

CHAPTER 221

S.B. No. 1138

AN ACT

relating to technical corrections and clarifications in suits brought under Titles 1 and 2, Family Code.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1.02, Family Code, as amended, is amended to read as follows:

Sec. 1.02. APPLICATION FOR LICENSE. Except as otherwise provided by Section 1.05 of this code, persons applying for a license shall:

- (1) appear together or separately before the county clerk;
- (2) submit for each applicant:
 - (A) proof of identity and age as prescribed by Section 1.04 of this code; *and*
 - (B) [~~a medical examination certificate or an exemption order as prescribed by Subchapter B of this chapter; and,~~
 - [(C)] if required, the documents establishing parental consent, or a court order, as prescribed by Subchapter C of this chapter;
- (3) provide the information for which spaces are provided in the application for a marriage license; and,
- (4) take the oath printed on the application and sign the application before the county clerk.

SECTION 2. Subsection (b), Section 1.03, Family Code, as amended, is amended to read as follows:

- (b) The application form shall contain:
 - (1) a heading entitled "Application for Marriage License, _____ County, Texas";
 - (2) spaces for each applicant's full name (including the woman's maiden surname), address, social security number, if any, date of birth, and place of birth (including city, county, and state);
 - (3) a space for indicating the document tendered by each applicant as proof of identity and age;
 - (4) spaces for indicating whether each applicant has been divorced within the last 30 days;

- (5) printed boxes for the applicant to check “true” or “false” in response to the following statement: “I am not presently married.”;
- (6) printed boxes for each applicant to check “true” or “false” in response to the following statement: “The other applicant is not related to me as:
 - (A) an ancestor or descendant, by blood or adoption;
 - (B) a brother or sister, of the whole or half blood or by adoption; [œ]
 - (C) a parent’s brother or sister of the whole or [œ] half blood; or
 - (D) a son or daughter of a brother or sister of the whole or half blood or by adoption.”;
- (7) a printed oath reading: “I SOLEMNLY SWEAR (OR AFFIRM) THAT THE INFORMATION I HAVE GIVEN IN THIS APPLICATION IS CORRECT.”;
- (8) spaces immediately below the printed oath for the applicants’ signatures;
- (9) a certificate of the county clerk that the applicants made the oath and the date and place that it was made (or that the applicant did not appear personally but the prerequisites for the license have been fulfilled as prescribed by Section 1.05 of this code);
- (10) spaces for indicating the date of the marriage and the county in which it is performed; and
- (11) a space for the address to which the applicants desire the executed license to be mailed.

SECTION 3. Subsections (b) and (c), Section 1.05, Family Code, are amended to read as follows:

- (b) The person applying on behalf of an absent applicant shall present to the clerk:
 - (1) the affidavit of the absent applicant as prescribed by Subsection (c) of this section;
 - (2) proof of the identity and age of the absent applicant as provided by Section 1.04 of this code; and
 - (3) ~~a medical examination certificate or an exemption order for the absent applicant as prescribed by Subchapter B of this chapter; and~~
 - [4] if required, the documents establishing parental consent, or a court order, for the absent applicant as prescribed by Subchapter C of this chapter.
- (c) The affidavit of an absent applicant must include:
 - (1) the absent applicant’s full name (including the maiden surname, if applicable), address, date of birth, place of birth (including city, county, and state), citizenship, and social security number, if any;
 - (2) a declaration that the absent applicant has not been divorced within the last 30 days;
 - (3) a declaration that the absent applicant is not presently married (unless to the other applicant and they wish to marry again);
 - (4) a declaration that the other applicant is not related to the absent applicant as:
 - (A) an ancestor or descendant, by blood or adoption;
 - (B) a brother or sister, of the whole or half blood or by adoption; [œ]
 - (C) a parent’s brother or sister of the whole or half blood; or
 - (D) a son or daughter of a brother or sister of the whole or half blood or by adoption;
 - (5) a declaration that the absent applicant desires to marry, and the name, age, and address of the person to whom the absent applicant desires to be married;
 - (6) the approximate date on which the marriage is to occur;
 - (7) the reason the absent applicant is unable to appear personally before the county clerk for the issuance of the license; and

(8) if the absent applicant will be unable to attend the ceremony, the appointment of any adult, except the other applicant, to act as proxy for the purpose of participating in the ceremony.

SECTION 4. Subsection (b), Section 1.92, Family Code, as amended, is amended to read as follows:

(b) The declaration form shall contain:

(1) a heading entitled "Declaration and Registration of Informal Marriage, _____ County, Texas";

(2) spaces for each party's full name (including the woman's maiden surname), address, date of birth, place of birth (including city, county, and state), and social security number, if any;

(3) a space for indicating the type of document tendered by each party as proof of age and identity;

(4) printed boxes for each party to check "true" or "false" in response to the following statement: "The other party is not related to me as:

(A) an ancestor or descendant, by blood or adoption;

(B) a brother or sister, of the whole or half blood or by adoption; [or]

(C) a parent's brother or sister of the whole or half blood; or

(D) a son or daughter of a brother or sister of the whole or half blood or by adoption.";

(5) a printed declaration and oath reading: "I SOLEMNLY SWEAR (OR AFFIRM) THAT WE, THE UNDERSIGNED, ARE MARRIED TO EACH OTHER BY VIRTUE OF THE FOLLOWING FACTS: ON OR ABOUT (DATE) WE AGREED TO BE MARRIED, AND AFTER THAT DATE WE LIVED TOGETHER AS HUSBAND AND WIFE AND IN THIS STATE WE REPRESENTED TO OTHERS THAT WE WERE MARRIED. SINCE THE DATE OF MARRIAGE TO THE OTHER PARTY I HAVE NOT BEEN MARRIED TO ANY OTHER PERSON. THIS DECLARATION IS TRUE AND THE INFORMATION IN IT WHICH I HAVE GIVEN IS CORRECT.";

(6) spaces immediately below the printed declaration and oath for the parties' signatures; and

(7) a certificate of the county clerk that the parties made the declaration and oath and the place and date it was made.

SECTION 5. The heading of Section 3.58, Family Code, is amended to read as follows:

Sec. 3.58. TEMPORARY ORDERS BEFORE JUDGMENT OR DURING THE PENDENCY OF ~~[AFTER]~~ APPEAL.

SECTION 6. Subsection (c), Section 11.07, Family Code, as amended, is amended to read as follows:

(c) On the receipt by a court of continuing jurisdiction of a petition requesting further action concerning the child, or of a motion to modify or to enforce the decree, or of a contempt motion ~~[with respect to a court order concerning the child]~~, the clerk shall file the petition or motion and all other related papers ~~[relating to the request for further action or to the motion in the file of the suit affecting the parent-child relationship]~~ under the same docket number as the prior proceeding without additional letters, digits, or special designations. However, ~~[except that]~~ if the petition requests the adoption of the child and ~~[if the petition]~~ alleges that the child has been placed for adoption with the petitioners by the Texas Department of Human Services or by an authorized agency ~~[authorized by the department to place children for adoption]~~, the clerk shall file the petition and all other papers relating to the suit in a new file having a new docket number.

SECTION 7. The heading of Section 11.10, Family Code, is amended to read as follows:

Sec. 11.10. GUARDIAN AND ATTORNEY AD LITEM.

SECTION 8. The heading of Section 11.11, Family Code, is amended to read as follows:

Sec. 11.11. TEMPORARY ORDERS BEFORE JUDGMENT OR DURING THE PENDENCY OF APPEAL.

SECTION 9. Subsections (b) and (c), Section 11.171, Family Code, are amended to read as follows:

(b) The clerk shall send the fees collected under this section to the Texas Department of Human Services ~~[Resources]~~.

(c) The Texas Department of Human Services ~~[Resources]~~ shall deposit the fees received under this section to the credit of a special fund in the State Treasury.

SECTION 10. Subsections (e) and (f), Section 14.05, Family Code, as amended, are amended to read as follows:

(e) Except for good cause shown, *or* on agreement of the parties, or as provided in Subsection (f) of this section, in a ~~[every]~~ proceeding in which periodic payments of child support are *to be ordered or modified*, the court shall order that income be withheld from the disposable earnings of the obligor to conform with the provisions of *Section 14.43* ~~[Subchapter B] of this code [chapter]. [The court shall order that income withheld for child support shall be paid through a court registry, a child support collection office, or the attorney general, unless the court finds that there is good cause to require payments to be made to another person or office.]~~ If the court does not order income withholding, an order for support entered or modified on or after January 1, 1987, must contain a provision for income withholding to ensure that withholding may be effected if a delinquency occurs. These orders must be construed to contain this withholding provision even if the provision has been omitted from the written order. In the case of each obligor against whom an order for support has been issued or modified prior to January 1, 1987, the order is presumed to contain a provision for income withholding procedures to take effect in the event a delinquency occurs without further amendment to the order or future action by the court.

(f) Except as provided in Sections 14.44 and 14.45 of this code, in any proceeding brought under Part D of Title IV of the federal Social Security Act, as amended (42 U.S.C. Section 651 et seq.), the court shall order that income be withheld from the disposable earnings of the obligor *to conform with the provisions of Section 14.43 of this code* ~~[and that all child support payments shall be paid through the Attorney General of Texas].~~

SECTION 11. Section 14.13, Family Code, as added by Section 8, Chapter 232, Acts of the 69th Legislature, Regular Session, 1985, is redesignated as Section 14.14, Family Code, to read as follows:

Sec. 14.14. ~~[14.13.]~~ EXEMPTION FROM COURT FEES: ATTORNEY GENERAL. A clerk, auditor, sheriff, or other government officer or employee may not charge a fee or other amount for services rendered in connection with an action or proceeding in which the attorney general of this state is representing a party for the purpose of obtaining child support.

SECTION 12. Section 16.02, Family Code, as amended, is amended to read as follows:

Sec. 16.02. *QUALIFICATIONS OF PETITIONER* ~~[WHO MAY ADOPT]~~. *Subject to the requirements of Section 11.03 of this code, any [Any] adult may petition [is eligible] to adopt a child who may be adopted.*

SECTION 13. Subsections (a) and (b), Section 17.02, Family Code, as amended, are amended to read as follows:

(a) Before any temporary restraining order or attachment of the child is issued without a full adversary hearing in a suit affecting the parent-child relationship brought by a governmental entity, the court must be satisfied from a sworn petition or affidavit that:

(1) there is an immediate danger to the physical health or safety of the child *or the child has been a victim of sexual abuse*; and

(2) there is no time, consistent with the physical health or safety of the child, for an adversary hearing.

(b) The petition or affidavit required by Subsection (a) of this section shall be sworn to by a person with personal knowledge and shall state facts sufficient to satisfy a person of ordinary prudence and caution that there is an immediate danger to the physical health or safety of the child *or the child has been a victim of sexual abuse*, and that there is no time, consistent with the physical health or safety of the child, for an adversary hearing.

SECTION 14. Subsection (i), Section 17.03, Family Code, as amended, is redesignated as Section 17.031, Family Code, and amended to read as follows:

Sec. 17.031. NOTICE TO PARENT OR GUARDIAN. [(i)] When a representative of the Texas Department of Human Services [Resources] or other agency takes possession of a child under *Section 17.02 or 17.03 of this code* [~~Subsection (a)(3), (a)(4), (a)(5), or (a)(6) of this section~~], the department or other agency must give written notice as prescribed by this subsection to the child's parent or a legal guardian. The written notice must be given as soon as practicable, but in any event *before the latter of the first working day after the child is taken into possession or the date of* [~~prior to~~] the hearing required by *Subsection (c) of Section 17.03 of this code* [~~Subsection (e) of this section~~]. The written notice may be waived by the court at the hearing held under *Subsection (c) of Section 17.03 of this code* [~~Subsection (e) of this section~~] on a showing by the Texas Department of Human Services [Resources] or other agency taking possession of the child that the parents or legal guardian of the child could not be located. The written notice must include:

(1) the reasons why the department or agency is taking possession of the child and the facts that led the department to believe that the child should be taken into custody;

(2) the name of the person at the department or agency that the parent or other custodian may contact for information relating to the child or any legal proceeding relating to the child;

(3) a summary of legal rights of parents or other custodians under this chapter and an explanation of the probable legal procedures relating to the child; and

(4) a statement that the parent or other custodian has the right to hire an attorney.

SECTION 15. The heading of Chapter 18, Family Code, is amended to read as follows:

CHAPTER 18. REVIEW OF PLACEMENT OF CHILDREN
UNDER THE CARE OF THE DEPARTMENT OF HUMAN
SERVICES [RESOURCES]

SECTION 16. Subsection (c), Section 1.07, Family Code, as amended, is reenacted to reconcile amendments of the 69th Legislature to read as follows:

(c) On the proper execution of the application, the clerk shall prepare the license. On the reverse side of the license he shall enter the names of the licensees, the date that the license is issued, and the name of the person appointed to act as proxy for an absent applicant, if any.

SECTION 17. Subsection (f), Section 14.03, Family Code, is repealed.

SECTION 18. This Act takes effect September 1, 1987.

SECTION 19. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 30, 1987, by the following vote: Yeas 31, Nays 0. Passed the House on May 15, 1987, by a non-record vote.

Approved May 28, 1987.

Effective Sept. 1, 1987.