

# STATE OF NEW YORK

4407

2017-2018 Regular Sessions

## IN SENATE

February 14, 2017

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

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

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

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

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

46 (a) the written consent to the marriage from both parents of the minor  
47 or minors or such as shall then be living, or if the parents of both are  
48 dead, then the written consent of the guardian or guardians of such  
49 minor or minors. If one of the parents has been missing and has not been  
50 seen or heard from for a period of one year preceding the time of the  
51 application for the license, although diligent inquiry has been made to  
52 learn the whereabouts of such parent, the town or city clerk may issue a  
53 license to such minor upon the sworn statement and consent of the other  
54 parent. If the marriage of the parents of such minor has been dissolved  
55 by decree of divorce or annulment, the consent of the parent to whom the  
56 court which granted the decree has awarded the custody of such minor

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

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

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

44 (i) provide notification to each minor party of his or her rights,  
45 including but not limited to, in relation to termination of the  
46 marriage, child and spousal support, and access to public benefits,  
47 domestic violence and other services, which notification shall be devel-  
48 oped by the office of court administration in consultation with the  
49 office for the prevention of domestic violence;

50 (ii) with respect to each party, including a minor party, conduct a  
51 review of related decisions in court proceedings initiated pursuant to  
52 article ten of the family court act, and all warrants issued under the  
53 family court act, and reports of the statewide computerized registry of  
54 orders of protection established and maintained pursuant to section two  
55 hundred twenty-one-a of the executive law, and reports of the sex offen-

1 der registry established and maintained pursuant to section one hundred  
2 sixty-eight-b of the correction law; and

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

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

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

9 C. that the marriage will not endanger the mental, emotional or phys-  
10 ical safety of the minor.

11 In making such findings, the court shall consider, among other rele-  
12 vant factors, the age difference between the parties intending to be  
13 married, whether there is a power imbalance between the parties intend-  
14 ing to be married, whether the parties are incapable of consenting to a  
15 marriage for want of understanding, whether there is a history of domes-  
16 tic violence between the parties and whether there is a history of  
17 domestic violence between a party and either parties' or legal guardi-  
18 ans' family members. Neither current or past pregnancy of either indi-  
19 vidual, nor the wishes of the parents or legal guardians of the minor  
20 intending to be married nor the existence of a prior religious marriage  
21 shall be the sole basis for consent or approval under this subdivision.

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

29 4. If it shall appear upon an application for a marriage license that  
30 either party is under the age of seventeen years, then the town or city  
31 clerk shall not issue a license to marry.

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

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

9 [4-] 6. Notwithstanding any other provision of this section, the city  
10 clerk of the city of New York, before issuing any licenses herein  
11 provided for, shall be entitled to a fee of twenty-five dollars, which  
12 sum shall be paid by the applicants before or at the time the license is  
13 issued and all such fees so received shall be paid monthly into the city  
14 treasury.

15 § 2. Section 13-b of the domestic relations law, as amended by chapter  
16 652 of the laws of 2007, is amended to read as follows:

17 § 13-b. Time within which marriage may be solemnized. A marriage shall  
18 not be solemnized within twenty-four hours after the issuance of the  
19 marriage license, unless authorized by an order of a court of record as  
20 hereinafter provided, nor shall it be solemnized after sixty days from  
21 the date of the issuance of the marriage license unless authorized  
22 pursuant to section three hundred fifty-four-d of the executive law.  
23 Every license to marry hereafter issued by a town or city clerk, in  
24 addition to other requirements specified by this chapter, must contain a  
25 statement of the day and the hour the license is issued and the period  
26 during which the marriage may be solemnized. It shall be the duty of the  
27 clergyman or magistrate performing the marriage ceremony, or if the  
28 marriage is solemnized by written contract, of the judge before whom the  
29 contract is acknowledged, to annex to or endorse upon the marriage  
30 license the date and hour the marriage is solemnized. A judge or justice  
31 of the supreme court of this state or the county judge of the county in  
32 which either party to be married resides, or if such party is ~~under~~  
33 ~~sixteen~~ at least seventeen years of age, the judge of the family court  
34 of such county, if it shall appear from an examination of the license  
35 and any other proofs submitted by the parties that one of the parties is  
36 in danger of imminent death, or by reason of other emergency public  
37 interest will be promoted thereby, or that such delay will work irrepar-  
38 able injury or great hardship upon the contracting parties, or one of  
39 them, may, upon making written affirmative findings under subdivision  
40 three of section fifteen of this article, make an order authorizing the  
41 immediate solemnization of the marriage and upon filing such order with  
42 the clergyman or magistrate performing the marriage ceremony, or if the  
43 marriage is to be solemnized by written contract, with the judge before  
44 whom the contract is acknowledged, such clergyman or magistrate may  
45 solemnize such marriage, or such judge may take such acknowledgment as  
46 the case may be, without waiting for such three day period and twenty-  
47 four hour period to elapse. The clergyman, magistrate or judge must file  
48 such order with the town or city clerk who issued the license within  
49 five days after the marriage is solemnized. Such town or city clerk  
50 must record and index the order in the book required to be kept by him  
51 or her for recording affidavits, statements, consents and licenses, and  
52 when so recorded the order shall become a public record and available in  
53 any prosecution under this section. A person who shall solemnize a  
54 marriage in violation of this section shall be guilty of a misdemeanor  
55 and upon conviction thereof shall be punished by a fine of fifty dollars

1 for each offense, and in addition thereto, his or her right to solemnize  
2 a marriage shall be suspended for ninety days.

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

5 § 15-a. Marriages of minors under [~~fourteen~~] seventeen years of age.

6 Any marriage in which either party is under the age of [~~fourteen~~] seven-  
7 teen years is hereby prohibited. Any town or city clerk who shall know-

8 ingly issue a marriage license to any persons, one or both of whom shall

9 be at the time of their contemplated marriage actually under the age of

10 [~~fourteen~~] seventeen years, shall be guilty of a misdemeanor and on

11 conviction thereof shall be fined in the sum of one hundred dollars.

12 § 4. This act shall take effect immediately and shall apply to

13 licenses issued on and after such effective date and to marriages that

14 have not been solemnized prior to such effective date.