a divorce petition would have to inform the petitioner about the website along with the location of libraries or other places that provided Internet access.

Effective date. The bill would apply only to a divorce petition filed on or after its September 1, 2010 effective date.

SUPPORTERS
SAY:

CSHB 480 would help restore marriages and keep children in intact homes by requiring couples with children who filed for divorce on the grounds of insupportability to attend crisis marriage education courses with the goal of marriage restoration. Healthy marriage initiatives aim to help couples who choose marriage to gain greater access, on a voluntary basis, to services that could help develop the skills and knowledge necessary to sustain healthy marriages. Research shows that what separates stable and healthy marriages from unstable and unhealthy ones is not frequency of conflict but how couples manage conflict.

Increasing the incidence of marriage and reducing the incidence of divorce are reasonable and necessary policy goals. Rather than continue exclusively to invest in programs that address the effects of family breakdown, the state also should take steps to invest in programs that could prevent family disintegration in the first place. It is estimated that a single divorce costs state and federal governments tens of thousands of dollars in direct and indirect costs. When a marriage ends and children are displaced from broken homes, the costs affect everyone.

Government is most intrusive into family life when marriages end in divorce. The government is responsible for child-custody arrangements that determine when parents can see their children, whether they can pick them up after school and on what days, whether they can authorize medical care for their children, and how much money they must spend on their children. Preventing marital breakup in the first place — not by making divorce harder to get, but by increasing the odds of a stable marriage — would obviate the need for government interference in marriages.

The bill would affect only couples with children who filed for divorce on the grounds of insupportability and would provide a broad exception for a victim of family violence committed by the victim's spouse. Other grounds not requiring a marriage education course would include cruelty, adultery, conviction of a felony or imprisonment, abandonment, an established period of separation, and confinement in a psychiatric hospital. Couples that considered their marriage unsalvageable due to irreconcilable differences could use the crisis marriage education as a last effort for reconciliation. If the course did not inspire hope of reconciliation, the

couple still would be eligible to finalize their divorce 60 days after suit was filed.

Contrary to some objections, CSHB 480 would not serve primarily to “lecture” or “moralize” couples who decided to file for divorce. The bill would act first and foremost to educate married couples about valuable skills that could help preserve their marriages. By encouraging marriage preservation and restoration, the bill also would have the effect of increasing the number of stable, two-parent homes for children, who benefit most from being reared by intact families.

The objection that marriage education courses would be too expensive for low-income Texans falls short on two grounds. First, many churches offer free marriage education courses, not all of which are necessarily religious or sectarian in character. Second, the attendant costs of divorce—including, but not limited to, attorney’s fees, division of community property, alimony, and child support payments—far exceed the costs of a marriage education course, which typically run from tens of dollars to a couple hundred dollars.

**OPPONENTS
SAY:**

CSHB 480 would increase the costs of divorce statewide and make it more difficult for low-income Texans to obtain a divorce. Marriage education courses frequently cost several hundreds of dollars, a significant amount for poor, married couples who live paycheck to paycheck and struggle to meet daily expenses. Moreover, many working poor would not have the time to attend a course while juggling work and family responsibilities. Married couples should not have to choose between attending a marriage education course and working to pay regular expenses and feed their families.

Even though some churches and other religious centers do offer free marriage education courses, these courses are often sectarian in character and could be offensive to Texans who follow a different religion or follow no religion at all. As such, this bill would effectively foreclose divorce on insupportability grounds to many poor couples who could not afford the costs of a marriage education course.

CSHB 480 is unnecessary because the Family Code already permits courts to refer couples to marriage counseling. The court in a divorce proceeding is in the best position to require counseling because it has the closest familiarity with the particular circumstances of each case. Some counties

already have local rules requiring divorcing couples to attend marriage counseling or education courses, and this bill would add education requirements to those that already exist. By requiring certain divorce petitions to contain a completion certificate before the petition could even be accepted, this bill would partially remove a court's flexibility to determine whether counseling could resolve marital difficulties.

The bill's family violence exception is poorly framed because it would limit the types of evidence that a petitioner could submit to demonstrate that family violence had occurred. Because victims of family violence sometimes do not report when an instance of violence or abuse occurs, it can be difficult for them to obtain a copy of a protective order, a police report, a medical report, or a statement from a counselor or advocate. Low-income victims would especially be affected because they often do not have the money or means of transportation to visit a physician for their injuries.

Finally, CSHB 480 would inject government interference into a deeply personal decision. People decide to divorce for a wide variety of reasons, and the state should not interfere in private, personal matters by assuming that forcing certain couples with children to attend a class would solve their problems. This bill would continue the unfortunate trend of turning the Family Code into a dumping ground for well-intended but ultimately counterproductive solutions to problems best addressed outside of the law.

NOTES:

The committee substitute differs from the bill as filed by reducing the time within which a marriage education course would have to be completed before the date a divorce petition was filed from one year to 60 days and increasing the time period by which a respondent could file with a court a completion certificate from 14 days to 60 days after the date the respondent received notice of the divorce petition.

The companion bill, SB 2352 by Estes, was considered by the Senate Jurisprudence Committee and left pending on May 13.