

## **BILL ANALYSIS**

C.S.H.B. 869  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Marriage by proxy allows for an individual to stand in for another person while applying for a marriage license. Under certain circumstances, if an individual is unable to appear in person for the application or the ceremony, the individual can sign an affidavit naming another person to represent that individual. According to interested parties, Texas is one of only four states that allows for marriage by proxy.

There is concern that, in its present form, this process allows for potential fraud and abuse. Concerned parties contend that there have been documented cases where individuals have fraudulently acquired a marriage license by proxy without the other person's knowledge, enabling them to receive entitlement benefits. C.S.H.B. 869 seeks to address these concerns while preserving the full benefits of marriage by proxy for certain members of the U.S. military.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 869 amends the Family Code to specify that the affidavit required to be provided to a county clerk by the person applying on behalf of each absent applicant for a marriage license must declare that the applicant is a member of the U.S. military stationed in another country in support of combat or another military operation, rather than that the applicant is on active duty as a member of the U.S. military or the state military forces. The bill removes a provision authorizing the county clerk to issue a marriage license for which both applicants are absent if the person applying on behalf of each absent applicant provides to the clerk such an affidavit declaring that the absent applicant is confined in a correctional facility. The bill requires a county clerk who issues a marriage license for an absent applicant to maintain the affidavit of the absent applicant and the application for the marriage license in the same manner that the clerk maintains an application for a marriage license submitted by two applicants in person. The bill requires the affidavit of an absent applicant to include the appointment of a proxy for the purposes of participating in the ceremony only if the applicant is a member of the U.S. military stationed in another country in support of combat or another military operation and is unable to attend the ceremony and authorizes a person to assent to marriage by the appearance of a proxy appointed in the applicant's affidavit only under those circumstances.

C.S.H.B. 869 amends the Health and Safety Code to require the county clerk to file with the bureau of vital statistics a copy of any affidavit of an absent applicant submitted with an application, in addition to a copy of each completed marriage license application.

### **EFFECTIVE DATE**

September 1, 2013.

## COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 869 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

### INTRODUCED

SECTION 1. Sections 2.006(a) and (c), Family Code, are amended to read as follows:

(a) ~~Any [If an applicant is unable to appear personally before the county clerk to apply for a marriage license, any] adult person or the other applicant may apply on behalf of an [the absent] applicant who is:~~

~~(1) a member of the armed forces of the United States stationed in another country in support of combat or another military operation;~~

~~(2) unable to appear personally before the county clerk to apply for a marriage license; and~~

~~(3) unable to attend the marriage ceremony.~~

(c) ~~The [Notwithstanding Subsection (a), the] clerk may [not] issue a marriage license under this section for which both applicants are absent [unless the person applying on behalf of each absent applicant provides to the clerk an affidavit of the applicant declaring that the applicant is:~~

~~[(1) on active duty as a member of the armed forces of the United States or the state military forces; or~~

~~[(2) confined in a correctional facility, as defined by Section 1.07, Penal Code].~~

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

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

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

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

### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 2.006(c), Family Code, is amended to read as follows:

(c) ~~Notwithstanding Subsection (a),~~ the clerk may ~~not~~ issue a marriage license for which both applicants are absent ~~unless the person applying on behalf of each absent applicant provides to the clerk an affidavit of the applicant declaring that the applicant is[:~~

~~[(1) on active duty as] a member of the armed forces of the United States stationed in another country in support of combat or another military operation [or the state military forces; or~~

~~[(2) confined in a correctional facility, as defined by Section 1.07, Penal Code].~~

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

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

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

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

(3) a declaration that the absent applicant is:

- (A) not presently married; or
- (B) married to the other applicant and they wish to marry again;
- (4) a declaration that the other applicant is not presently married and is not related to the absent applicant as:
  - (A) an ancestor or descendant, by blood or adoption;
  - (B) a brother or sister, of the whole or half blood or by adoption;
  - (C) a parent's brother or sister, of the whole or half blood or by adoption;
  - (D) a son or daughter of a brother or sister, of the whole or half blood or by adoption;
  - (E) a current or former stepchild or stepparent; or
  - (F) a son or daughter of a parent's brother or sister, of the whole or half blood or by adoption;

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

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

(7) ~~a declaration that the absent applicant is a member of the armed forces of the United States stationed in another country in support of combat or another military operation; [the reason the absent applicant is unable to appear personally before the county clerk for the issuance of the license; and]~~

(8) ~~a declaration that the absent applicant is unable to attend the marriage ceremony; and~~

(9) ~~[if the absent applicant will be unable to attend the ceremony,]~~ the appointment of any adult, other than the other applicant, to act as proxy for the purpose of participating in the ceremony.

SECTION 3. Subchapter A, Chapter 2, Family Code, is amended by adding Section 2.0071.

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

(3) a declaration that the absent applicant is:

- (A) not presently married; or
- (B) married to the other applicant and they wish to marry again;
- (4) a declaration that the other applicant is not presently married and is not related to the absent applicant as:
  - (A) an ancestor or descendant, by blood or adoption;
  - (B) a brother or sister, of the whole or half blood or by adoption;
  - (C) a parent's brother or sister, of the whole or half blood or by adoption;
  - (D) a son or daughter of a brother or sister, of the whole or half blood or by adoption;
  - (E) a current or former stepchild or stepparent; or
  - (F) a son or daughter of a parent's brother or sister, of the whole or half blood or by adoption;

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

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

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

(8) ~~[if the absent applicant will be unable to attend the ceremony,]~~ the appointment of any adult, other than the other applicant, to act as proxy for the purpose of participating in the ceremony, if the absent applicant is:

(A) a member of the armed forces of the United States stationed in another country in support of combat or another military operation; and

(B) unable to attend the ceremony.

SECTION 3. Same as introduced version.

~~No equivalent provision.~~

- (c) On the proper execution of the application, the clerk shall:
- (1) prepare the license;
  - (2) enter on the license the names of the licensees, the date that the license is issued, and, if applicable, the name of the person appointed to act as proxy for an absent applicant~~[, if any]~~;
  - (3) record the time at which the license was issued;
  - (4) distribute to each applicant printed materials about acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus (HIV) and note on the license that the distribution was made; and
  - (5) distribute to each applicant a premarital education handbook provided by the attorney general under Section 2.014.

**No equivalent provision.**

SECTION 4. Section 2.203(b), Family Code, is amended to read as follows:

(b) A person ~~[unable to appear for the ceremony]~~ may assent to marriage by the appearance of a proxy appointed in the affidavit authorized by Subchapter A if the person is:

- (1) a member of the armed forces of the United States stationed in another country in support of combat or another military operation; and
- (2) unable to attend the ceremony.

**No equivalent provision.**

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

(a) The county clerk shall file with the bureau of vital statistics a copy of each completed marriage license application and a copy of any affidavit of an absent applicant submitted with an application. The clerk shall file the copies ~~[copy]~~ not later than the 90th day after the date of the application. The clerk may not collect a fee for filing the copies ~~[copy]~~.

SECTION 5. Sections 2.006 and 2.007, Family Code, as amended by this Act, apply to an application for a marriage license filed on or after the effective date of this Act. An application filed before that date is governed by the law in effect on the date the

SECTION 6. Same as introduced version.

application was filed, and the former law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 2013.

SECTION 7. Same as introduced version.