

By: Brown of Kaufman

H.B. No. 363

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to certain requirements relating to the issuance of a  
3 marriage license or the recording of a declaration of informal  
4 marriage and to the maintenance of marriage and divorce indexes by  
5 the bureau of vital statistics.

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

7 SECTION 1. Effective January 1, 2011, Subchapter A, Chapter  
8 2, Family Code, is amended by adding Section 2.0075 to read as  
9 follows:

10 Sec. 2.0075. STATE INDEX VERIFICATION REQUIRED. (a) The  
11 clerk shall verify, using the online state index maintained by the  
12 bureau of vital statistics under Section 194.003, Health and Safety  
13 Code, that neither applicant is listed on the index as being  
14 presently married.

15 (b) An applicant may provide to the clerk a copy of a decree  
16 of divorce or annulment or a copy of the death certificate of the  
17 person to whom the applicant was formerly married as proof that a  
18 marriage of the applicant that is listed on the index has been  
19 dissolved.

20 SECTION 2. Effective January 1, 2011, Section 2.009, Family  
21 Code, is amended by amending Subsections (a) and (b) and adding  
22 Subsection (e) to read as follows:

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

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

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

4 (3) is under 16 years of age and has not been granted a  
5 court order as provided by Section 2.103;

6 (4) is 16 years of age or older but under 18 years of  
7 age and has not presented at least one of the following:

8 (A) parental consent as provided by Section  
9 2.102;

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

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

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

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

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

21 (B) the prohibition against remarriage is waived  
22 as provided by Section 6.802; or

23 (7) is listed on the state index under Section  
24 194.003, Health and Safety Code, as being presently married to a  
25 person other than the other applicant and has not provided to the  
26 clerk under Section 2.0075(b) proof that the marriage of the  
27 applicant has been dissolved.

1           (b) If an applicant is listed on the online state index  
2 under Section 194.003, Health and Safety Code, as being presently  
3 married to the other applicant or an applicant checks "false" in  
4 response to the statement "I am not presently married and the other  
5 applicant is not presently married," the county clerk shall inquire  
6 as to whether the applicant is presently married to the other  
7 applicant. If the applicant states that the applicant is currently  
8 married to the other applicant, the county clerk shall record that  
9 statement on the license before the administration of the oath. The  
10 county clerk may not refuse to issue a license on the ground that  
11 the applicants are already married to each other.

12           (e) The county clerk may not refuse to issue a license on the  
13 ground that an applicant is listed on the online state index under  
14 Section 194.003, Health and Safety Code, as being presently married  
15 to a person other than the other applicant if the applicant provides  
16 to the clerk an affidavit of the applicant declaring that the  
17 applicant's name is listed on the index in error or declaring that  
18 the applicant has good reason for failing to provide to the clerk  
19 proof under Section 2.0075(b) that the marriage of the applicant  
20 has been dissolved. The county clerk shall submit to the bureau of  
21 vital statistics of the Department of State Health Services a copy  
22 of an affidavit provided to the clerk under this subsection.

23           SECTION 3. Effective January 1, 2011, Subchapter E, Chapter  
24 2, Family Code, is amended by adding Section 2.4035 to read as  
25 follows:

26           Sec. 2.4035. STATE INDEX VERIFICATION REQUIRED. (a) The  
27 clerk shall verify, using the online state index maintained by the

1 bureau of vital statistics under Section 194.003, Health and Safety  
2 Code, that neither party to the declaration of informal marriage is  
3 listed on the index as being presently married.

4 (b) A party may provide to the clerk a copy of a decree of  
5 divorce or annulment or a copy of a death certificate of the person  
6 to whom the applicant was formerly married as proof that a marriage  
7 of the party that is listed on the index has been dissolved.

8 SECTION 4. Effective January 1, 2011, Section 2.404, Family  
9 Code, is amended by amending Subsection (b) and adding Subsection  
10 (f) to read as follows:

11 (b) Except as provided by Subsection (f), the [The] county  
12 clerk may not certify or record the declaration if:

13 (1) either party fails to supply any information or  
14 provide any document required by this subchapter;

15 (2) either party is under 18 years of age; ~~or~~

16 (3) either party checks "false" in response to the  
17 statement of relationship to the other party; or

18 (4) either party is listed on the state index as being  
19 presently married to a person other than the other party and has not  
20 provided to the clerk under Section 2.4035(b) proof that the  
21 marriage of the party has been dissolved.

22 (f) The county clerk may not refuse to record a declaration  
23 on the ground that a party is listed on the online state index under  
24 Section 194.003, Health and Safety Code, as being presently married  
25 to a person other than the other party if the party provides to the  
26 clerk an affidavit of the party declaring that the party's name is  
27 listed on the index in error or declaring that the party has good

1 reason for failing to provide to the clerk proof under Section  
2 2.4035(b) that the marriage of the party has been dissolved. The  
3 county clerk shall submit to the bureau of vital statistics of the  
4 Department of State Health Services a copy of an affidavit provided  
5 to the clerk under this subsection.

6 SECTION 5. Section 194.003, Health and Safety Code, is  
7 amended by adding Subsections (c), (d), and (e) to read as follows:

8 (c) The bureau of vital statistics shall make available on  
9 its Internet website the indexes required by this section. To the  
10 extent practicable using the fees imposed by Sections 118.018(c)  
11 and 118.019(b), Local Government Code, the bureau shall enhance the  
12 search capabilities of its database of information regarding  
13 marriages, divorces, or annulments of marriages and ensure that the  
14 indexes required by this section are up-to-date, accurate, and  
15 easily accessible to interested members of the public. The index  
16 must include a notation next to each marriage license application  
17 or declaration of informal marriage for which an affidavit was  
18 submitted under Section 2.009(e) or 2.404(f), Family Code, as  
19 applicable.

20 (d) The executive commissioner of the Health and Human  
21 Services Commission shall adopt rules for the administration of  
22 this section, including rules to require that:

23 (1) the index provide county clerks with online access  
24 seven days a week to any identifying information necessary for a  
25 county clerk to verify that an applicant for a marriage license is a  
26 person listed on the index;

27 (2) any confidential identifying information

1 maintained on the index for use by a county clerk under Subdivision  
2 (1) be secure and inaccessible to members of the public; and

3 (3) a county clerk of a county that lacks online access  
4 to the index receive the assistance required for the clerk to  
5 satisfy in a timely manner any duty relating to accessing the  
6 information on the index that is imposed on the clerk by other law.

7 (e) The executive commissioner of the Health and Human  
8 Services Commission by rule shall establish the amount of the fee to  
9 be imposed on each marriage license applicant under Section  
10 118.018(c), Local Government Code, and on the parties to a  
11 declaration of an informal marriage under Section 118.019(b), Local  
12 Government Code. The amount of the fee may not exceed the lesser of  
13 \$5 or the amount the executive commissioner determines necessary  
14 for updating, developing, and maintaining the state index of  
15 marriage license applications and declarations of informal  
16 marriage and the state index of reports of divorces or annulments of  
17 marriage under this section. The executive commissioner shall  
18 provide notice to the Office of Court Administration of the Texas  
19 Judicial System regarding the amount of a fee established or  
20 modified under this subsection. On receipt of that notification,  
21 the Office of Court Administration of the Texas Judicial System  
22 shall notify each county clerk in this state regarding the amount of  
23 a fee to be charged under Sections 118.018(c) and 118.019(b), Local  
24 Government Code.

25 SECTION 6. Section 118.018, Local Government Code, is  
26 amended by adding Subsection (c) to read as follows:

27 (c) In addition to other fees collected under this section,

1 a county clerk shall collect from a marriage license applicant a fee  
2 in the amount established by the executive commissioner of the  
3 Health and Human Services Commission by rule under Section 194.003,  
4 Health and Safety Code, for the purpose of updating, developing,  
5 and maintaining the state index of marriage license applications  
6 and declarations of informal marriage and the state index of  
7 reports of divorces or annulments of marriage under that section. A  
8 fee collected under this subsection shall be sent to the bureau of  
9 vital statistics of the Department of State Health Services for  
10 deposit to the credit of the vital statistics fund to be used for  
11 the purpose of updating, developing, and maintaining the state  
12 index described by this subsection.

13 SECTION 7. Section 118.019, Local Government Code, is  
14 amended to read as follows:

15 Sec. 118.019. DECLARATION OF INFORMAL MARRIAGE. (a) The  
16 fee for "Declaration of Informal Marriage" under Section 118.011 is  
17 for all services rendered in connection with the execution of a  
18 declaration of informal marriage under Section 2.404 [~~1.92~~], Family  
19 Code. The fee shall be collected at the time the service is  
20 rendered.

21 (b) In addition to the fee described by Subsection (a), a  
22 county clerk shall collect from the parties to a declaration of  
23 informal marriage a fee in the amount established by the executive  
24 commissioner of the Health and Human Services Commission by rule  
25 under Section 194.003, Health and Safety Code, for the purpose of  
26 updating, developing, and maintaining the state index of marriage  
27 license applications and declarations of informal marriage and the

1 state index of reports of divorces or annulments of marriage under  
2 that section. A fee collected under this subsection shall be sent  
3 to the bureau of vital statistics of the Department of State Health  
4 Services for deposit to the credit of the vital statistics fund to  
5 be used for the purpose of updating, developing, and maintaining  
6 the state index described by this subsection.

7 SECTION 8. Section 118.022, Local Government Code, is  
8 amended by adding Subsection (d) to read as follows:

9 (d) Subsection (a) does not apply to a fee imposed under  
10 Section 118.018(c) or 118.019(b).

11 SECTION 9. Sections 2.009(a) and (b) and 2.404(b), Family  
12 Code, as amended by this Act, apply only to an application for a  
13 marriage license filed, or a declaration of an informal marriage  
14 executed, as applicable, on or after January 1, 2011. An  
15 application filed or declaration executed before that date is  
16 governed by the law in effect on the date the application was filed  
17 or the declaration was executed, and the former law is continued in  
18 effect for that purpose.

19 SECTION 10. The executive commissioner of the Health and  
20 Human Services Commission shall:

21 (1) adopt rules for the administration of Section  
22 194.003, Health and Safety Code, as required by this Act, not later  
23 than June 1, 2010; and

24 (2) ensure that the enhancements to the state index  
25 required by this Act are completed and available for access by  
26 county clerks not later than January 1, 2011.

27 SECTION 11. The changes in law made by this Act to Sections



1 118.018, 118.019, and 118.022, Local Government Code, apply only to  
2 a fee imposed for a marriage license application filed, or a  
3 declaration of an informal marriage executed, as applicable, on or  
4 after the effective date of this Act. A fee imposed for an  
5 application filed or declaration executed before the effective date  
6 of this Act is governed by the law in effect on the date the  
7 application was filed or the declaration was executed, and the  
8 former law is continued in effect for that purpose.

9 SECTION 12. This Act takes effect September 1, 2009.