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Senate Bills 67, 103, and 104 (as enrolled)

**PUBLIC ACTS 9-11 of 2001**

Sponsor: Senator Bev Hammerstrom (Senate Bills 67 & 103)

Senator Mike Goschka (Senate Bill 104)

Senate Committee: Families, Mental Health and Human Services (Senate Bills 67 & 104)

Judiciary (Senate Bill 103)

House Committee: Criminal Justice

Date Completed: 6-20-01

**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 Many consider this language derogatory, discriminatory, and outdated, and believe that it should be repealed.

provided that an "insane person, idiot, or person who has been afflicted with syphilis or gonorrhea and has not been cured" was not capable of marriage. Under Section 6, it was 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 had syphilis or gonorrhea to marry.

**CONTENT**

**Senate Bill 67 amended Chapter 83 of the Revised Statutes of 1846, which regulates marriage, to repeal Section 6 of that chapter. That section provided criminal penalties for people with certain mental disabilities or venereal diseases who got married, and for people who married mentally disabled individuals. Section 6 also validated certain interracial marriages.**

**Senate Bills 103 and 104 amended 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 104 also specifies that those privileges do not apply in a suit for annulment or separate maintenance.**  
Senate Bill 103 was tie-barred to Senate Bill 67.

**Senate Bill 67**

Section 6 of Chapter 83 of the Revised Statutes of 1846, which the bill repealed,

Section 6 also specified 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" was 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 had been completely cured and that there was no probability that he or she would transmit any of those conditions to the children of the marriage. It was 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 stated: "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**

The bill deleted 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 was repealed by Senate Bill 67, was 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 exempted from the spousal and confidential communication privileges a case arising under Section 6 of Chapter 83 of the Revised Statutes of 1846, which was repealed by Senate Bill 67. (Section 6 stated that, in all prosecutions under that Act, a husband had to be examined as a witness against his wife, and a wife against her husband, whether or not the husband or wife consented.) Senate Bill 104 deleted the reference to Section 6 in the RJA's exemptions from the spousal and confidential communication privileges.

The RJA also exempts a suit for divorce from the spousal and confidential communications privileges. The bill added a suit for separate maintenance or annulment to that exemption.

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 was 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 was 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 were reports that the Section 6 marriage prohibitions were used to prevent people with cognitive impairments from getting married. This suggests that the prohibitions were being observed inconsistently and may not have been at all necessary or desirable. Eliminating the discriminatory marriage provisions from the law is a step toward treating mentally disabled people with equality, and toward eliminating the type of thinking that led to the prohibitions.

**Response:** Senate Bill 67 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 will 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.

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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.