

1-1 By: Nelson, Williams S.B. No. 47
1-2 (In the Senate - Filed November 13, 2006; January 23, 2007,
1-3 read first time and referred to Committee on Jurisprudence;
1-4 March 12, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; March 12, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 47 By: Watson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to certain requirements relating to the issuance of a
1-11 marriage license or the recording of a declaration of informal
1-12 marriage and to the maintenance of marriage and divorce indexes by
1-13 the bureau of vital statistics.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Effective January 1, 2009, Subchapter A, Chapter
1-16 2, Family Code, is amended by adding Section 2.0075 to read as
1-17 follows:

1-18 Sec. 2.0075. STATE INDEX VERIFICATION REQUIRED. (a) The
1-19 clerk shall verify, using the online state index maintained by the
1-20 bureau of vital statistics under Section 194.003, Health and Safety
1-21 Code, that neither applicant is listed on the index as being
1-22 presently married.

1-23 (b) An applicant may provide to the clerk a certified copy
1-24 of a decree of divorce or annulment as proof that a marriage of the
1-25 applicant that is listed on the index has been dissolved.

1-26 SECTION 2. Effective January 1, 2009, Subsections (a) and
1-27 (b), Section 2.009, Family Code, are amended to read as follows:

1-28 (a) Except as provided by Subsections (b) and (d), the
1-29 county clerk may not issue a license if either applicant:

1-30 (1) fails to provide the information required by this
1-31 subchapter;

1-32 (2) fails to submit proof of age and identity;

1-33 (3) is under 16 years of age and has not been granted a
1-34 court order as provided by Section 2.103;

1-35 (4) is 16 years of age or older but under 18 years of
1-36 age and has not presented at least one of the following:

1-37 (A) parental consent as provided by Section
1-38 2.102;

1-39 (B) documents establishing that a prior marriage
1-40 of the applicant has been dissolved; or

1-41 (C) a court order as provided by Section 2.103;

1-42 (5) checks "false" in response to a statement in the
1-43 application, except as provided by Subsection (b) or (d), or fails
1-44 to make a required declaration in an affidavit required of an absent
1-45 applicant; ~~or~~

1-46 (6) indicates that the applicant has been divorced by
1-47 a decree of a court of this state within the last 30 days, unless:

1-48 (A) the applicants were divorced from each other;
1-49 or

1-50 (B) the prohibition against remarriage is waived
1-51 as provided by Section 6.802; or

1-52 (7) is listed on the state index under Section
1-53 194.003, Health and Safety Code, as being presently married to a
1-54 person other than the other applicant and has not provided to the
1-55 clerk under Section 2.0075(b) proof that the marriage of the
1-56 applicant has been dissolved.

1-57 (b) If an applicant is listed on the online state index
1-58 under Section 194.003, Health and Safety Code, as being presently
1-59 married to the other applicant or an applicant checks "false" in
1-60 response to the statement "I am not presently married and the other
1-61 applicant is not presently married," the county clerk shall inquire
1-62 as to whether the applicant is presently married to the other
1-63 applicant. If the applicant states that the applicant is currently

2-1 married to the other applicant, the county clerk shall record that
2-2 statement on the license before the administration of the oath. The
2-3 county clerk may not refuse to issue a license on the ground that
2-4 the applicants are already married to each other.

2-5 SECTION 3. Effective January 1, 2009, Subchapter E, Chapter
2-6 2, Family Code, is amended by adding Section 2.4035 to read as
2-7 follows:

2-8 Sec. 2.4035. STATE INDEX VERIFICATION REQUIRED. (a) The
2-9 clerk shall verify, using the online state index maintained by the
2-10 bureau of vital statistics under Section 194.003, Health and Safety
2-11 Code, that neither party to the declaration of informal marriage is
2-12 listed on the index as being presently married.

2-13 (b) A party may provide to the clerk a certified copy of a
2-14 decree of divorce or annulment as proof that a marriage of the party
2-15 that is listed on the index has been dissolved.

2-16 SECTION 4. Effective January 1, 2009, Subsection (b),
2-17 Section 2.404, Family Code, is amended to read as follows:

2-18 (b) The county clerk may not certify or record the
2-19 declaration if:

2-20 (1) either party fails to supply any information or
2-21 provide any document required by this subchapter;

2-22 (2) either party is under 18 years of age; [~~or~~]

2-23 (3) either party checks "false" in response to the
2-24 statement of relationship to the other party; or

2-25 (4) either party is listed on the state index as being
2-26 presently married to a person other than the other party and has not
2-27 provided to the clerk under Section 2.4035(b) proof that the
2-28 marriage of the party has been dissolved.

2-29 SECTION 5. Section 194.003, Health and Safety Code, is
2-30 amended by adding Subsections (c) and (d) to read as follows:

2-31 (c) The bureau of vital statistics shall make available on
2-32 its Internet website the indexes required by this section. To the
2-33 extent practicable using the fees imposed by Sections 118.018(d)
2-34 and 118.019(b), Local Government Code, the bureau shall enhance the
2-35 search capabilities of its database of information regarding
2-36 marriages, divorces, or annulments of marriages and ensure that the
2-37 indexes required by this section are up-to-date, accurate, and
2-38 easily accessible to interested members of the public.

2-39 (d) The executive commissioner of the Health and Human
2-40 Services Commission shall adopt rules for the administration of
2-41 this section, including rules to ensure that:

2-42 (1) the index provides county clerks with online
2-43 access to any identifying information necessary for a county clerk
2-44 to verify that an applicant for a marriage license is a person
2-45 listed on the index;

2-46 (2) any confidential identifying information
2-47 maintained on the index for use by a county clerk under Subdivision
2-48 (1) is secure and may not be accessed by members of the public; and

2-49 (3) a county clerk of a county that lacks online access
2-50 to the index receives the assistance required for the clerk to
2-51 satisfy any duty relating to accessing the information on the index
2-52 that is imposed on the clerk by other law.

2-53 SECTION 6. Section 118.018, Local Government Code, is
2-54 amended by adding Subsection (d) to read as follows:

2-55 (d) In addition to other fees collected under this section,
2-56 a county clerk shall collect from a marriage license applicant a fee
2-57 not to exceed \$5 to be sent to the bureau of vital statistics of the
2-58 Department of State Health Services for updating, developing, and
2-59 maintaining the state index of marriage license applications and
2-60 declarations of informal marriage and the state index of reports of
2-61 divorces or annulments of marriage under Section 194.003, Health
2-62 and Safety Code.

2-63 SECTION 7. Section 118.019, Local Government Code, is
2-64 amended to read as follows:

2-65 Sec. 118.019. DECLARATION OF INFORMAL MARRIAGE. (a) The
2-66 fee for "Declaration of Informal Marriage" under Section 118.011 is
2-67 for all services rendered in connection with the execution of a
2-68 declaration of informal marriage under Section 2.404 [~~1.92~~], Family
2-69 Code. The fee shall be collected at the time the service is

3-1 rendered.
3-2 (b) In addition to the fee described by Subsection (a), a
3-3 county clerk shall collect from the parties to a declaration of
3-4 informal marriage a fee not to exceed \$5 to be sent to the bureau of
3-5 vital statistics of the Department of State Health Services for
3-6 updating, developing, and maintaining the state index of marriage
3-7 license applications and declarations of informal marriage and the
3-8 state index of reports of divorces or annulments of marriage under
3-9 Section 194.003, Health and Safety Code.

3-10 SECTION 8. Subsection (a), Section 118.022, Local
3-11 Government Code, is amended to read as follows:

3-12 (a) The county clerk shall deposit, as provided by
3-13 Subchapter B, Chapter 133, \$12.50 of each fee collected for
3-14 issuance of a marriage license or declaration of informal marriage,
3-15 other than a fee imposed under Section 118.018(d) or 118.019(b), to
3-16 be sent to the comptroller and deposited as provided by Subsection
3-17 (b).

3-18 SECTION 9. Subsections (a) and (b), Section 2.009, and
3-19 Subsection (b), Section 2.404, Family Code, as amended by this Act,
3-20 apply only to an application for a marriage license filed, or a
3-21 declaration of an informal marriage executed, as applicable, on or
3-22 after January 1, 2009. An application filed or declaration
3-23 executed before that date is governed by the law in effect on the
3-24 date the application was filed or the declaration was executed, and
3-25 the former law is continued in effect for that purpose.

3-26 SECTION 10. The executive commissioner of the Health and
3-27 Human Services Commission shall:

3-28 (1) adopt rules for the administration of Section
3-29 194.003, Health and Safety Code, as required by this Act, as soon as
3-30 practicable after the effective date of this Act; and

3-31 (2) ensure that the enhancements to the state index
3-32 required by this Act are completed and available for access by
3-33 county clerks not later than January 1, 2009.

3-34 SECTION 11. The changes in law made by this Act to Sections
3-35 118.018, 118.019, and 118.022, Local Government Code, apply only to
3-36 a fee imposed for a marriage license application filed, or a
3-37 declaration of an informal marriage executed, as applicable, on or
3-38 after the effective date of this Act. A fee imposed for an
3-39 application filed or declaration executed before the effective date
3-40 of this Act is governed by the law in effect on the date the
3-41 application was filed or the declaration was executed, and the
3-42 former law is continued in effect for that purpose.

3-43 SECTION 12. This Act takes effect September 1, 2007.

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