

By: Dutton

H.B. No. 908

A BILL TO BE ENTITLED

AN ACT

relating to an affirmative defense available to certain students who engage in sexual contact with another student at least 13 years of age.

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

SECTION 1. Section 21.11(b), Penal Code, is amended to read as follows:

(b) It is an affirmative defense to prosecution under this section that the actor:

(1) was ~~[not more than three years older than the victim and]~~ of the opposite sex and not more than three years older than the victim, or not more than five years older if both the actor and victim were enrolled in public or private school grade level nine or above at the time of the offense;

(2) did not use duress, force, or a threat against the victim at the time of the offense; and

(3) at the time of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.

SECTION 2. Section 22.011(e), Penal Code, is 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, or not more than five years older if both the actor and victim were enrolled in public or private school grade level nine or above at the time of the offense, and at the time of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, 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.

SECTION 3. The change in law made by this Act applies 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 governed by the law in effect at the time of the offense, 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 4. This Act takes effect September 1, 2009.