

Amend CSSB 6 (House Committee Report) by adding the following appropriately numbered ARTICLE to the bill and renumbering subsequent ARTICLES of the bill appropriately:

ARTICLE __. CERTAIN REQUIREMENTS AND LIMITATIONS RELATING TO
MARRIAGE; PROVIDING CRIMINAL PENALTIES

SECTION __.01. Article 38.10, Code of Criminal Procedure, is amended to read as follows:

Art. 38.10. EXCEPTIONS TO THE SPOUSAL ADVERSE TESTIMONY PRIVILEGE. The privilege of a person's spouse not to be called as a witness for the state does not apply in any proceeding in which the person is charged with:

(1) a crime committed against the person's spouse, a minor child, or a member of the household of either spouse; or

(2) an offense under Section 25.01, Penal Code (Bigamy).

SECTION __.02. Sections 22.011(e) and (f), Penal Code, are amended to read as follows:

(e) It is an affirmative defense to prosecution under Subsection (a)(2) that:

(1) the actor was not more than three years older than the victim and at the time of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, [~~as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997,~~] to register for life as a sex offender; or

(B) was not a person who under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section; and

(2) the victim:

(A) was a child of 14 years of age or older; and

(B) was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

(f) An offense under this section is a felony of the second degree, except that an offense under this section is a felony of the first degree if the victim was a person whom the actor was

prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

SECTION __.03. Sections 25.01(c) and (e), Penal Code, are amended to read as follows:

(c) It is a defense to prosecution under Subsection (a)(1) that the actor reasonably believed at the time of the commission of the offense that the actor and the person whom the actor married or purported to marry or with whom the actor lived under the appearance of being married were legally eligible to be married because the actor's prior [his] marriage was void or had been dissolved by death, divorce, or annulment. For purposes of this subsection, an actor's belief is reasonable if the belief is substantiated by a certified copy of a death certificate or other signed document issued by a court.

(e) An offense under this section is a felony of the third degree, except that if at the time of the commission of the offense, the person whom the actor marries or purports to marry or with whom the actor lives under the appearance of being married is:

(1) 16 years of age, the offense is a felony of the second degree; or

(2) younger than 16 years of age, the offense is a felony of the first degree [Class A misdemeanor].

SECTION __.04. Sections 25.02(a) and (c), Penal Code, are amended to read as follows:

(a) A person [An individual] commits an offense if the person [he] engages in sexual intercourse or deviate sexual intercourse with another [a] person the actor [he] knows to be, without regard to legitimacy:

(1) the actor's [his] ancestor or descendant by blood or adoption;

(2) the actor's current or former [his] stepchild or stepparent [~~while the marriage creating that relationship exists~~];

(3) the actor's [his] parent's brother or sister of the whole or half blood;

(4) the actor's [his] brother or sister of the whole or

half blood or by adoption; [~~or~~]

(5) the children of the actor's [~~his~~] brother or sister of the whole or half blood or by adoption; or

(6) the son or daughter of the actor's aunt or uncle of the whole or half blood or by adoption.

(c) An offense under this section is a felony of the third degree, unless the offense is committed under Subsection (a)(6), in which event the offense is a felony of the second degree.

SECTION __.05. Section 2.004, Family Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) The application form must contain:

(1) a heading entitled "Application for Marriage License, _____ County, Texas";

(2) spaces for each applicant's full name, including the woman's maiden surname, address, social security number, if any, date of birth, and place of birth, including city, county, and state;

(3) a space for indicating the document tendered by each applicant as proof of identity and age;

(4) spaces for indicating whether each applicant has been divorced within the last 30 days;

(5) printed boxes for each applicant to check "true" or "false" in response to the following statement: "I am not presently married and the other applicant is not presently married.";

(6) printed boxes for each applicant to check "true" or "false" in response to the following statement: "The other applicant is not related to me as:

(A) an ancestor or descendant, by blood or adoption;

(B) a brother or sister, of the whole or half blood or by adoption;

(C) a parent's brother or sister, of the whole or half blood or by adoption; [~~or~~]

(D) a son or daughter of a brother or sister, of the whole or half blood or by adoption;

(E) a current or former stepchild or stepparent;
or

(F) a son or daughter of a parent's brother or sister, of the whole or half blood or by adoption.";

(7) printed boxes for each applicant to check "true" or "false" in response to the following statement: "I am not presently delinquent in the payment of court-ordered child support.";

(8) a printed oath reading: "I SOLEMNLY SWEAR (OR AFFIRM) THAT THE INFORMATION I HAVE GIVEN IN THIS APPLICATION IS CORRECT.";

(9) spaces immediately below the printed oath for the applicants' signatures;

(10) a certificate of the county clerk that:

(A) each applicant made the oath and the date and place that it was made; or

(B) an applicant did not appear personally but the prerequisites for the license have been fulfilled as provided by this chapter;

(11) spaces for indicating the date of the marriage and the county in which the marriage is performed; and

(12) a space for the address to which the applicants desire the completed license to be mailed.

(c) An applicant commits an offense if the applicant knowingly provides false information under Subsection (b)(1), (2), (3), or (4). An offense under this subsection is a Class C misdemeanor.

(d) An applicant commits an offense if the applicant knowingly provides false information under Subsection (b)(5) or (6). An offense under this subsection is a Class A misdemeanor.

SECTION __.06. Section 2.005, Family Code, is amended by adding Subsection (c) to read as follows:

(c) A person commits an offense if the person knowingly provides false, fraudulent, or otherwise inaccurate proof of an applicant's identity or age under this section. An offense under this subsection is a Class A misdemeanor.

SECTION __.07. Section 2.007, Family Code, is amended to

read as follows:

Sec. 2.007. AFFIDAVIT OF ABSENT APPLICANT. The affidavit of an absent applicant must include:

(1) the absent applicant's full name, including the maiden surname of a female applicant, address, date of birth, place of birth, including city, county, and state, citizenship, and social security number, if any;

(2) a declaration that the absent applicant has not been divorced within the last 30 days;

(3) a declaration that the absent applicant is:

(A) not presently married; or

(B) married to the other applicant and they wish to marry again;

(4) a declaration that the other applicant is not presently married and is not related to the absent applicant as:

(A) an ancestor or descendant, by blood or adoption;

(B) a brother or sister, of the whole or half blood or by adoption;

(C) a parent's brother or sister, of the whole or half blood or by adoption; [~~or~~]

(D) a son or daughter of a brother or sister, of the whole or half blood or by adoption;

(E) a current or former stepchild or stepparent;

or

(F) a son or daughter of a parent's brother or sister, of the whole or half blood or by adoption;

(5) a declaration that the absent applicant desires to marry and the name, age, and address of the person to whom the absent applicant desires to be married;

(6) the approximate date on which the marriage is to occur;

(7) the reason the absent applicant is unable to appear personally before the county clerk for the issuance of the license; and

(8) if the absent applicant will be unable to attend the ceremony, the appointment of any adult, other than the other

applicant, to act as proxy for the purpose of participating in the ceremony.

SECTION __.08. Sections 2.009(a) and (b), Family Code, are amended to read as follows:

(a) Except as provided by Subsections (b) and (d), the county clerk may not issue a license if either applicant:

(1) fails to provide the information required by this subchapter;

(2) fails to submit proof of age and identity;

(3) is under 16 [~~14~~] years of age and has not been granted a court order as provided by Section 2.103;

(4) is 16 [~~14~~] years of age or older but under 18 years of age and has not presented at least one of the following:

(A) parental consent as provided by Section 2.102;

(B) documents establishing that a prior marriage of the applicant has been dissolved; or

(C) a court order as provided by Section 2.103;

(5) checks "false" in response to a statement in the application, except as provided by Subsection (b) or (d), or fails to make a required declaration in an affidavit required of an absent applicant; or

(6) indicates that the applicant has been divorced by a decree of a court of this state within the last 30 days, unless:

(A) the applicants were divorced from each other; or

(B) the prohibition against remarriage is waived as provided by Section 6.802.

(b) If an applicant checks "false" in response to the statement "I am not presently married and the other applicant is not presently married," the county clerk shall inquire as to whether the applicant is presently married to the other applicant. If the applicant states that the applicant is currently married to the other applicant, the county clerk shall record that statement on the license before the administration of the oath. The county clerk may not refuse to issue a license on the ground that the applicants are already married to each other.

SECTION __.09. Section 2.102, Family Code, is amended by amending Subsection (a) and adding Subsections (g) and (h) to read as follows:

(a) If an applicant is 16 [~~14~~] years of age or older but under 18 years of age, the county clerk shall issue the license if parental consent is given as provided by this section.

(g) A person commits an offense if the person knowingly provides parental consent for an underage applicant under this section and the person is not a parent or a judicially designated managing conservator or guardian of the applicant. An offense under this subsection is a Class A misdemeanor.

(h) A parent or judicially designated managing conservator or guardian of an applicant commits an offense if the parent, managing conservator, or guardian knowingly provides parental consent under this section for an applicant who is younger than 16 years of age or who is presently married to a person other than the person the applicant desires to marry. An offense under this subsection is a felony of the third degree.

SECTION __.10. Section 2.202, Family Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) Except as provided by Subsection (d), a person commits an offense if the person knowingly conducts a marriage ceremony without authorization under this section. An offense under this subsection is a Class A misdemeanor.

(d) A person commits an offense if the person knowingly conducts a marriage ceremony of a minor whose marriage is prohibited by law or of a person who by marrying commits an offense under Section 25.01, Penal Code. An offense under this subsection is a felony of the third degree.

SECTION __.11. Section 2.302, Family Code, is amended to read as follows:

Sec. 2.302. CEREMONY CONDUCTED BY UNAUTHORIZED PERSON. The validity of a marriage is not affected by the lack of authority of the person conducting the marriage ceremony if:

(1) there was a reasonable appearance of authority by that person; [~~and~~]

(2) at least one party to the marriage participated in

the ceremony in good faith and that party treats the marriage as valid; and

(3) neither party to the marriage:

(A) is a minor whose marriage is prohibited by law; or

(B) by marrying commits an offense under Section 25.01, Penal Code.

SECTION __.12. Section 2.401, Family Code, is amended by adding Subsection (d) to read as follows:

(d) A person may not be a party to an informal marriage or execute a declaration of an informal marriage if the person is presently married to a person who is not the other party to the informal marriage or declaration of an informal marriage, as applicable.

SECTION __.13. Section 2.402(b), Family Code, is amended to read as follows:

(b) The declaration form must contain:

(1) a heading entitled "Declaration and Registration of Informal Marriage, _____ County, Texas";

(2) spaces for each party's full name, including the woman's maiden surname, address, date of birth, place of birth, including city, county, and state, and social security number, if any;

(3) a space for indicating the type of document tendered by each party as proof of age and identity;

(4) printed boxes for each party to check "true" or "false" in response to the following statement: "The other party is not related to me as:

(A) an ancestor or descendant, by blood or adoption;

(B) a brother or sister, of the whole or half blood or by adoption;

(C) a parent's brother or sister, of the whole or half blood or by adoption; [~~or~~]

(D) a son or daughter of a brother or sister, of the whole or half blood or by adoption;

(E) a current or former stepchild or stepparent;

or

(F) a son or daughter of a parent's brother or sister, of the whole or half blood or by adoption.";

(5) a printed declaration and oath reading: "I SOLEMNLY SWEAR (OR AFFIRM) THAT WE, THE UNDERSIGNED, ARE MARRIED TO EACH OTHER BY VIRTUE OF THE FOLLOWING FACTS: ON OR ABOUT (DATE) WE AGREED TO BE MARRIED, AND AFTER THAT DATE WE LIVED TOGETHER AS HUSBAND AND WIFE AND IN THIS STATE WE REPRESENTED TO OTHERS THAT WE WERE MARRIED. SINCE THE DATE OF MARRIAGE TO THE OTHER PARTY I HAVE NOT BEEN MARRIED TO ANY OTHER PERSON. THIS DECLARATION IS TRUE AND THE INFORMATION IN IT WHICH I HAVE GIVEN IS CORRECT.";

(6) spaces immediately below the printed declaration and oath for the parties' signatures; and

(7) a certificate of the county clerk that the parties made the declaration and oath and the place and date it was made.

SECTION __.14. Section 2.403, Family Code, is amended to read as follows:

Sec. 2.403. PROOF OF IDENTITY AND AGE; OFFENSE. (a) The county clerk shall require proof of the identity and age of each party to the declaration of informal marriage to be established by a certified copy of the party's birth certificate or by some certificate, license, or document issued by this state or another state, the United States, or a foreign government.

(b) A person commits an offense if the person knowingly provides false, fraudulent, or otherwise inaccurate proof of the person's identity or age under this section. An offense under this subsection is a Class A misdemeanor.

SECTION __.15. Section 6.101, Family Code, is amended to read as follows:

Sec. 6.101. ANNULMENT OF MARRIAGE OF PERSON UNDER AGE 16 [~~14~~]. (a) The court may grant an annulment of a licensed marriage of a person under 16 [~~14~~] years of age unless a court order has been obtained as provided in Subchapter B, Chapter 2.

(b) A petition for annulment under this section may be filed by a next friend for the benefit of a person under 16 [~~14~~] years of age or on the petition of the parent or the judicially designated managing conservator or guardian, whether an individual,

authorized agency, or court, of the person.

(c) A suit by a parent, managing conservator, or guardian of the person may be brought at any time before the person is 16 [~~14~~] years of age.

(d) A suit under this section to annul the marriage of a person 16 [~~14~~] years of age or older that was entered into before the person was 16 [~~14~~] years of age is barred unless the suit is filed within the later of:

(1) 90 days after the date the petitioner knew or should have known of the marriage; or

(2) 90 days after the date of the 16th [~~14th~~] birthday of the underage party.

SECTION __.16. Section 6.102(a), Family Code, is amended to read as follows:

(a) The court may grant an annulment of a licensed or informal marriage of a person 16 [~~14~~] years of age or older but under 18 years of age that occurred without parental consent or without a court order as provided by Subchapters B and E, Chapter 2.

SECTION __.17. Subchapter C, Chapter 6, Family Code, is amended by adding Sections 6.205 and 6.206 to read as follows:

Sec. 6.205. MARRIAGE TO MINOR. A marriage is void if either party to the marriage is younger than 16 years of age.

Sec. 6.206. MARRIAGE TO STEPCHILD OR STEPPARENT. A marriage is void if a party is a current or former stepchild or stepparent of the other party.

SECTION __.18. Under the terms of Section 22.109(b), Government Code, Rule 504(b)(1), Texas Rules of Evidence, is disapproved to the extent that the rule conflicts with Article 38.10, Code of Criminal Procedure, as amended by this article.

SECTION __.19. The changes in law made by this article in amending Article 38.10, Code of Criminal Procedure, and Sections 22.011, 25.01, and 25.02, Penal Code, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this

Act if any element of the offense was committed before that date.

SECTION __.20. The changes in law made by this article to Sections 2.004, 2.005, 2.007, 2.009, and 2.102, Family Code, apply only to an application for a marriage license filed on or after the effective date of this Act. An application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION __.21. The changes in law made by this article to Sections 2.202 and 2.302, Family Code, apply only to a marriage ceremony that is conducted on or after the effective date of this Act. A marriage ceremony conducted before the effective date of this Act is governed by the law in effect on the date the ceremony was conducted, and the former law is continued in effect for that purpose.

SECTION __.22. Section 2.401(d), Family Code, as added by this article, applies to an informal marriage or a declaration of an informal marriage regardless of when the informal marriage was entered into or the declaration was executed.

SECTION __.23. The changes in law made by this article to Sections 2.402(b) and 2.403, Family Code, apply to a declaration of an informal marriage executed on or after the effective date of this Act. A declaration executed before the effective date of this Act is governed by the law in effect on the date the declaration was executed, and the former law is continued in effect for that purpose.

SECTION __.24. The changes in law made by this article by the amendment of Sections 6.101 and 6.102(a), Family Code, and the enactment of Sections 6.205 and 6.206, Family Code, apply only to a marriage entered into on or after the effective date of this Act. A marriage entered into before the effective date of this Act is governed by the law in effect on the date the marriage was entered into, and the former law is continued in effect for that purpose.