

SUBJECT: Requirements for marriage license applicants

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 5 ayes — Dutton, Goodman, Castro, Nixon, Strama
0 nays
4 absent — Y. Davis, Dunnam, J. Moreno, Thompson

WITNESSES: For — Allyson Nixon; Beth Ann Rothermel, County and District Clerks Association
Against — None
On — John Rolater, for Bill Hill, Dallas County Criminal District Attorney

BACKGROUND: Under current law, a couple desiring to enter into a ceremonial marriage must apply for a marriage license with the county clerk of any county of the state. The couple must fill out an application form by providing the requested information applicable to each person, including whether either applicant currently is married. Each applicant also must take the oath printed on the application and sign the application before the county clerk. If an applicant is unable to appear personally before the county clerk, an adult person or the other applicant may apply on behalf of the absent applicant by providing an affidavit of the absent applicant

Although each applicant is required to show proof of identity and age, applicants are not required to furnish proof as to the veracity of their answers given on the application form. Generally, validity of marriage is not affected by fraud, mistake, or illegality in obtaining a marriage license. The law does not require a county clerk to take into account fraudulent or inappropriate reasons for obtaining a marriage license if an applicant does not provide them. Additionally, current law does not provide for criminal penalties for committing perjury while applying for a license.

DIGEST:

CSHB 1120 would modify the application form for a marriage license and an affidavit of an absent applicant to require each applicant to answer whether they were presently married under the laws of this state or any other jurisdiction, whether they desired to marry the other applicant only to get around immigration laws or to obtain immigration benefits, and whether either applicant had received or would in the future accept consideration or payment of any kind for marrying the other applicant. Each applicant also would have to disclose whether they had ever been a party to a divorce or an annulment of a marriage.

Under the bill, an applicant who provided false responses to the new questions in a marriage license application or affidavit could face prosecution for aggravated perjury, a third-degree felony.

CSHB 1120 would require the bureau of vital statistics to make its statewide index of all marriages, divorces, and annulments, and parties involved, accessible on its Internet website. To fund the Internet database, the bill would allow a county clerk to collect from a marriage license applicant and parties to a declaration of informal marriage a fee not to exceed \$5. The fees would be sent directly to the bureau and would be used to update, develop, and maintain the index to keep it easily accessible to the public.

As with marriage license applications, county clerks would be required to file copies of all affidavits of absent applicants for a marriage license with the bureau of vital statistics no later than 90 days after the date on the application. The bill would allow the bureau to impose an administrative penalty on a county clerk who failed to comply with the filing requirements. The penalty could not exceed \$500 and would be based on the seriousness of the violation, the history of previous violations, the amount necessary to deter a future violation, or other matter required by justice.

The bill would take effect on September 1, 2005, and would apply only to a fee imposed for a marriage license application filed, or a declaration of an informal marriage executed, on or after the effective date.

SUPPORTERS
SAY:

Urban and rural county clerks from all over the state have seen many instances of couples applying for marriage licenses who appear hardly to know each other. In many cases, one applicant is a foreigner and the other applicant comes from an area in close proximity to other suspicious

applicants who also have applied to marry foreigners. In some areas of the state, rings of individuals have been discovered operating businesses that help individuals obtain marriages to avoid immigration laws or benefit from marrying an American citizen. In one county, the same woman was found to have participated in more than 150 marriages. Under the current marriage license application system, one individual could participate in the application process repeatedly.

CSHB 1120 would require new statements of fact by marriage license applicants to ensure that the state was not being taken advantage of in this manner. The bill would make violators subject to prosecution for aggravated perjury. Currently, the only criminal penalty these individuals would face is bigamy, a class A misdemeanor, a crime punishable by only up to one year in prison. Aggravated perjury is an easier case to prove and is a third-degree felony, punishable by up to 10 years in prison. A stricter penalty for this kind of activity would discourage fraud and help protect the security of the state and nation.

County clerks now have to accept the word of applicants if they say they are being truthful. Individuals committing this kind of fraud for a living are negatively affecting those individuals who do want to marry for the right reasons. CSHB 1120 would help ensure the sanctity and honor of marriage by making it illegal to falsely represent one's self or one's intentions when applying for a marriage license.

There is no statewide electronic database to check the marriages, divorces, and annulments occurring across the counties. County clerks have the capacity only to cross-check within their own counties. CSHB 1120 would provide for a current, accurate, and easily accessible statewide internet index containing information on all marriages, divorces, and annulments throughout the state. It would provide counties with a better way to keep track of the individuals involved, helping prevent fraudulent marriages.

The federal government's homeland security department does not want to get involved in a matter because seen as a customer service concern. The department presumes documents are bona fide unless they are blatantly fraudulent. It is up to the state to take appropriate measures to defend the security of its documents.

OPPONENTS
SAY:

The bill's requirement that each applicant respond to whether he or she had received or would in the future accept consideration or payment of any kind for marrying the other applicant appears to be too broad in scope. The broad language could affect rings and other gifts given to and by fiancées. The language should be narrowed to inquire whether any consideration or payment were received or would be accepted in the future from the other applicant for purposes of marrying to circumvent immigration laws or obtain immigration benefits. This would avoid applicants desiring to get married for legal purposes from having their applications delayed or denied.

NOTES:

The committee substitute modified the original bill by requiring an affidavit of an absent applicant to include a declaration of whether the applicant has ever been a party to a divorce or an annulment of a marriage. It would also require a county clerk to file a copy of any affidavit of an absent applicant for a marriage license with the bureau of vital statistics. The substitute would provide an administrative penalty for a county clerk who failed to comply with filing requirements. The substitute would require the bureau of vital statistics to create a database of all information regarding marriages, divorces, or annulments of marriage accessible by internet. To fund the database, a marriage license applicant and parties to a declaration of informal marriage would be charged an extra fee not to exceed \$5.

The fiscal note reports that a fee of \$5 applied to each of the approximately 180,000 marriage licenses and declarations of informal marriage filed annually would generate revenue of \$900,000 per year. DSHS indicates that the cost of modifying the existing bureau of vital statistics index web page to include an inquiry function would total \$75,000 in 2006.

The author plans to offer a floor amendment that would remove the administrative penalty for county clerks who failed to comply with filing requirements. It also would allow an applicant to be subject to prosecution for aggravated perjury if the applicant provided false information concerning a past divorce or annulment.