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I N A S S E M B L Y

June 13, 2016

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Paulin, Titus, Simon, Dinowitz, Steck, Seawright, Hevesi, Zebrowski, Solages, Abinanti, Colton, Raia, Graf, Crouch, Galef, Lawrence, Thiele) -- read once and referred to the Committee on Judiciary

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
19 REQUIRED TO PRESENT TO THE CLERK DOCUMENTARY PROOF OF AGE IN THE FORM OF
20 AN ORIGINAL OR CERTIFIED COPY OF A BIRTH RECORD, A CERTIFICATION OF
21 BIRTH ISSUED BY THE STATE DEPARTMENT OF HEALTH, A LOCAL REGISTRAR OF
22 VITAL STATISTICS OR OTHER PUBLIC OFFICER CHARGED WITH SIMILAR DUTIES BY
23 THE LAWS OF ANY OTHER STATE, TERRITORY OR COUNTRY, A BAPTISMAL RECORD, A
24 PASSPORT, AN AUTOMOBILE DRIVER'S LICENSE, ANY GOVERNMENT OR SCHOOL
25 ISSUED IDENTIFICATION CARD THAT CONTAINS A PHOTOGRAPH OF THE APPLICANT,
26 A LIFE INSURANCE POLICY, AN EMPLOYMENT CERTIFICATE, A SCHOOL RECORD, AN

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

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1 IMMIGRATION RECORD, A NATURALIZATION RECORD, A COURT RECORD OR ANY OTHER
2 DOCUMENT OR RECORD ISSUED BY A GOVERNMENTAL ENTITY, SHOWING THE DATE OF
3 BIRTH OF SUCH PARTIES. The said clerk shall also embody in the statement
4 if either or both of the applicants have been previously married, a
5 statement as to whether the former [husband or husbands or the former
6 wife or wives] SPOUSE OR SPOUSES of the respective applicants are living
7 or dead and as to whether either or both of said applicants are divorced
8 persons, if so, when and where and against whom the divorce or divorces
9 were granted and shall also embody therein a statement that no legal
10 impediment exists as to the right of each of the applicants to enter
11 into the marriage state. The town or city clerk is hereby given full
12 power and authority to administer oaths and may require the applicants
13 to produce witnesses to identify them or either of them and may examine
14 under oath or otherwise other witnesses as to any material inquiry
15 pertaining to the issuing of the license, and if the applicant is a
16 divorced person the clerk may also require the production of a certified
17 copy of the decree of the divorce, or proof of an existing marriage of
18 parties who apply for a license to be used for a second or subsequent
19 ceremony; provided, however, that in cities or towns the verified state-
20 ments and affidavits may be made before any regular clerk or designee of
21 the clerk's office.

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

40 3. If it shall appear upon an application of the applicants as
41 provided in this section or upon information required by the clerk that
42 either party is at least [sixteen] SEVENTEEN years of age but under
43 eighteen years of age, then the town or city clerk before he shall issue
44 a license shall require:

45 (A) the written consent to the marriage from both parents of the minor
46 or minors or such as shall then be living, or if the parents of both are
47 dead, then the written consent of the guardian or guardians of such
48 minor or minors. If one of the parents has been missing and has not been
49 seen or heard from for a period of one year preceding the time of the
50 application for the license, although diligent inquiry has been made to
51 learn the whereabouts of such parent, the town or city clerk may issue a
52 license to such minor upon the sworn statement and consent of the other
53 parent. If the marriage of the parents of such minor has been dissolved
54 by decree of divorce or annulment, the consent of the parent to whom the
55 court which granted the decree has awarded the custody of such minor
56 shall be sufficient. If there is no parent or guardian of the minor or

1 minors living to their knowledge then the town or city clerk shall
2 require the written consent to the marriage of the person under whose
3 care or government the minor or minors may be before a license shall be
4 issued. If a parent of such minor has been adjudicated an incompetent,
5 the town or city clerk may issue a license to such minor upon the
6 production of a certified copy of such judgment so determining and upon
7 the written consent of the other parent. If there is no other parent
8 whose consent is required by this section, then and in such event, the
9 town or city clerk shall require the written consent of the guardian of
10 such minor or of the person under whose care or government the minor may
11 be before a license shall be issued. The parents, guardians, or other
12 persons whose consent it shall be necessary to obtain and file with the
13 town or city clerk before the license shall issue, shall personally
14 appear and acknowledge or execute the same before the town or city
15 clerk, or some other officer authorized to administer oaths and take
16 acknowledgments provided that where such affidavit or acknowledgment is
17 made before an official other than an officer designated in section two
18 hundred ninety-eight of the real property law as authorized to take such
19 affidavit or acknowledgment if a conveyance of real property were being
20 acknowledged or proved, or if a certificate of authentication would be
21 required by section three hundred ten of the real property law to enti-
22 tle the instrument to be recorded if it were a conveyance of real prop-
23 erty, the consent when filed must have attached thereto a certificate of
24 authentication[.]; AND

25 [3. If it shall appear upon an application for a marriage license that
26 either party is under the age of sixteen years, the town or city clerk
27 shall require, in addition to any consents provided for in this
28 section,]

29 (B) the written approval and consent of a justice of the supreme court
30 or of a judge of the family court, having jurisdiction over the town or
31 city in which the application is made, to be attached to or endorsed
32 upon the application, before the license is issued. The application for
33 such approval and consent shall be heard by the judge at chambers. THE
34 JUSTICE OF THE SUPREME COURT AND THE JUDGE OF THE FAMILY COURT SHALL
35 APPOINT AN ATTORNEY FOR THE CHILD FOR EACH MINOR PARTY IMMEDIATELY UPON
36 THE APPLICATION FOR APPROVAL AND CONSENT. THE ATTORNEY FOR THE CHILD
37 MUST HAVE RECEIVED TRAINING IN DOMESTIC VIOLENCE INCLUDING A COMPONENT
38 ON FORCED MARRIAGE. All papers and records pertaining to any such appli-
39 cation shall be sealed by him and withheld from inspection, except by
40 order of a court of competent jurisdiction. BEFORE ISSUING APPROVAL AND
41 CONSENT, THE JUSTICE OF THE SUPREME COURT OR THE JUDGE OF THE FAMILY
42 COURT MUST HAVE AN IN CAMERA INTERVIEW, SEPARATELY WITH EACH MINOR
43 PARTY, AND MUST MAKE THE FOLLOWING AFFIRMATIVE FINDINGS:

44 (I) THAT IT IS THE MINOR'S OWN WILL THAT THE MINOR ENTER INTO THE
45 MARRIAGE;

46 (II) THAT THE MINOR IS NOT BEING COMPELLED AGAINST HIS OR HER WILL BY
47 FORCE, THREAT, PERSUASION, FRAUD, COERCION OR DURESS; AND

48 (III) THAT THE MARRIAGE WILL NOT ENDANGER THE MENTAL, EMOTIONAL AND
49 PHYSICAL SAFETY OF THE MINOR. IN MAKING SUCH FINDINGS, THE COURT SHALL
50 CONSIDER, AMONG OTHER RELEVANT FACTORS, THE AGE DIFFERENCE BETWEEN THE
51 PARTIES INTENDING TO BE MARRIED, WHETHER THERE IS A POWER IMBALANCE
52 BETWEEN THE PARTIES INTENDING TO BE MARRIED, WHETHER THE PARTIES ARE
53 INCAPABLE OF CONSENTING TO A MARRIAGE FOR WANT OF UNDERSTANDING, WHETHER
54 THERE IS A HISTORY OF DOMESTIC VIOLENCE BETWEEN THE PARTIES AND WHETHER
55 THERE IS A HISTORY OF DOMESTIC VIOLENCE BETWEEN A PARTY AND EITHER
56 PARTIES' FAMILY MEMBERS. NEITHER CURRENT OR PAST PREGNANCY OF EITHER

1 INDIVIDUAL, NOR THE WISHES OF THE PARENTS OR LEGAL GUARDIANS OF THE
2 MINOR INTENDING TO BE MARRIED SHALL BE THE SOLE BASIS FOR CONSENT OR
3 APPROVAL UNDER THIS SUBDIVISION.

4 4. IF IT SHALL APPEAR UPON AN APPLICATION FOR A MARRIAGE LICENSE THAT
5 EITHER PARTY IS UNDER THE AGE OF SEVENTEEN YEARS, THEN THE TOWN OR CITY
6 CLERK SHALL NOT ISSUE A LICENSE TO MARRY.

7 5. Before issuing any licenses herein provided for, the town or city
8 clerk shall be entitled to a fee of thirty dollars, which sum shall be
9 paid by the applicants before or at the time the license is issued. Any
10 town or city clerk who shall issue a license to marry any persons one or
11 both of whom shall not be at the time of the marriage under such license
12 legally competent to marry without first requiring the parties to such
13 marriage to make such affidavits and statements or who shall not require
14 the production of documentary proof of age or the procuring of the
15 approval and consents provided for by this article, which shall show
16 that the parties authorized by said license to be married are legally
17 competent to marry, shall be guilty of a misdemeanor and on conviction
18 thereof shall be fined in the sum of one hundred dollars for each and
19 every offense. On or before the fifteenth day of each month, each town
20 and city clerk, except in the city of New York, shall transmit to the
21 state commissioner of health twenty-two dollars and fifty cents of the
22 amount received for each fee collected, which shall be paid into the
23 vital records management account as provided by section ninety-seven-
24 cccc of the state finance law. In any city the balance of all fees
25 collected for the issuing of a marriage license, or for solemnizing a
26 marriage, so far as collected for services rendered by any officer or
27 employee of such city, shall be paid monthly into the city treasury and
28 may by ordinance be credited to any fund therein designated, and said
29 ordinance, when duly enacted, shall have the force of law in such city.
30 Notwithstanding any other provisions of this article, the clerk of any
31 city with the approval of the governing body of such city is hereby
32 authorized to designate, in writing filed in the city clerk's office, a
33 deputy clerk, if any, and/or other city employees in such office to
34 receive applications for, examine applications, investigate and issue
35 marriage licenses in the absence or inability of the clerk of said city
36 to act, and said deputy and/or employees so designated are hereby vested
37 with all the powers and duties of said city clerk relative thereto. Such
38 deputy and/or employees shall perform said duties without additional
39 compensation.

40 [4.] 6. Notwithstanding any other provision of this section, the city
41 clerk of the city of New York, before issuing any licenses herein
42 provided for, shall be entitled to a fee of twenty-five dollars, which
43 sum shall be paid by the applicants before or at the time the license is
44 issued and all such fees so received shall be paid monthly into the city
45 treasury.

46 S 2. Section 13-b of the domestic relations law, as amended by chapter
47 652 of the laws of 2007, is amended to read as follows:

48 S 13-b. Time within which marriage may be solemnized. A marriage shall
49 not be solemnized within twenty-four hours after the issuance of the
50 marriage license, unless authorized by an order of a court of record as
51 hereinafter provided, nor shall it be solemnized after sixty days from
52 the date of the issuance of the marriage license unless authorized
53 pursuant to section three hundred fifty-four-d of the executive law.
54 Every license to marry hereafter issued by a town or city clerk, in
55 addition to other requirements specified by this chapter, must contain a
56 statement of the day and the hour the license is issued and the period

1 during which the marriage may be solemnized. It shall be the duty of the
2 clergyman or magistrate performing the marriage ceremony, or if the
3 marriage is solemnized by written contract, of the judge before whom the
4 contract is acknowledged, to annex to or endorse upon the marriage
5 license the date and hour the marriage is solemnized. A judge or justice
6 of the supreme court of this state or the county judge of the county in
7 which either party to be married resides, or if such party is [under
8 sixteen] AT LEAST SEVENTEEN years of age, the judge of the family court
9 of such county, if it shall appear from an examination of the license
10 and any other proofs submitted by the parties that one of the parties is
11 in danger of imminent death, or by reason of other emergency public
12 interest will be promoted thereby, or that such delay will work irrepar-
13 able injury or great hardship upon the contracting parties, or one of
14 them, may, UPON MAKING AFFIRMATIVE FINDINGS UNDER SUBDIVISION THREE OF
15 SECTION FIFTEEN OF THIS ARTICLE, make an order authorizing the immediate
16 solemnization of the marriage and upon filing such order with the cler-
17 gyman or magistrate performing the marriage ceremony, or if the marriage
18 is to be solemnized by written contract, with the judge before whom the
19 contract is acknowledged, such clergyman or magistrate may solemnize
20 such marriage, or such judge may take such acknowledgment as the case
21 may be, without waiting for such three day period and twenty-four hour
22 period to elapse. The clergyman, magistrate or judge must file such
23 order with the town or city clerk who issued the license within five
24 days after the marriage is solemnized. Such town or city clerk must
25 record and index the order in the book required to be kept by him OR HER
26 for recording affidavits, statements, consents and licenses, and when so
27 recorded the order shall become a public record and available in any
28 prosecution under this section. A person who shall solemnize a marriage
29 in violation of this section shall be guilty of a misdemeanor and upon
30 conviction thereof shall be punished by a fine of fifty dollars for each
31 offense, and in addition thereto, his OR HER right to solemnize a
32 marriage shall be suspended for ninety days.

33 S 3. Section 15-a of the domestic relations law, as amended by chapter
34 126 of the laws of 1984, is amended to read as follows:

35 S 15-a. Marriages of minors under [fourteen] SEVENTEEN years of age.
36 Any marriage in which either party is under the age of [fourteen] SEVEN-
37 TEEN years is hereby prohibited. Any town or city clerk who shall know-
38 ingly issue a marriage license to any persons, one or both of whom shall
39 be at the time of their contemplated marriage actually under the age of
40 [fourteen] SEVENTEEN years, shall be guilty of a misdemeanor and on
41 conviction thereof shall be fined in the sum of one hundred dollars.

42 S 4. This act shall take effect immediately and shall apply to
43 licenses issued on and after such effective date and to marriages that
44 have not been solemnized prior to such effective date.