

## **BILL ANALYSIS**

S.B. 522  
By: Birdwell  
State Affairs  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties assert that a county clerk should not be required to perform the clerk's duties in relation to the license for a marriage with which the clerk's sincerely held religious beliefs conflict, especially if another person authorized to perform those duties is willing to do so. S.B. 522 seeks to establish a process by which a person other than the county clerk performs the clerk's marriage license-related duties for a marriage with which the clerk's sincerely held religious beliefs conflict.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **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**

S.B. 522 amends the Family Code to require a county clerk who has a sincerely held religious belief that conflicts with the clerk's ability to fulfill the clerk's duties with regard to certifying a marriage license application, administering the oath for a marriage license, and issuing the license to notify the county commissioners court of that belief in writing and to prohibit a county clerk from being required to certify such an application, administer the oath, or issue the license if the clerk has made that notification. The bill requires the county commissioners court on receipt of the notification to ensure that a deputy clerk or other official authorized to certify a completed marriage license application, administer the oath, and issue the license is available in that county to perform those functions or, if there is an insufficient number of certifying officials willing or available in that county, to provide for one or more officials designated by the commissioners court as a certifying official under the bill's Local Government Code provisions. The bill requires a commissioners court of a county in which the clerk has made such a notification to ensure that all eligible persons applying for a marriage license are given equal access to the process and are not subject to undue burden due to the county clerk's refusal to certify the application for a marriage license, administer the oath, and issue the license.

S.B. 522 authorizes a county clerk who has notified the county commissioners court of such a sincerely held religious belief to delegate the duty to certify a marriage license application filed in that county, administer the oath, and issue the license to a deputy clerk who is willing and available to perform those functions. The bill authorizes a judge or magistrate who is willing and available to perform those functions to act as the certifying official in any county, regardless of whether the magistrate or judge normally has jurisdiction in that county. The bill requires a county commissioners court that determines that the county clerk has made a notification of a

sincerely held religious belief and that an insufficient number of deputy county clerks, judges, or magistrates in the county are willing and available to certify a marriage license application, administer the oath, and issue the license to designate one or more county employees or employ or contract with one or more individuals to provide those services as a certifying official under the bill's Local Government Code provisions. A certifying official contracted with by the commissioners court is expressly not required to be a county employee. A certifying official under these provisions is expressly not authorized to perform the functions of a county clerk other than certifying a completed marriage license application, administering the oath, and issuing the license.

S.B. 522 replaces the requirement for each person applying for a marriage license to appear before the county clerk with a requirement for such a person to appear before the county clerk or certifying official, in person or by telephone or electronic means, and specifies that certain other actions that such a person must take may be taken in any order.

S.B. 522 requires a certifying official who certifies a marriage license application to include on the application the county to which the marriage license is to be returned and the name, job title, and signature of the certifying official and to return the certified application and any supporting documentation by facsimile or electronic or other means to the county clerk. The bill requires a county clerk who has given notice that the clerk is unwilling to certify a marriage license application, administer the oath, and issue the license because of a sincerely held religious belief to provide the applicants with notice of any certifying officials serving in that county if the deputy clerk is not performing those functions in that county. The bill requires the clerk, if no such certifying official is located in the county, to provide the applicants with contact information for a certifying official designated under the bill's Local Government Code provisions.

S.B. 522 authorizes a marriage license applicant, in the event the applicant is referred to a certifying official located outside the county, to submit the completed application and all supporting documentation to the applicable certifying official via facsimile or electronic or other means. The bill requires such a certifying official to determine that certain necessary information is recorded on the application and that all necessary documents are submitted; to administer the oath to each applicant, which may be accomplished telephonically or electronically; to ensure that each applicant appearing by telephone or electronic means before the certifying official has signed the application; to certify the application and include specified information on the application; and to return the certified application and any supporting documentation by facsimile or electronic or other means to the appropriate county clerk. The bill authorizes parental consent to a marriage for an applicant 16 years of age or older but under 18 years of age to be acknowledged by telephone or electronic means if the certifying official is not in the same county as the applicant.

S.B. 522 removes the specification that the recording on a marriage license of an applicant's statement that the applicant is presently married to the other applicant, if applicable, is to be done before the administration of the oath. The bill adds certain alternative methods for the distribution of certain information provided to marriage license applicants by a county clerk or certifying official on certification of the application. The bill specifies that the misdemeanor offense that arises from a county clerk, deputy county clerk, or certifying official violating or failing to comply with statutory provisions governing marriage license applications is a Class C misdemeanor and removes the specification that the minimum amount of the fine associated with that offense is \$200.

S.B. 522 authorizes a person authorized to conduct a marriage ceremony to decline to conduct a marriage ceremony. The bill exempts such a person from an administrative or civil penalty imposed by the state, a state agency, or a political subdivision of the state and prohibits a civil cause of action from being brought against such a person based on the person's refusal to conduct a marriage ceremony, unless the person declines to conduct the ceremony on the basis of

race, religion, or national origin.

S.B. 522 amends the Local Government Code to provide for the designation or employment of or contracting with additional certifying officials by a county commissioners court on receipt of notification by the county clerk of a sincerely held religious belief that conflicts with the clerk's ability to fulfill the clerk's duties with regard to marriage licenses and to specify that such a certifying official is not required to be a county employee or to be located in the county. The bill requires a certifying official who collects the fee for issuing a marriage license to remit the fee to the county clerk of the county to which the marriage license was returned and requires the county clerk to deposit the fee in the manner described by applicable state law.

S.B. 522 amends the Health and Safety Code to prohibit the executive commissioner of the Health and Human Services Commission from prescribing a marriage license application form that requires a county clerk to personally certify the application, administer the oath for a marriage license, or issue the marriage license but authorizes the executive commissioner to prescribe a form that requires that a certifying official perform those functions. The bill requires the vital statistics unit established in the Department of State Health Services (DSHS) to provide the DSHS marriage license application forms to a certifying official on request and authorizes a certifying official to reproduce that form locally.

**EFFECTIVE DATE**

September 1, 2017.