

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 67 (as passed by the Senate)
Senate Bill 103 (Substitute S-1 as passed by the Senate)
Senate Bill 104 (as passed by the Senate)
Sponsor: Senator Bev Hammerstrom (Senate Bills 67 & 103)
 Senator Mike Goschka (Senate Bill 104)
Committee: Families, Mental Health and Human Services (Senate Bills 67 & 104)
 Judiciary (Senate Bill 103)

Date Completed: 2-13-01

RATIONALE

Michigan's laws regulating marriage and divorce date back as far as 1846 and contain some provisions that prohibit mentally disabled people and those with certain physical illnesses from marrying. Many consider this language derogatory, discriminatory, and outdated, and believe that it should be repealed.

CONTENT

Senate Bill 67 would amend Chapter 83 of the Revised Statutes of 1846, which regulates marriage, to repeal Section 6 of that chapter. That section provides criminal penalties for people with certain mental disabilities or venereal diseases who get married, and for people who marry mentally disabled individuals. Section 6 also validates certain interracial marriages.

Senate Bills 103 (S-1) and 104 would amend the Code of Criminal Procedure and the Revised Judicature Act (RJA), respectively, to delete references to Section 6 of Chapter 83 of the Revised Statutes of 1846 in the sentencing guidelines and spousal privilege and confidential communication provisions. Senate Bill 103 (S-1) is tie-barred to Senate Bill 67.

Senate Bill 67

Section 6 of Chapter 83 of the Revised Statutes of 1846, which the bill would repeal, provides that an "insane person, idiot, or person who has been afflicted with syphilis or gonorrhea and has not been cured" is not capable of marriage. Under Section 6, it is a felony punishable by a fine of not less than \$500 or more than \$1,000 and/or up to five years' imprisonment for a person who has syphilis or gonorrhea to marry.

Section 6 also specifies that a "person who has been confined in any public institution or asylum as a feeble-minded, imbecile or insane patient, or who has been adjudged insane, feeble-minded or an imbecile" is not capable of contracting marriage without first filing with the county clerk a verified certificate from two physicians licensed in Michigan stating that the person has been completely cured and that there is no probability that he or she will transmit any of those conditions to the children of the marriage. It is a felony punishable by a maximum fine of \$1,000 and/or up to five years' imprisonment for a person of sound mind to marry such a person, with knowledge of the disability, except upon filing the required certificate, or to advise, aid, abet, cause, procure, or assist in procuring such a marriage in violation of Section 6.

In addition, Section 6 states: "All marriages heretofore contracted between white persons and those wholly or in part of African descent are hereby declared valid and effectual in law for all purposes; and the issues of such marriages shall be deemed and taken as legitimate as to such issue and as to both of the parents."

Senate Bill 103 (S-1)

The bill would delete from the sentencing guidelines the felony of marrying when afflicted by a mental or venereal disease in violation of Section 6 of Chapter 83 of the Revised Statutes of 1846. The felony, which would be repealed by Senate Bill 67, is categorized as a Class H felony against a person, with a statutory maximum penalty of five years' imprisonment.

Senate Bill 104

The RJA provides that, in a civil action or

administrative proceeding, a husband may not be examined as a witness for or against his wife without her consent, and vice versa. It also provides that a married person, or a person who has been married previously, may not be examined in a criminal prosecution as to any communication made between that person and his or her spouse or former spouse during the marriage without the consent of the person to be examined. The RJA exempts from the spousal and confidential communication privileges a case arising under Section 6 of Chapter 83 of the Revised Statutes of 1846, which would be repealed by Senate Bill 67. (Section 6 states that, in all prosecutions under that Act, a husband must be examined as a witness against his wife, and a wife against her husband, whether or not the husband or wife consents.) Senate Bill 104 would delete the reference to Section 6 in the RJA's exemptions from the spousal and confidential communication privileges.

MCL 551.6 (S.B. 67)
777.15 (S.B. 103)
600.2162 (S.B. 104)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Section 6 of Chapter 83 of the Revised Statutes of 1846 is obsolete as well as extremely offensive and discriminatory. People with developmental disabilities should have the same opportunities in life as their nondisabled peers. Section 6 is the antithesis of that concept of equality. According to testimony before the Senate Committee on Families, Mental Health and Human Services, there are hundreds of individuals in Michigan with cognitive impairments who are happily married and many who are raising children. At the same time, however, there are reports that the Section 6 marriage prohibitions are used to prevent people with cognitive impairments from getting married. This suggests that the prohibitions are being observed inconsistently and may not be at all necessary or desirable. Eliminating the discriminatory marriage provisions from the law would be a step toward treating mentally disabled people with equality, and toward eliminating the type of thinking that led to the prohibitions.

Response: The bill is not broad enough. There are other provisions in Michigan's laws governing marriage that use equally objectionable and outdated language, and legislation should address those sections as well. For instance, Section 1 of Chapter 84 of the Revised Statutes of 1846 provides that "all marriages solemnized when either of the parties was

insane or an idiot, shall...be absolutely void" (MCL 552.1).

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

According to the annual statistical report from the Department of Corrections, in 1998, there were no convictions for violations of Section 6 of Chapter 83 of the Revised Statutes of 1846. To the extent that 1998 is representative of other years, there should be no fiscal impact from the repeal of this section.

Fiscal Analyst: D. Zin
K. Firestone
B. Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.