

By: Nixon

H.B. No. 1120

Substitute the following for H.B. No. 1120:

By: Dutton

C.S.H.B. No. 1120

A BILL TO BE ENTITLED

AN ACT

relating to certain requirements relating to an application for a marriage license and an affidavit of an absent applicant for a marriage license and to the maintenance of marriage and divorce indexes by the bureau of vital statistics; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 2.004(b), Family Code, is amended 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 statements [~~statement~~]:

(A) "I am not presently married under the laws of this state or any other jurisdiction.";

(B) "I do not desire to marry the other applicant

1 to circumvent immigration laws or for the sole purpose of obtaining  
2 immigration benefits."; and

3 (C) "I have not received and will not accept  
4 consideration or payment of any kind for marrying the other  
5 applicant.";

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

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

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

13 (C) a parent's brother or sister, of the whole or  
14 half blood or by adoption; or

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

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

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

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

26 (10) a certificate of the county clerk that:

27 (A) each applicant made the oath and the date and

1 place that it was made; or

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

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

7 (12) a space for the address to which the applicants  
8 desire the completed license to be mailed; and

9 (13) spaces for each applicant to indicate whether the  
10 applicant has ever been a party to a divorce or an annulment of a  
11 marriage.

12 SECTION 2. Section 2.007, Family Code, is amended to read as  
13 follows:

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

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

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

22 (3) a declaration that the absent applicant is:

23 (A) not presently married under the laws of this  
24 state or any other jurisdiction; or

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

27 (4) a declaration that the other applicant is not

1 related to the absent applicant as:

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

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

6 (C) a parent's brother or sister, of the whole or  
7 half blood or by adoption; or

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

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

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

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

18 (8) if the absent applicant will be unable to attend  
19 the ceremony, the appointment of any adult, other than the other  
20 applicant, to act as proxy for the purpose of participating in the  
21 ceremony;

22 (9) a declaration that the applicant does not desire  
23 to marry to circumvent immigration laws or for the sole purpose of  
24 obtaining immigration benefits;

25 (10) a declaration that the applicant has not received  
26 and will not accept consideration or payment of any kind for  
27 marrying the person to whom the absent applicant desires to be

1 married; and

2 (11) a declaration of whether the applicant has ever  
3 been a party to a divorce or an annulment of a marriage.

4 SECTION 3. Section 2.009(b), Family Code, is amended to  
5 read as follows:

6 (b) If an applicant checks "false" in response to the  
7 statement "I am not presently married under the laws of this state  
8 or any other jurisdiction," the county clerk shall inquire as to  
9 whether the applicant is presently married to the other applicant.  
10 If the applicant states that the applicant is currently married to  
11 the other applicant, the county clerk shall record that statement  
12 on the license before the administration of the oath. The county  
13 clerk may not refuse to issue a license on the ground that the  
14 applicants are already married to each other.

15 SECTION 4. Subchapter A, Chapter 2, Family Code, is amended  
16 by adding Section 2.0125 to read as follows:

17 Sec. 2.0125. PROSECUTION FOR AGGRAVATED PERJURY. An  
18 applicant who provides false information in an application for a  
19 license under Section 2.004(b)(5), or in an affidavit under Section  
20 2.007(3)(A), (9), or (10), is subject to prosecution for aggravated  
21 perjury under Section 37.03, Penal Code.

22 SECTION 5. Section 194.001(a), Health and Safety Code, is  
23 amended to read as follows:

24 (a) The county clerk shall file with the bureau of vital  
25 statistics a copy of each completed marriage license application,  
26 including any affidavit of an absent applicant for the license. The  
27 clerk shall file the copy not later than the 90th day after the date

1 of the application. The clerk may not collect a fee for filing the  
2 copy.

3 SECTION 6. Chapter 194, Health and Safety Code, is amended  
4 by adding Section 194.0012 to read as follows:

5 Sec. 194.0012. VIOLATION BY COUNTY CLERK; ADMINISTRATIVE  
6 PENALTY. (a) The department may impose an administrative penalty  
7 on a county clerk who fails to comply with Section 194.001.

8 (b) The amount of the penalty may not exceed \$500 for each  
9 violation. The amount shall be based on:

10 (1) the seriousness of the violation, including the  
11 nature, circumstances, extent, and gravity of the violation;

12 (2) the history of previous violations;

13 (3) the amount necessary to deter a future violation;

14 and

15 (4) any other matter that justice may require.

16 (c) A proceeding to impose a penalty is considered to be a  
17 contested case under Chapter 2001, Government Code.

18 (d) The enforcement of the penalty may be stayed during the  
19 time the order is under judicial review if the person pays the  
20 penalty to the clerk of the court or files a supersedeas bond with  
21 the court in the amount of the penalty. A person who cannot afford  
22 to pay the penalty or file the bond may stay the enforcement by  
23 filing an affidavit in the manner required by the Texas Rules of  
24 Civil Procedure for a party who cannot afford to file security for  
25 costs, subject to the right of the department to contest the  
26 affidavit as provided by those rules.

27 (e) The attorney general may sue to collect the penalty.

SECTION 7. Section 194.003, Health and Safety Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) The bureau of vital statistics shall make available on its Internet website the indexes required by this section. To the extent practicable using the fees imposed by Sections 118.018(d) and 118.019(b), Local Government Code, the bureau shall enhance the search capabilities of its database of information regarding marriages, divorces, or annulments of marriages and ensure that the indexes required by this section are up-to-date, accurate, and easily accessible to interested members of the public.

(d) The executive commissioner of the Health and Human Services Commission shall adopt rules for the administration of this section.

SECTION 8. Section 118.018, Local Government Code, is amended by adding Subsection (d) to read as follows:

(d) In addition to other fees collected under this section, a county clerk shall collect from a marriage license applicant a fee not to exceed \$5 to be sent to the bureau of vital statistics of the Department of State Health Services for updating, developing, and maintaining the state index of marriage license applications and declarations of informal marriage and the state index of reports of divorces or annulments of marriage under Section 194.003, Health and Safety Code.

SECTION 9. Section 118.019, Local Government Code, is amended to read as follows:

Sec. 118.019. DECLARATION OF INFORMAL MARRIAGE. (a) The fee for "Declaration of Informal Marriage" under Section 118.011 is

1 for all services rendered in connection with the execution of a  
2 declaration of informal marriage under Section 1.92, Family Code.  
3 The fee shall be collected at the time the service is rendered.

4 (b) In addition to the fee described by Subsection (a), a  
5 county clerk shall collect from the parties to a declaration of  
6 informal marriage a fee not to exceed \$5 to be sent to the bureau of  
7 vital statistics of the Department of State Health Services for  
8 updating, developing, and maintaining the state index of marriage  
9 license applications and declarations of informal marriage and the  
10 state index of reports of divorces or annulments of marriage under  
11 Section 194.003, Health and Safety Code.

12 SECTION 10. Section 118.022(a), Local Government Code, is  
13 amended to read as follows:

14 (a) The county clerk shall deposit, as provided by  
15 Subchapter B, Chapter 133, \$12.50 of each fee collected for  
16 issuance of a marriage license or declaration of informal marriage,  
17 other than a fee imposed under Section 118.018(d) or 118.019(b), to  
18 be sent to the comptroller and deposited as provided by Subsection  
19 (b).

20 SECTION 11. Sections 2.004 and 2.007, Family Code, and  
21 Section 194.001(a), Health and Safety Code, as amended by this Act,  
22 and Sections 2.0125, Family Code, and 194.0012, Health and Safety  
23 Code, as added by this Act, apply only to an application for a  
24 marriage license filed, or a declaration of an informal marriage  
25 executed, as applicable, on or after the effective date of this Act.  
26 An application filed or declaration executed before the effective  
27 date of this Act is governed by the law in effect on the date the



1 application was filed or the declaration was executed, and the  
2 former law is continued in effect for that purpose.

3 SECTION 12. The executive commissioner of the Health and  
4 Human Services Commission shall adopt rules for the administration  
5 of Section 194.003, Health and Safety Code, as required by this Act,  
6 as soon as practicable after the effective date of this Act.

7 SECTION 13. The changes in law made by this Act to Sections  
8 118.018, 118.019, and 118.022, Local Government Code, apply only to  
9 a fee imposed for a marriage license application filed, or a  
10 declaration of an informal marriage executed, as applicable, on or  
11 after the effective date of this Act. A fee imposed for an  
12 application filed or declaration executed before the effective date  
13 of this Act is governed by the law in effect on the date the  
14 application was filed or the declaration was executed, and the  
15 former law is continued in effect for that purpose.

16 SECTION 14. This Act takes effect September 1, 2005.