

BILL ANALYSIS

Senate Research Center
85R5470 JSC-D

S.B. 522
By: Birdwell; Perry
State Affairs
3/28/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In Texas, many county clerks have noted that they believe issuing a same-sex marriage license is in direct violation of the oath they swore to uphold the Texas Constitution and against their sincerely held religious beliefs. One such clerk in Texas was sued because she objected to signing one such license because of her faith.

S.B. 522 seeks to protect the religious liberties of county clerks and not place those county clerks with sincerely held religious beliefs in a position to violate their First Amendment rights.

S.B. 522 changes the process regarding issuance of marriage licenses to protect county clerks. S.B. 522 allows a county clerk to recuse himself or herself from signing such licenses by formally notifying the county commissioners court of their intent to do so. If the clerk has recused himself or herself, the county commissioners court will appoint a person to perform the duties of the clerk, known as the certifying official. The person performing the duties of the clerk and signing the license will then forward all forms to the county clerk for filing.

S.B. 522 also protects judges, allowing them to perform or refuse to perform any marriage ceremony for any reason other than a prohibited reason, such as discrimination based on race.

As proposed, S.B. 522 amends current law relating to issuing a marriage license and conducting a marriage ceremony.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to executive commissioner of the Health and Human Services Commission is modified in SECTION 25 (Section 194.0011, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 2, Family Code, by adding Sections 2.0001 and 2.0002, as follows:

Sec. 2.0001. DEFINITION: CERTIFYING OFFICIAL. Defines "certifying official."

Sec. 2.0002. FUNCTIONS OF CERTIFYING OFFICIAL. (a) Provides that this section applies only to a county in which the county clerk has notified the commissioners court of a sincerely held religious belief.

(b) Authorizes the county clerk in the county in which an application for a marriage license is filed to delegate the duty to certify the application, administer the oath, and issue the license to a deputy clerk if the deputy clerk is willing and available to perform those functions.

(c) Authorizes a judge or magistrate who is willing and available to certify an application for a marriage license, administer the oath, and issue the license to act as the certifying official in any county, regardless of whether the magistrate or judge normally has jurisdiction in that county.

(d) Requires the commissioners court to designate one or more county employees or employ or contract with one or more individuals to provide those services as a certifying official, if the commissioners court of a county determines that a county clerk has made a notification and an insufficient number of deputy county clerks, judges, or magistrates in the county are willing and available to certify an application for a marriage license, administer the oath, and issue the license. Provides that a certifying official contracted is not required to be an employee of the county.

(e) Provides that a certifying official is 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.

SECTION 2. Amends Section 2.001(a), Family Code, to require a man and a woman desiring to enter into a ceremonial marriage to obtain a marriage license from the county clerk of any county of this state or a certifying official.

SECTION 3. Amends Section 2.002, Family Code, as follows:

Sec. 2.002. APPLICATION FOR LICENSE. Requires, except as provided by Section 2.006, each person applying for a license to:

- (1) appear before the county clerk or certifying official;
- (2)-(3) makes no changes to these subdivisions;
- (4) makes a nonsubstantive change to this subdivision;
- (5) take the oath printed on the application administered by the county clerk or certifying official; and
- (6) sign the application, rather than sign the application before the county clerk.

SECTION 4. Amends Section 2.003, Family Code, to make a conforming change.

SECTION 5. Amends Sections 2.004(a) and (b), Family Code, to make conforming and nonsubstantive changes.

SECTION 6. Amends Sections 2.005(a) and (b), Family Code, to make conforming changes.

SECTION 7. Amends Section 2.006, Family Code, to make conforming changes.

SECTION 8. Amends Section 2.007, Family Code, to make conforming and nonsubstantive changes.

SECTION 9. Amends Section 2.0071, Family Code, to make conforming and nonsubstantive changes.

SECTION 10. Amends Section 2.008, Family Code, as follows:

Sec. 2.008. New heading: CERTIFICATION OF APPLICATION. (a) Requires the county clerk or certifying official to:

- (1) makes no changes to this subdivision;
- (2) makes conforming changes to this subdivision;
- (3) makes conforming changes to this subdivision.

(a-1) Requires the county clerk, if the clerk certifies the application, to execute the clerk's certificate on the application. Requires the certifying official, if a certifying official certifies the application, to:

- (1) include on the application certain information for application; and
- (2) return the certified application and any supporting documentation by facsimile or electronic means to the county clerk for recording.

(a-2) Requires the county clerk, if the county clerk has given notice that the clerk is unwilling to certify the application, administer the oath, and issue the license, and the deputy clerk is not performing those functions in that county, to provide the applicants with notice of any certifying officials serving that county. Requires the county clerk, if no certifying official is located in the county, to provide the applicants with contact information for a certain certifying official.

(a-3) Authorizes the applicant, in the event an 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 means. Sets forth requirements for application and supporting documentation.

(b) Makes a conforming change.

SECTION 11. Amends Section 2.009, Family Code, to make conforming and nonsubstantive changes.

SECTION 12. Amends Section 2.012, Family Code, as follows:

Sec. 2.012. New heading: VIOLATION OF SUBCHAPTER; PENALTY. (a) Creates this subsection from existing text and makes conforming changes.

(b) Creates this subsection from existing text. Provides that an offense under this section is a Class C misdemeanor punishable by a fine of not more than \$500, rather than a misdemeanor punishable by a fine of not less than \$200 and not more than \$500.

SECTION 13. Amends Section 2.101, Family Code, to make a conforming change.

SECTION 14. Amends Sections 2.102(a), (b), and (c), Family Code, as follows:

(a) to (b) Makes conforming and nonsubstantive changes.

(c) Requires that consent, except as otherwise provided by this section, be acknowledged before a county clerk or certifying official. Authorizes consent to be acknowledged telephonically or electronically if the certifying official is not in the county in which the application is made.

SECTION 15. Amends Section 2.202, Family Code, by adding Subsection (e), as follows:

(e) Authorizes a person authorized to conduct a marriage ceremony under this section to decline to conduct a marriage ceremony and provides that, unless the person declines to conduct the ceremony for a prohibited reason:

- (1) the person is not subject to an administrative or civil penalty imposed by his state, an agency of this state, or a political subdivision of this state; and
- (2) a civil cause of action may not be brought against the person based on the person's refusal to conduct the marriage ceremony.

SECTION 16. Amends Section 2.204(b), Family Code, to make conforming changes.

SECTION 17. Amends Section 2.206(a), Family Code, as follows:

(a) Requires the person who conducts a marriage ceremony to record on the license the date on which and the county in which the ceremony is performed and the person's name, subscribe the license, and return the license to the county clerk of the county in which the license was issued, rather than to the county clerk who issued it, not later than the 30th day after the date the ceremony is conducted.

SECTION 18. Amends Section 2.207(a), Family Code, to require a person who is to conduct a marriage ceremony to determine whether the license has expired from the date of certification of the license, rather than has expired from the county clerk's endorsement on the license.

SECTION 19. Amends Section 2.209(b), Family Code, to make conforming changes.

SECTION 20. Amends the heading to Subchapter G, Chapter 2, Family Code, to read as follows:

SUBCHAPTER G. FREEDOM OF RELIGION WITH RESPECT TO RECOGNIZING,
LICENSING, OR PERFORMING CERTAIN MARRIAGES

SECTION 21. Amends Subchapter G, Chapter 2, Family Code, by adding Section 2.603, as follows:

Sec. 2.603. REFUSAL BY COUNTY CLERK; DESIGNATION OF CERTIFYING OFFICIAL. (a) Requires the clerk to notify the commissioners court of the county of religious belief in writing if a county clerk has a sincerely held religious belief that conflicts with the clerk's ability to fulfill the clerk's duties with regard to certifying an application for a marriage license, administering the oath for the marriage license, and issuing the license.

(b) Prohibits a county clerk from being required to certify an application for a marriage license, administer the oath, or issue the license if the clerk has made the notification under Subsection (a).

(c) Requires the commissioners court, on receipt of a notification under Subsection (a), to:

(1) ensure that a deputy clerk or other certifying official is available in that county to certify an application for a marriage license, administer the oath, and issue the license; or

(2) if there is an insufficient number of certifying officials willing or available in that county, provide for one or more certifying officials.

SECTION 22. Amends Subchapter B, Chapter 81, Local Government Code, by adding Section 81.035, as follows:

Sec. 81.035. CERTIFYING OFFICIAL FOR APPLICATION FOR MARRIAGE LICENSE. Requires a commissioners court, on receipt of a notification, to designate one or more county employees or employ or contract with one or more individuals to certify applications for marriage licenses, administer oaths for a marriage license, and issue licenses. Provides that a certifying official designated, employed, or contracted with under this section is not required to be an employee of the county and is not required to be located in the county.

SECTION 23. Amends Sections 118.018(b-1) and (c), Local Government Code, to make conforming changes.

SECTION 24. Amends Section 118.022, Local Government Code, by adding Subsection (a-1), as follows:

(a-1) Requires a certifying official, if a certifying official collects the fee for issuing a marriage license, to remit the fee to the county clerk of the county in which the application for a marriage license was submitted. Requires the county clerk to deposit the fee in the manner described by Subsection (a).

SECTION 25. Amends Sections 194.0011(a), (b), and (d), Health and Safety Code, as follows:

(a) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) by rule to prescribe the format and content of the department form used for the marriage license application. Prohibits the executive commissioner from prescribing a form that requires a county clerk to personally certify the application, administer the oath for a marriage license, or issue the marriage license. Authorizes the executive commissioner to prescribe a form that requires that a certifying official perform those functions as provided by Section 2.0002, Family Code.

(b) Requires the vital statistics unit to print and distribute the department forms to each county clerk throughout the state. Requires, on request, the vital statistics unit to provide the Department of State Health Services forms to a certifying official.

(d) Makes a conforming change.

SECTION 26. Effective date: September 1, 2017.