

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3018

By Delegates Young, Garcia, Crouse, Chiarelli,

Hornby, Fast, Worrell, Holstein and Hansen

[Introduced January 25, 2023; Referred

to the Committee on the Judiciary]

1 A BILL to repeal §48-2-103 of the Code of West Virginia, 1931, as amended; and to amend and
 2 reenact §48-2-106 and §48-2-301, all related to establishing that 18 is the age of consent
 3 and removing the ability of an underage person to obtain consent to marry through their
 4 parents, legal guardians, or by petition to the circuit court.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. MARRIAGES.

**§48-2-103. Waiting period before issuance of marriage license; issuance of license in case
of emergency or extraordinary circumstances.**

1 [Repealed.]

§48-2-106. Proof of age.

1 (a) At the time of the execution of the application, the clerk or the person administering the
 2 oath to the applicants shall require evidence of the age of each of the applicants. Evidence of age
 3 may be as follows:

- 4 (1) A certified copy of a birth certificate or a duplicate certificate produced by any means
- 5 that accurately reproduces the original;
- 6 (2) A voter’s registration certificate;
- 7 (3) An operator’s or chauffeur’s license;
- 8 ~~(4) The affidavit of both parents or the legal guardian of the applicant; or~~
- 9 ~~(5)~~ (4) Other good and sufficient evidence.

10 (b) ~~If an affidavit is relied upon as evidence of the age of an applicant, and if one parent is~~
 11 ~~dead, the affidavit of the surviving parent or of the guardian of the applicant is sufficient. If both~~
 12 ~~parents are dead, the affidavit of the guardian of the applicant is sufficient. If the parents of the~~
 13 ~~applicant live separate and apart, the affidavit of the parent having custody of the applicant is~~
 14 ~~sufficient~~

PART 3. CAPACITY TO MARRY.

§48-2-301. Age of consent for marriage; exception.

1 (a) ~~The age of consent for marriage for both the male and the female applicants is 18 years~~
2 ~~of age. A person under the age of eighteen lacks the capacity to contract a marriage without the~~
3 ~~consent required by this section~~

4 ~~(b) The clerk of the county commission may issue a marriage license to an applicant who is~~
5 ~~under the age of eighteen but sixteen years of age or older if the clerk obtains a valid written~~
6 ~~consent from the applicant's parents or legal guardian.~~

7 ~~(c) Upon order of a circuit judge, the clerk of the county commission may issue a marriage~~
8 ~~license to an applicant who is under the age of sixteen, if the clerk obtains a valid written consent~~
9 ~~from the applicant's parents or legal guardian. A circuit judge of the county in which the application~~
10 ~~for a marriage license is filed may order the clerk of the county commission to issue a license to an~~
11 ~~applicant under the age of sixteen if, in the court's discretion, the issuance of a license is in the~~
12 ~~best interest of the applicant and if consent is given by the parents or guardian.~~

13 ~~(d) A consent to marry must be duly acknowledged before an officer authorized to~~
14 ~~acknowledge a deed. If the parents are living together at the time the application for a marriage~~
15 ~~license is made and the consent is given, the signatures of both parents or the applicant's legal~~
16 ~~guardian is required. If one parent is dead, the signature of the surviving parent or the applicant's~~
17 ~~legal guardian is required. If both parents are dead, the signature of the applicant's legal guardian~~
18 ~~is required. If the parents of the applicant are living separate and apart, the signature of the parent~~
19 ~~having custody of the applicant or the applicant's legal guardian is required~~

20 ~~(e) (b) If a person under the age of consent is married in violation of this section, the~~
21 ~~marriage is not void for this reason, and such marriage is valid until it is actually annulled.~~

22 ~~(f) (c) A marriage by an underage person without a valid consent as required by this~~
23 ~~section, though voidable at the time it is entered into, may be ratified and become completely valid~~
24 ~~and binding when the underage party reaches the age of consent. Validation of a marriage by~~
25 ~~ratification is established by some unequivocal and voluntary act, statement, or course of conduct~~

- 26 after reaching the age of consent. Ratification includes, but is not limited to, continued cohabitation
27 as husband and wife after the age of consent is attained.

NOTE: The purpose of this bill is to prohibit a person under the age of 18 from entering into a marriage.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.