

STATE OF NEW YORK

4407--B

Cal. No. 404

2017-2018 Regular Sessions

IN SENATE

February 14, 2017

Introduced by Sens. LANZA, ALCANTARA, FUNKE, GALLIVAN, HAMILTON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged and said bill committed to the Committee on Rules -- reported favorably from said committee, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the domestic relations law, in relation to increasing the age of consent for purposes of marriage to the age of seventeen

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (a) of subdivision 1, and subdivisions 2, 3 and 4
2 of section 15 of the domestic relations law, paragraph (a) of subdivi-
3 sion 1 as amended by chapter 415 of the laws of 2014, subdivision 2 as
4 amended by chapter 126 of the laws of 1984, subdivision 3 as amended by
5 section 5 of part W2 of chapter 62 of the laws of 2003 and subdivision 4
6 as amended by chapter 424 of the laws of 1990, are amended to read as
7 follows:

8 (a) It shall be the duty of the town or city clerk when an application
9 for a marriage license is made to him or her to require each of the
10 contracting parties to sign and verify a statement or affidavit before
11 such clerk or one of his or her deputies, containing the following
12 information. From [~~the groom~~] party one: Full name [~~of husband~~], place
13 of residence, social security number, age, occupation, place of birth,
14 name of father, country of birth, maiden name of mother, country of
15 birth, number of marriage. From [~~the bride~~] party two: Full name [~~of~~
16 ~~bride~~], place of residence, social security number, age, occupation,
17 place of birth, name of father, country of birth, maiden name of mother,
18 country of birth, number of marriage. Both parties shall also be

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 required to present to the clerk documentary proof of age in the form of
2 an original or certified copy of a birth record, a certification of
3 birth issued by the state department of health, a local registrar of
4 vital statistics or other public officer charged with similar duties by
5 the laws of any other state, territory or country, a baptismal record, a
6 passport, an automobile driver's license, any government or school
7 issued identification card that contains a photograph of the applicant,
8 a life insurance policy, an employment certificate, a school record, an
9 immigration record, a naturalization record, a court record or any other
10 document or record issued by a governmental entity, showing the date of
11 birth of such parties. The said clerk shall also embody in the statement
12 if either or both of the applicants have been previously married, a
13 statement as to whether the former [~~husband or husbands or the former~~
14 ~~wife or wives~~] spouse or spouses of the respective applicants are living
15 or dead and as to whether either or both of said applicants are divorced
16 persons, if so, when and where and against whom the divorce or divorces
17 were granted and shall also embody therein a statement that no legal
18 impediment exists as to the right of each of the applicants to enter
19 into the marriage state. The town or city clerk is hereby given full
20 power and authority to administer oaths and may require the applicants
21 to produce witnesses to identify them or either of them and may examine
22 under oath or otherwise other witnesses as to any material inquiry
23 pertaining to the issuing of the license, and if the applicant is a
24 divorced person the clerk may also require the production of a certified
25 copy of the decree of the divorce, or proof of an existing marriage of
26 parties who apply for a license to be used for a second or subsequent
27 ceremony; provided, however, that in cities or towns the verified state-
28 ments and affidavits may be made before any regular clerk or designee of
29 the clerk's office.

30 2. If it appears from the affidavits and statements so taken, and from
31 the documentary proof of age presented, that the persons for whose
32 marriage the license in question is demanded are legally competent to
33 marry, the said clerk shall issue such license [~~except in the following~~
34 ~~cases. If it shall appear upon an application that the applicant is~~
35 ~~under eighteen years of age, before the town or city clerk shall issue a~~
36 ~~license, he shall require documentary proof of age in the form of an~~
37 ~~original or certified copy of a birth record, a certification of birth~~
38 ~~issued by the state department of health, a local registrar of vital~~
39 ~~statistics or other public officer charged with similar duties by the~~
40 ~~laws of any other state, territory or country, a baptismal record, pass-~~
41 ~~port, automobile driver's license, life insurance policy, employment~~
42 ~~certificate, school record, immigration record, naturalization record or~~
43 ~~court record, showing the date of birth of such minor. If the town or~~
44 ~~city clerk shall be in doubt as to whether an applicant claiming to be~~
45 ~~over eighteen years of age is actually over eighteen years of age, he~~
46 ~~shall, before issuing such license, require documentary proof as above~~
47 ~~defined~~].

48 3. If it shall appear upon an application of the applicants as
49 provided in this section or upon information required by the clerk that
50 either party is at least [~~sixteen~~] seventeen years of age but under
51 eighteen years of age, then the town or city clerk before he shall issue
52 a license shall require:

53 (a) the written consent to the marriage from both parents of the minor
54 or minors or such as shall then be living, or if the parents of both are
55 dead, then the written consent of the guardian or guardians of such
56 minor or minors. If one of the parents has been missing and has not been

1 seen or heard from for a period of one year preceding the time of the
2 application for the license, although diligent inquiry has been made to
3 learn the whereabouts of such parent, the town or city clerk may issue a
4 license to such minor upon the sworn statement and consent of the other
5 parent. If the marriage of the parents of such minor has been dissolved
6 by decree of divorce or annulment, the consent of the parent to whom the
7 court which granted the decree has awarded the custody of such minor
8 shall be sufficient. If there is no parent or guardian of the minor or
9 minors living to their knowledge then the town or city clerk shall
10 require the written consent to the marriage of the person under whose
11 care or government the minor or minors may be before a license shall be
12 issued. If a parent of such minor has been adjudicated an incompetent,
13 the town or city clerk may issue a license to such minor upon the
14 production of a certified copy of such judgment so determining and upon
15 the written consent of the other parent. If there is no other parent
16 whose consent is required by this section, then and in such event, the
17 town or city clerk shall require the written consent of the guardian of
18 such minor or of the person under whose care or government the minor may
19 be before a license shall be issued. The parents, guardians, or other
20 persons whose consent it shall be necessary to obtain and file with the
21 town or city clerk before the license shall issue, shall personally
22 appear and acknowledge or execute the same before the town or city
23 clerk, or some other officer authorized to administer oaths and take
24 acknowledgments provided that where such affidavit or acknowledgment is
25 made before an official other than an officer designated in section two
26 hundred ninety-eight of the real property law as authorized to take such
27 affidavit or acknowledgment if a conveyance of real property were being
28 acknowledged or proved, or if a certificate of authentication would be
29 required by section three hundred ten of the real property law to entitle
30 the instrument to be recorded if it were a conveyance of real property,
31 the consent when filed must have attached thereto a certificate of
32 authentication[-

33 ~~3. If it shall appear upon an application for a marriage license that~~
34 ~~either party is under the age of sixteen years, the town or city clerk~~
35 ~~shall require, in addition to any consents provided for in this~~
36 ~~section,]; and~~

37 (b) the written approval [and consent] of a justice of the supreme
38 court or of a judge of the family court, having jurisdiction over the
39 town or city in which the application is made, to be attached to or
40 endorsed upon the application, before the license is issued. The appli-
41 cation for such approval [and consent] may be made by either minor party
42 to the proposed marriage and shall be heard by the judge at chambers.
43 The justice of the supreme court or the judge of the family court shall
44 appoint an attorney for the child for each minor party immediately upon
45 the application for approval. The attorney for the child must have
46 received training in domestic violence including a component on forced
47 marriage. All papers and records pertaining to any such application
48 shall be sealed ~~[by him]~~ and withheld from inspection, except by order
49 of a court of competent jurisdiction. Before issuing any approval, the
50 justice of the supreme court or the judge of the family court shall:

51 (i) provide notification to each minor party of his or her rights,
52 including but not limited to, rights in relation to termination of the
53 marriage, child and spousal support, domestic violence services and
54 access to public benefits and other services, which notification shall
55 be developed by the office of court administration, in consultation with
56 the office for the prevention of domestic violence;

(ii) with respect to each party, including a minor party, conduct a review of related decisions in court proceedings initiated pursuant to article ten of the family court act, and all warrants issued under the family court act, and reports of the statewide computerized registry of orders of protection established and maintained pursuant to section two hundred twenty-one-a of the executive law, and reports of the sex offender registry established and maintained pursuant to section one hundred sixty-eight-b of the correction law; and

(iii) have an in camera interview, separately with each minor party, and make the following written affirmative findings:

A. that it is the minor's own will that the minor enter into the marriage;

B. that the minor is not being compelled by force, threat, persuasion, fraud, coercion or duress; and

C. that the marriage will not endanger the mental, emotional or physical safety of the minor.

In making such findings, the court shall consider, among other relevant factors, the age difference between the parties intending to be married, whether there is a power imbalance between the parties intending to be married, whether the parties are incapable of consenting to a marriage for want of understanding, whether there is a history of domestic violence between the parties and whether there is a history of domestic violence between a party and either parties' or legal guardians' family members. The wishes of the parents or legal guardians of the minor intending to be married shall not be the sole basis for approval under this subdivision.

Upon the approval of the justice of the supreme court or the judge of the family court of the application to marry, each minor party shall have all the rights of an adult, including the right to enter into a contract, except for those specific constitutional and statutory age requirements such as, but not limited to, voting, use of alcoholic beverages, and other health or safety statutes relevant to him or her because of his or her age.

4. Before issuing any licenses herein provided for, the town or city clerk shall be entitled to a fee of thirty dollars, which sum shall be paid by the applicants before or at the time the license is issued. Any town or city clerk who shall issue a license to marry any persons one or both of whom shall not be at the time of the marriage under such license legally competent to marry without first requiring the parties to such marriage to make such affidavits and statements or who shall not require the production of documentary proof of age or the procuring of the approval and consents provided for by this article, which shall show that the parties authorized by said license to be married are legally competent to marry, shall be guilty of a misdemeanor and on conviction thereof shall be fined in the sum of one hundred dollars for each and every offense. On or before the fifteenth day of each month, each town and city clerk, except in the city of New York, shall transmit to the state commissioner of health twenty-two dollars and fifty cents of the amount received for each fee collected, which shall be paid into the vital records management account as provided by section ninety-seven-cccc of the state finance law. In any city the balance of all fees collected for the issuing of a marriage license, or for solemnizing a marriage, so far as collected for services rendered by any officer or employee of such city, shall be paid monthly into the city treasury and may by ordinance be credited to any fund therein designated, and said ordinance, when duly enacted, shall have the force of law in such city.

1 Notwithstanding any other provisions of this article, the clerk of any
2 city with the approval of the governing body of such city is hereby
3 authorized to designate, in writing filed in the city clerk's office, a
4 deputy clerk, if any, and/or other city employees in such office to
5 receive applications for, examine applications, investigate and issue
6 marriage licenses in the absence or inability of the clerk of said city
7 to act, and said deputy and/or employees so designated are hereby vested
8 with all the powers and duties of said city clerk relative thereto. Such
9 deputy and/or employees shall perform said duties without additional
10 compensation.

11 ~~[4-]~~ 5. Notwithstanding any other provision of this section, the city
12 clerk of the city of New York, before issuing any licenses herein
13 provided for, shall be entitled to a fee of twenty-five dollars, which
14 sum shall be paid by the applicants before or at the time the license is
15 issued and all such fees so received shall be paid monthly into the city
16 treasury.

17 § 2. Section 13-b of the domestic relations law, as amended by chapter
18 652 of the laws of 2007, is amended to read as follows:

19 § 13-b. Time within which marriage may be solemnized. A marriage shall
20 not be solemnized within twenty-four hours after the issuance of the
21 marriage license, unless authorized by an order of a court of record as
22 hereinafter provided, nor shall it be solemnized after sixty days from
23 the date of the issuance of the marriage license unless authorized
24 pursuant to section three hundred fifty-four-d of the executive law.
25 Every license to marry hereafter issued by a town or city clerk, in
26 addition to other requirements specified by this chapter, must contain a
27 statement of the day and the hour the license is issued and the period
28 during which the marriage may be solemnized. It shall be the duty of the
29 clergyman or magistrate performing the marriage ceremony, or if the
30 marriage is solemnized by written contract, of the judge before whom the
31 contract is acknowledged, to annex to or endorse upon the marriage
32 license the date and hour the marriage is solemnized. A judge or justice
33 of the supreme court of this state or the county judge of the county in
34 which either party to be married resides, or if such party is ~~[under~~
35 ~~sixteen]~~ at least seventeen years of age, the judge of the family court
36 of such county, if it shall appear from an examination of the license
37 and any other proofs submitted by the parties that one of the parties is
38 in danger of imminent death, or by reason of other emergency public
39 interest will be promoted thereby, or that such delay will work irrepar-
40 able injury or great hardship upon the contracting parties, or one of
41 them, may, upon making written affirmative findings under subdivision
42 three of section fifteen of this article, make an order authorizing the
43 immediate solemnization of the marriage and upon filing such order with
44 the clergyman or magistrate performing the marriage ceremony, or if the
45 marriage is to be solemnized by written contract, with the judge before
46 whom the contract is acknowledged, such clergyman or magistrate may
47 solemnize such marriage, or such judge may take such acknowledgment as
48 the case may be, without waiting for such three day period and twenty-
49 four hour period to elapse. The clergyman, magistrate or judge must file
50 such order with the town or city clerk who issued the license within
51 five days after the marriage is solemnized. Such town or city clerk
52 must record and index the order in the book required to be kept by him
53 or her for recording affidavits, statements, consents and licenses, and
54 when so recorded the order shall become a public record and available in
55 any prosecution under this section. A person who shall solemnize a
56 marriage in violation of this section shall be guilty of a misdemeanor

1 and upon conviction thereof shall be punished by a fine of fifty dollars
2 for each offense, and in addition thereto, his or her right to solemnize
3 a marriage shall be suspended for ninety days.

4 § 3. Section 15-a of the domestic relations law, as amended by chapter
5 126 of the laws of 1984, is amended to read as follows:

6 § 15-a. Marriages of minors under [~~fourteen~~] seventeen years of age.
7 Any marriage in which either party is under the age of [~~fourteen~~] seven-
8 teen years is hereby prohibited. Any town or city clerk who shall know-
9 ingly issue a marriage license to any persons, one or both of whom shall
10 be at the time of their contemplated marriage actually under the age of
11 [~~fourteen~~] seventeen years, shall be guilty of a misdemeanor and on
12 conviction thereof shall be fined in the sum of one hundred dollars.

13 § 4. This act shall take effect on the thirtieth day after it shall
14 have become a law and shall apply to licenses issued on and after such
15 effective date and to marriages that have not been solemnized prior to
16 such effective date.