GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 35
Judiciary Committee Substitute Adopted 4/28/21
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PROPOSED HOUSE COMMITTEE SUBSTITUTE S35-PCS45439-RN-25

Short Title: Max 4-Yr Age Diff to Marry Under 18 Yrs. (Public)

Sponsors:

Referred to:

February 2, 2021

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAWFUL AGE OF MARRIAGE TO SIXTEEN YEARS OF AGE OR OLDER AND TO PROVIDE A MAXIMUM FOUR-YEAR AGE DIFFERENCE FOR A SIXTEEN OR SEVENTEEN YEAR-OLD TO MARRY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 51-2 reads as rewritten:

"**§ 51-2. ~~Capacity~~ Lawful age to marry.**

(a) All unmarried persons of 18 years, or older, may lawfully ~~marry, except as hereinafter forbidden.~~marry.

(a1) Persons over 16 years of age and under 18 years of age may ~~marry,~~ marry a person no more than four years older, and the register of deeds may issue a license for the marriage, only after there ~~shall have~~ has been filed with the register of deeds a certified copy of an order issued by a district court authorizing the marriage as provided in G.S. 51-2.1, or a written consent to the marriage, said consent having been signed by the appropriate person as follows:

(1) By a parent having full or joint legal custody of the underage party; or

(2) By a person, agency, or institution having legal custody or serving as a guardian of the underage party.

Such written consent shall not be required for an emancipated minor if a certificate of emancipation issued pursuant to Article 35 of Chapter 7B of the General Statutes or a certified copy of a final decree or certificate of emancipation from this or any other jurisdiction is filed with the register of deeds.

~~(b) Persons over 14 years of age and under 16 years of age may marry as provided in G.S. 51-2.1.~~

(b1) It shall be unlawful for any person under ~~14~~ 16 years of age to marry.

(c) When a license to marry is procured by any person under 18 years of age by fraud or misrepresentation, a parent of the underage party, a person, agency, or institution having legal custody or serving as a guardian of the underage party, or a guardian ad litem appointed to represent the underage party pursuant to G.S. 51-2.1(b) is a proper party to bring an action to annul the marriage."

SECTION 2. G.S. 51-2.1 reads as rewritten:

"**§ 51-2.1. Marriage of certain underage parties.**

(a) ~~If an unmarried female who is more than 14 years of age, but less than 16 years of age, is pregnant or has given birth to a child and the unmarried female and the putative father of the child, either born or unborn, agree to marry, or if an unmarried male who is more than 14~~

~~years of age, but less than 16 years of age, is the putative father of a child, either born or unborn, and the unmarried male and the mother of the child agree to marry, the register of deeds is authorized to issue to the parties a license to marry; and it shall be lawful for them to marry in accordance with the provisions of this Chapter, only after a certified copy of an order issued by a district court authorizing the marriage is filed with the register of deeds.~~ A district court judge may issue an order authorizing a marriage between a person over 16 years of age and under 18 years of age, to a person no more than four years older under this section only upon finding as fact and concluding as a matter of law that the underage party is capable of assuming the responsibilities of marriage and the marriage will serve the best interest of the underage party. In determining whether the marriage will serve the best interest of an underage party, the district court shall consider the following:

(1) The opinion of the parents of the underage party as to whether the marriage serves the best interest of the underage party.

(2) The opinion of any person, agency, or institution having legal custody or serving as a guardian of the underage party as to whether the marriage serves the best interest of the underage party.

(3) The opinion of the guardian ad litem appointed to represent the best interest of the underage party pursuant to G.S. 51-2.1(b) as to whether the marriage serves the best interest of the underage party.

(4) The relationship between the underage party and the parents of the underage party, as well as the relationship between the underage party and any person having legal custody or serving as a guardian of the underage party.

(5) Any evidence that it would find useful in making its determination.

There shall be a rebuttable presumption that the marriage will not serve the best interest of the underage party when all living parents of the underage party oppose the marriage. The fact that the female is pregnant, or has given birth to a child, alone does not establish that the best interest of the underage party will be served by the marriage.

…."

SECTION 3. G.S. 51-3 reads as rewritten:

"**§ 51-3. Want of capacity; void and voidable marriages.**

All marriages between any two persons nearer of kin than first cousins, or between double first cousins, or between a male person under 16 years of age and any female, or between a female person under 16 years of age and any male, or between persons either of whom has a husband or wife living at the time of such marriage, or between persons either of whom is at the time physically impotent, or between persons either of whom is at the time incapable of contracting from want of will or understanding, shall be void. No marriage followed by cohabitation and the birth of issue shall be declared void after the death of either of the parties for any of the causes stated in this section except for bigamy. ~~No marriage by persons either of whom may be under 16 years of age, and otherwise competent to marry, shall be declared void when the girl shall be pregnant, or when a child shall have been born to the parties unless such child at the time of the action to annul shall be dead.~~ A marriage contracted under a representation and belief that the female partner to the marriage is pregnant, followed by the separation of the parties within 45 days of the marriage which separation has been continuous for a period of one year, shall be voidable unless a child shall have been born to the parties within 10 lunar months of the date of separation."

SECTION 4. This act is effective when it becomes law and applies to marriage licenses pending or issued on or after that date.