S T A T E O F N E W Y O R K

8122

I N S E N A T E

June 13, 2016

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

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

(a) It shall be the duty of the town or city clerk when an application for a marriage license is made to him or her to require each of the contracting parties to sign and verify a statement or affidavit before such clerk or one of his or her deputies, containing the following information. From [the groom] PARTY ONE: Full name [of husband], place of residence, social security number, age, occupation, place of birth, name of father, country of birth, maiden name of mother, country of birth, number of marriage. From [the bride] PARTY TWO: Full name [of bride], place of residence, social security number, age, occupation, place of birth, name of father, country of birth, maiden name of mother, country of birth, number of marriage. BOTH PARTIES SHALL ALSO BE REQUIRED TO PRESENT TO THE CLERK DOCUMENTARY PROOF OF AGE IN THE FORM OF AN ORIGINAL OR CERTIFIED COPY OF A BIRTH RECORD, A CERTIFICATION OF BIRTH ISSUED BY THE STATE DEPARTMENT OF HEALTH, A LOCAL REGISTRAR OF VITAL STATISTICS OR OTHER PUBLIC OFFICER CHARGED WITH SIMILAR DUTIES BY THE LAWS OF ANY OTHER STATE, TERRITORY OR COUNTRY, A BAPTISMAL RECORD, A PASSPORT, AN AUTOMOBILE DRIVER'S LICENSE, ANY GOVERNMENT OR SCHOOL ISSUED IDENTIFICATION CARD THAT CONTAINS A PHOTOGRAPH OF THE APPLICANT, A LIFE INSURANCE POLICY, AN EMPLOYMENT CERTIFICATE, A SCHOOL RECORD, AN IMMIGRATION RECORD, A NATURALIZATION RECORD, A COURT RECORD OR ANY OTHER DOCUMENT OR RECORD ISSUED BY A GOVERNMENTAL ENTITY, SHOWING THE DATE OF

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

LBD15851-03-6

BIRTH OF SUCH PARTIES. The said clerk shall also embody in the statement if either or both of the applicants have been previously married, a statement as to whether the former [husband or husbands or the former wife or wives] SPOUSE OR SPOUSES of the respective applicants are living or dead and as to whether either or both of said applicants are divorced persons, if so, when and where and against whom the divorce or divorces were granted and shall also embody therein a statement that no legal impediment exists as to the right of each of the applicants to enter into the marriage state. The town or city clerk is hereby given full power and authority to administer oaths and may require the applicants to produce witnesses to identify them or either of them and may examine under oath or otherwise other witnesses as to any material inquiry pertaining to the issuing of the license, and if the applicant is a divorced person the clerk may also require the production of a certified copy of the decree of the divorce, or proof of an existing marriage of parties who apply for a license to be used for a second or subsequent ceremony; provided, however, that in cities or towns the verified statements and affidavits may be made before any regular clerk or designee of the clerk's office.

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

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

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

care or government the minor or minors may be before a license shall be issued. If a parent of such minor has been adjudicated an incompetent, the town or city clerk may issue a license to such minor upon the production of a certified copy of such judgment so determining and upon the written consent of the other parent. If there is no other parent whose consent is required by this section, then and in such event, the town or city clerk shall require the written consent of the guardian of such minor or of the person under whose care or government the minor may be before a license shall be issued. The parents, guardians, or other persons whose consent it shall be necessary to obtain and file with the town or city clerk before the license shall issue, shall personally appear and acknowledge or execute the same before the town or city clerk, or some other officer authorized to administer oaths and take acknowledgments provided that where such affidavit or acknowledgment is made before an official other than an officer designated in section two hundred ninety-eight of the real property law as authorized to take such affidavit or acknowledgment if a conveyance of real property were being acknowledged or proved, or if a certificate of authentication would be required by section three hundred ten of the real property law to entitle the instrument to be recorded if it were a conveyance of real property, the consent when filed must have attached thereto a certificate of authentication[.]; AND

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

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

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

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

(III) THAT THE MARRIAGE WILL NOT ENDANGER THE MENTAL, EMOTIONAL AND 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' FAMILY MEMBERS. NEITHER CURRENT OR PAST PREGNANCY OF EITHER INDIVIDUAL, NOR THE WISHES OF THE PARENTS OR LEGAL GUARDIANS OF THE

MINOR INTENDING TO BE MARRIED SHALL BE THE SOLE BASIS FOR CONSENT OR APPROVAL UNDER THIS SUBDIVISION.

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

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

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

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

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

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

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

S 15-a. Marriages of minors under [fourteen] SIXTEEN years of age. Any marriage in which either party is under the age of [fourteen] SIXTEEN years is hereby prohibited. Any town or city clerk who shall knowingly issue a marriage license to any persons, one or both of whom shall be at the time of their contemplated marriage actually under the age of [fourteen] SIXTEEN years, shall be guilty of a misdemeanor and on conviction thereof shall be fined in the sum of one hundred dollars.

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