

By: Dutton

H.B. No. 545

A BILL TO BE ENTITLED

AN ACT

1
2 relating to an affirmative defense available to certain students
3 who engage in sexual contact with another student at least 13 years
4 of age.

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

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

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

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

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

17 (3) at the time of the offense:

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

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

23 SECTION 2. Section 22.011(e), Penal Code, is amended to
24 read as follows:

1 (e) It is an affirmative defense to prosecution under
2 Subsection (a)(2):

3 (1) that the actor was the spouse of the child at the
4 time of the offense; or

5 (2) that:

6 (A) the actor was not more than three years older
7 than the victim, or not more than five years older if both the actor
8 and victim were enrolled in a public or private school in grade
9 level nine or above at the time of the offense, and at the time of
10 the offense:

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

13 (ii) was not a person who under Chapter 62,
14 Code of Criminal Procedure, had a reportable conviction or
15 adjudication for an offense under this section; and

16 (B) the victim:

17 (i) was a child of 14 years of age or older;
18 and

19 (ii) was not a person whom the actor was
20 prohibited from marrying or purporting to marry or with whom the
21 actor was prohibited from living under the appearance of being
22 married under Section 25.01.

23 SECTION 3. The change in law made by this Act applies only
24 to an offense committed on or after the effective date of this Act.
25 An offense committed before the effective date of this Act is
26 governed by the law in effect at the time of the offense, and the
27 former law is continued in effect for that purpose. For purposes of

1 this section, an offense was committed before the effective date of
2 this Act if any element of the offense occurred before that date.

3 SECTION 4. This Act takes effect September 1, 2011.