

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 3038**

BY DELEGATES YOUNG, THOMPSON, AND HIGGINBOTHAM

[Introduced March 10, 2021; Referred to the  
Committee on Senior, Children, and Family Issues  
then the Judiciary]

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

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 2. MARRIAGES.**

### **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 is 18 years of age.  
2 A person under the age of 18 lacks the capacity to contract a marriage. ~~without the consent~~  
3 ~~required by this section~~

4 (b) ~~The clerk of the county commission may issue a marriage license to an applicant who~~  
5 ~~is 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~~  
11 ~~an applicant under the age of sixteen if, in the court's discretion, the issuance of a license is in~~  
12 ~~the 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  
27 cohabitation 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.