

# 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 prop-  
31 erty, 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;

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

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

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

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

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

17 In making such findings, the court shall consider, among other rele-  
18 vant factors, the age difference between the parties intending to be  
19 married, whether there is a power imbalance between the parties intend-  
20 ing to be married, whether the parties are incapable of consenting to a  
21 marriage for want of understanding, whether there is a history of domes-  
22 tic violence between the parties and whether there is a history of  
23 domestic violence between a party and either parties' or legal guardi-  
24 ans' family members. The wishes of the parents or legal guardians of the  
25 minor intending to be married shall not be the sole basis for approval  
26 under this subdivision.

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

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