

BILL ANALYSIS

Senate Research Center

S.B. 1705
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Health & Human Services
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In the State of Texas minors under the age of 16 can marry with a judge's approval. Minors aged 16 and 17 can be married with parental consent and do not even have to be present to be married away by their parents. Most of these minors, who have not been emancipated, lack the same legal rights as an adult. This is known as having the disabilities of minority. These minors without the full legal rights of an adult are often marrying adults with full legal rights. This creates a situation ripe for abuse. Interested parties contend that minors attempting to marry face legal obstacles, such as lacking the right to contract, which is needed to contract with an attorney, and can be unable to legally protect themselves in a marriage proceeding before they reach the age of maturity, 18. Inexplicably, minors are removed of the disabilities of minority and are considered adults with full rights under law immediately after marriage, but not before when the ability to contract an attorney and make their own decisions could be impactful.

S.B. 1705 requires a minor to petition a court for the removal of the disabilities of a minor before applying for a marriage license in Texas. In order to have the disabilities of minority removed, a minor must prove that they are a resident of Texas, 17 years of age, or at least 16 years of age and living separate and apart from their parents, managing conservator, or guardian, and self-supporting and managing their own financial affairs. The court is required to appoint an amicus attorney or attorney ad litem to represent the interest of the minor at the hearing. The court is required to issue the order removing the disabilities of the minor if it is found to be in the best interest of the minor.

S.B. 1705 ends the practice of marriage under the age of 16 in Texas and ensures that minors petitioning to marry have access to an attorney and the same legal protections as those they are marrying.

S.B. 1705 amends current law relating to the application for and issuance of a marriage license and the marriage of a minor.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is rescinded in SECTION 6 (Section 2.102, Family Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2.003, Family Code, as follows:

Sec. 2.003. APPLICATION FOR LICENSE BY MINOR. (a) Prohibits a person under 18 years of age from marrying unless the person has been granted by this state or another state a court order removing the disabilities of minority of the person for general purposes.

(b) Creates this subsection from existing text. Requires a person under 18 years of age applying for a license, in addition to the other requirements provided by this chapter (The Marriage Relationship), to provide to the county clerk a court order granted by this state under Chapter 31 (Removal of Disabilities of Minority)

removing the disabilities of minority of the person for general purposes or, if the person is a nonresident minor, a certified copy of an order removing the disabilities of minority of the person for general purposes filed with this state under Section 31.007 (Registration of Order of Another State or Nation). Deletes existing text requiring a person under 18 years of age applying for a license, in addition to the other requirements provided by this chapter, to provide to the county clerk documents establishing, as provided by Section 2.102 (Parental Consent for Underage Applicant), parental consent for the person to the marriage; documents establishing that a prior marriage of the person has been dissolved; or a court order granted under Section 2.103 (Court Order for Underage Applicant) authorizing the marriage of the person.

SECTION 2. Amends Sections 2.006(a) and (b), Family Code, as follows:

(a) Authorizes any adult person or the other applicant, if an applicant who is 18 years of age or older is unable to appear personally before the county clerk to apply for a marriage license, to apply on behalf of the absent applicant.

(b) Deletes existing Subdivision (3) requiring the person applying on behalf of an absent applicant to provide to the clerk, if required because the absent applicant is a person under 18 years of age, documents establishing that a prior marriage has been dissolved, a court order authorizing the marriage of the absent, underage applicant, or documents establishing consent by a parent or a person who has legal authority to consent to the marriage, including certain proof. Makes nonsubstantive changes.

SECTION 3. Amends Section 2.009(a), Family Code, as follows:

(a) Prohibits the county clerk, except as provided by Subsections (b) (relating to the duties of the county clerk when the applicant makes certain claims) and (d) (relating to prohibiting the county clerk from refusing to issue a license to an applicant on the ground that the applicant checked “false” in response to a certain statement), from issuing a license if either applicant:

(1) and (2) makes no changes to these subdivisions;

(3) deletes existing Subdivision (3) prohibiting the county clerk from issuing a license if either applicant is under 16 years of age and has not been granted a court order as provided by Section 2.103;

(4) is under 18 years of age and has not presented, rather than is 16 years of age or older but under 18 years of age and has not presented at least one of the following. Redesignates existing Subdivision (4) as Subdivision (3):

(A) a court order granted by this state under Chapter 31 removing the disabilities of minority of the applicant for general purposes, rather than a court order as provided by Section 2.103. Deletes existing Paragraphs (A) and (B) and redesignates text of existing Paragraph (C) as Paragraph (A);
or

(B) if the applicant is a nonresident minor, a certified copy of an order removing the disabilities of minority of the applicant for general purposes filed with this state under Section 31.007;

(4) redesignates existing Subdivision (5) as Subdivision (4) and makes no further changes to this subdivision; or

(5) redesignates existing Subdivision (6) as Subdivision (5) and makes no further changes to this subdivision.

SECTION 4. Amends Section 2.101, Family Code, as follows:

Sec. 2.101. GENERAL AGE REQUIREMENT. Prohibits a county clerk from issuing a marriage license if either applicant is under 18 years of age, unless each underage applicant shows that the applicant has been granted by this state or another state a court order removing the disabilities of minority of the applicant for general purposes. Deletes existing text prohibiting a county clerk, except as otherwise provided by this subchapter (Underage Applicants) or on a showing that a prior marriage has been dissolved, from issuing a marriage license if either applicant is under 18 years of age.

SECTION 5. Amends Section 6.205, Family Code, to provide that a marriage is void if either party to the marriage is younger than 18 years of age, unless a court order removing the disabilities of minority of the party for general purposes has been obtained in this state or in another state, rather than to provide that a marriage is void if either party to the marriage is younger than 16 years of age, unless a court order has been obtained under Section 2.103.

SECTION 6. Repealers: Sections 2.102 (Parental Consent for Underage Applicant) and 2.103 (Court Order for Underage Applicant), Family Code.

SECTION 7. (a) Makes application of Sections 2.003, 2.006, 2.009, and 2.101, Family Code, as amended by this Act, prospective.

(b) Makes application of Section 6.205, Family Code, as amended by this Act, prospective.

SECTION 8. Effective date: September 1, 2017.