

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4435

BY DELEGATE YOUNG

[Introduced January 31, 2022; 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1 [Repealed.]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.

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

5 (1) A certified copy of a birth certificate or a duplicate certificate produced by any means
 6 that accurately reproduces the original;

7 (2) A voter’s registration certificate;

8 (3) An operator’s or chauffeur’s license;

9 ~~(4) The affidavit of both parents or the legal guardian of the applicant; or~~

10 ~~(5)~~ (4) Other good and sufficient evidence.

11 ~~(b) If an affidavit is relied upon as evidence of the age of an applicant, and if one parent is~~
 12 ~~dead, the affidavit of the surviving parent or of the guardian of the applicant is sufficient. If both~~
 13 ~~parents are dead, the affidavit of the guardian of the applicant is sufficient. If the parents of the~~
 14 ~~applicant live separate and apart, the affidavit of the parent having custody of the applicant is~~
 15 ~~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
2 years of age. A person under the age of eighteen lacks the capacity to contract a marriage without
3 the consent 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.