

BILL ANALYSIS

C.S.H.B. 3006
By: Hilderbran
Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The ambiguity of current Texas law has allowed for alleged crimes to be committed under the practice of religious freedom. Allegations including, but not limited to, practices of bigamy, polygamy, child abuse, incest, domestic violence, child endangerment, denial of equal education services or opportunities, election and welfare fraud are rampant in these religious sects, also known as "The Fundamentalist Church of Jesus Christ of Latter Day Saints."

The U.S. Supreme Court has already ruled that while the government may not restrict religious beliefs, they may restrict religious practices. The court has said that no religious actions may violate general laws. Underage marriage, parental consent, education issues, and election fraud are all general laws. The states of Utah and Arizona have identified similar problems with their laws regarding bigamy and polygamy, underage marriage, and religious practices. Accordingly, these states are adamantly addressing these issues legislatively by increasing penalties for those who violate these laws.

C.S.H.B.3006 focuses on various provisions of the Penal Code, Family Code, Election and Education Codes in order to better regulate those activities associated with bigamy and polygamy.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

ARTICLE 1.

- Section 1.01.** Amends Article 38.10, Code of Criminal by adding additional language to provide that 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 an offense under Section 25.01 of the Penal Code (Bigamy).
- Section 1.02.** Amends Sections 22.011(e) and (f) of the Penal Code by providing that it is an affirmative defense to prosecution under Subsection (a)(2) that the actor was not more than three years older than the victim and at the time of the offense was not a person who under Chapter 62 of the Code of Criminal Procedure, had a reportable or adjudication for an offense and the victim was a child of 14 years of age or older; and was not a person whom the actor was prohibited from living under the appearance of being married under Section 25.01. An offense under this section is a second degree felony except it is a first degree felony if the victim was a person whom the actor was prohibited from marrying.
- Section 1.03.** Amends Sections 25.01(c) and (e) of the Penal Code to provide that 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 marriage was void or had been

dissolved by death, divorce, or annulment. Makes it a first degree felony for marriage to a child younger than 16 and a second degree felony for a child 16 years and older. Further defines the language as it pertains to prohibited sexual conduct with a victim.

Section 1.04. Amends Sections 25.02(a) and (c) of the Penal Code by deleting "an individual" and inserting "a person." Also deletes references to "he" and "his" and inserts "the actor" and "deletes "a" and inserts "another." Also inserts language that includes the son or daughter of the actor's aunt or uncle of the whole or half blood by adoption.

ARTICLE 2.

Section 2.01. Amends Section 141.001(a) of the Election Code to provide for continued residency in the state for two years and in the territory from which the office is elected for one year and not have been convicted of an offense under Section 141.040 in the previous 24 months.

Section 2.02. Amends Section 141.002(a) of the Election Code by changing the six-month residency requirement to one-year, and deletes reference to "seven" and inserts "13."

Section 2.03. Amends Section 141.003 of the Election Code by deleting the reference to "12 months" and inserting "two years."

Section 2.04. Amends Section 141.031 of the Election Code by placing a statement in the, General Requirements for Application, swearing that the applicant is not currently violating the constitution or laws of the United States and of the State of Texas.

Section 2.05. Amends Subchapter B, Chapter 141 of the Election Code by adding Section 141.040 to provide for a Class A misdemeanor penalty for knowingly providing false information on an application.

ARTICLE 3.

Section 3.01. Amends Section 2.004 of the Family Code by amending Subsection (b) and adding Subsections (c) and (d) by expanding the language of the application to add, the statement that "the other applicant is not married." Adds additional language to include, "a current or former stepchild or stepparent" and "a son or daughter of a parent's brother or sister, of the whole or half blood by adoption." Increases the penalty if an applicant knowingly provides false information under this section.

Section 3.02 Amends Section 2.005 of the Family Code by adding Subsection (c) to provide that a person commits an offense for knowingly providing false information regarding their identity or age. An offense under this subsection is a Class A misdemeanor.

Section 3.03 Amends Section 2.007 of the Family Code by providing that the affidavit of an absent applicant must include a declaration that the other applicant is not presently married and is not related to the absent applicant as a current or former stepchild or stepparent or a son or daughter of a parent's brother or sister, of the whole or half blood or by adoption.

Section 3.04 Amends Section 2.009(a) and (b) of the Family Code by striking "14" and inserting "16." Also provides that the county clerk may not issue a license if either applicant checks "false" in response to the statement "I am not presently married and the other applicant is not presently married."

- Section 3.05** Amends Section 2.102 of the Family Code by amending Subsection (a) and adding Subsections (g) and (h) by striking "14" and inserting "16." Further provides, that it is a Class A misdemeanor if a person giving consent for an underage marriage is not a parent, managing conservator, or guardian of the applicant and knowingly provides consent to marriage for an underage applicant. Also provides that it is a felony of the third degree if a parent or judicially designated managing conservator or guardian knowingly provides parental consent for an underage marriage or who is presently married to a person other than the person the applicant desires to marry.
- Section 3.06** Amends Section 2.202 of the Family Code by adding Subsections (c) and (d) to provide that it is a Class A misdemeanor for a person who knowingly conducts a marriage ceremony without authorization under this section, and a third degree felony for a person who knowingly conducts a marriage ceremony of a minor whose marriage is prohibited by law or by a person who by marrying commits an offense under Section 25.01 of the Penal Code.
- Section 3.07** Amends Section 2.302 of the Family Code by providing that the validity of a marriage is not affected by the lack of authority of the person conducting the ceremony if neither party to the marriage is a minor whose marriage is prohibited by law or by marrying commits an offense under Section 25.01 of the Penal Code.
- Section 3.08** Amends Section 2.401 of the Family Code by adding Subsection(d) to provide that 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 3.09** Amends Section 2.402(b) of the Family Code by providing that the declaration form must contain 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 current or former stepchild or stepparent or a son or daughter of a parent's brother or sister, of the whole or half blood or by adoption.
- Section 3.10** Amends Section 2.403 of the Family Code by inserting "OFFENSE," and by providing that 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 3.11** Amends Section 6.101 of the Family Code by raising the annulment age from 14 years old to 16 years old.
- Section 3.12** Amends Section 6.102(a) of the Family Code by raising the annulment age in informal marriages from 14 years old to 16 years old.
- Section 3.13** Amends Subchapter C, Chapter 6, of the Family Code by adding Sections 6.205 and 6.206 to provide a marriage is void if, either party is under 16 years of age and if a party in a marriage is a current or former stepchild or stepparent of either party.
- Section 3.14** Applicability Clause
- Section 3.15** Applicability Clause
- Section 3.16** Applicability Clause

Section 3.17 Applicability Clause

Section 3.18 Applicability Clause

ARTICLE 4.

Section 4.01. This Act takes effect September 1, 2005

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B.3006 modifies the original H.B.3006 by reinstating current law in Section 1.03 and adds additional language to include cousins in Article 1. It also deletes Article 2 in the original from the substitute. There is no change in Article 3 and Article 4 adds language to include cousins.