

BILL ANALYSIS

Senate Research Center

H.B. 3666
By: Kolkhorst (Wentworth)
Jurisprudence
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 3666 is a clean-up bill requested by the Texas County and District Clerks Association. The bill specifies valid forms of identification to be used by an applicant for a marriage license. It prohibits the county clerk from issuing a marriage license to any applicant who has been divorced within the last 30 days either in the State of Texas or elsewhere. In addition, the bill requires that proper identification be presented by a parent or conservator when providing consent of marriage for minors.

This bill prohibits clerks from issuing duplicate marriage licenses except in the event that a license issued by a county clerk is lost, destroyed, or rendered useless. Otherwise, the clerk may only issue a certified copy of a recorded license upon request. H.B. 3666 adds language to include a certificate of informal marriage in statute. The bill repeals Section 2.011, Family Code, which states that county clerks should record all licenses issued by the clerk and all documents submitted with an application for license or note a summary of the documents on the application. This is an obsolete portion of the code as the issue of recording is addressed in Section 2.208, Family Code.

H.B. 3666 amends current law relating to the application for and issuance of a marriage license.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 5 (Section 2.102, Family Code), SECTION 6 (Section 2.209, Family Code), and SECTION 11 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2.002, Family Code, to require each person applying for a license, except as provided by Section 2.006 (Absent Applicant), to, among other things, submit the person's proof of identity and age as provided by Section 2.005(b), rather than this chapter.

SECTION 2. Amends Section 2.005(b), Family Code, to require that the proof be established by certain forms of identification. Deletes existing text requiring that proof be established by a certified copy of the applicant's birth certificate or by some certificate license, or document issued by this state or another state, the United States, or a foreign government.

SECTION 3. Amends Section 2.006(b), Family Code, to require the person applying on behalf of an absent applicant to provide the clerk, notwithstanding Section 132.001 (Use by Inmates in Lieu of Sworn Declaration), Civil Practice and Remedies Code, the notarized affidavit of the absent applicant as provided by this subchapter; proof of the identity and age of the absent applicant under Section 2.005(b), rather than as provided by this subchapter; if required because the absent applicant is a person under 18 years of age, documents establishing that a prior marriage has been dissolved, rather than the documents establishing parental consent, a court order authorizing the marriage of the absent, underage applicant, or documents establishing consent by a parent or a person who has legal authority to consent to the marriage, including certain proof of identity and consent.

SECTION 4. Amends Section 2.009(a), Family Code, to delete existing text prohibiting the county clerk, except as provided by Subsections (b) and (d), from issuing a license if either applicant indicates that the applicant has been divorced by a decree of a court of this state.

SECTION 5. Amends Section 2.102, Family Code, by adding Subsections (i) and (j) as follows:

(i) Requires a parent or person who has legal authority to consent to marriage for an underage applicant who gives consent under this section to provide certain proof of identity and consent.

(j) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules detailing acceptable proof of the legal authority to consent to the marriage of an underage applicant. Requires the executive commissioner to ensure that the rules adequately protect against fraud and do not create an undue burden on any class of person legally entitled to consent to the marriage of an underage applicant.

SECTION 6. Amends Section 2.209, Family Code, as follows:

Sec. 2.209. DUPLICATE LICENSE. (a) Requires the county clerk on request to issue a certified copy of a recorded marriage license. Deletes existing text requiring the county clerk, on the application and proof of identity of a person whose marriage is recorded in the records of the county clerk, to issue a duplicate marriage license completed with information as contained in the records.

(b) Requires a county clerk to issue a duplicate license if a marriage license issued by the clerk is lost, destroyed, or rendered useless. Deletes existing text requiring the county clerk, on the application and proof of identity of both persons whom a marriage license was issued but not recorded as required by Section 2.208, to issue a duplicate license if each person submits to the clerk an affidavit stating certain information.

(c) Requires both parties to the marriage, if one or both parties to a marriage license discover an error on the recorded marriage license, to execute a notarized affidavit stating the error. Requires the county clerk to file and record the affidavit as an amendment to the marriage license and provides that the affidavit is considered part of the marriage license. Requires the clerk to include a copy of the affidavit with any future certified copy of the marriage license issued by the clerk.

(d) Requires the executive commissioner by rule to prescribe the form of the affidavit under Subsection (c).

SECTION 7. Amends Section 2.403(a), Family Code, to require the county clerk to require proof of the identity and age of each party to the declaration of informal marriage to be established by a document listed in Section 2.005(b), rather than by a certified copy of the party's birth certificate or by some certificate, license, or document issued by this state or another states, the United States, or a foreign government.

SECTION 8. Amends the heading to Section 2.404, Family Code, to read as follows:

Sec. 2.404. RECORDING OF CERTIFICATE OR DECLARATION OF INFORMAL MARRIAGE.

SECTION 9. Amends Section 2.404, Family Code, by adding Subsection (a-1) and amending Subsections (b)-(d), as follows:

(a-1) Authorizes the clerk on proper execution of the declaration, to prepare a certificate of informal marriage, enter on the certificate the names of the persons declaring their informal marriage and the date the certificate or declaration is issued, and record the time at which the certificate or declaration is issued.

(b) Prohibits the county clerk from certifying the declaration or issue or recording the certificate of informal marriage if either party fails to supply any information or provide

any document required by this subchapter, either party is under 18 years of age, or either party checks "false" in response to the statement of relationship to the other party.

(c) Requires the county clerk, on execution of the declaration, to record the declaration or certificate of informal marriage, deliver the original of the declaration to the parties, deliver the original of the certificate of informal marriage to the parties, if a certificate was prepared, and send a copy of the declaration of informal marriage to the bureau of vital statistics. Deletes existing text requiring the county clerk to record the declaration and all documents submitted with declaration or note a summary of them on the declaration form.

(d) Provides that an executed declaration or a certificate of informal marriage recorded as provided in this section is prima facie evidence of the marriage of the parties. Makes a nonsubstantive change.

SECTION 10. Repealer: Section 2.011(Recording), Family Code.

SECTION 11. Requires the executive commissioner as soon as practicable after the effective date of this Act, to adopt the rules required by Sections 2.102(j) and 2.209(d), Family Code, as added by this Act.

SECTION 12. (a) Makes application of Sections 2.002, 2.005, 2.006, 2.009, and 2.102, Family Code, as amended by this Act, prospective for a marriage license submitted to a county clerk.

(b) Makes application of Sections 2.209(a) and (b), Family Code, as amended by this Act, prospective for a duplicate marriage license or certified copy of a marriage license.

(c) Makes application of Section 2.209(c), Family Code, as added by this Act, prospective.

(d) Makes application of Sections 2.403 and 2.404, Family Code, as amended by this Act, prospective for a declaration or certificate of informal marriage.

SECTION 13: Effective date: September 1, 2009.