

By: Dutton

H.B. No. 826

A BILL TO BE ENTITLED

AN ACT

1
2 relating to an affirmative defense available to certain students
3 enrolled in grade level nine or above who engage in prohibited
4 sexual contact with another student at or above that grade level.

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) the actor was [not more than three years older than
11 the victim and] of the opposite sex and not more than three years
12 older than the victim, or not more than five years older if both the
13 actor and victim were enrolled in a public or private school in
14 grade 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 the actor:

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; and

23 (3) the actor's conduct did not occur without the
24 consent of the victim.

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

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

5 (1) that the actor was the spouse of the child at the
6 time of the offense; or

7 (2) that:

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

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

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

18 (B) the victim:

19 (i) was a child of 14 years of age or older;
20 and

21 (ii) was not:

22 (a) a person whom the actor was
23 prohibited from marrying or purporting to marry or with whom the
24 actor was prohibited from living under the appearance of being
25 married under Section 25.01; or

26 (b) a person with whom the actor was
27 prohibited from engaging in sexual intercourse or deviate sexual

1 intercourse under Section [25.02](#); and

2 (C) the actor's conduct did not occur without the
3 consent of the victim.

4 SECTION 3. The change in law made by this Act applies only
5 to an offense committed on or after the effective date of this Act.
6 An offense committed before the effective date of this Act is
7 governed by the law in effect at the time of the offense, and the
8 former law is continued in effect for that purpose. For purposes of
9 this section, an offense was committed before the effective date of
10 this Act if any element of the offense occurred before that date.

11 SECTION 4. This Act takes effect September 1, 2021.