

House Bill 228

By: Representatives Welch of the 110th, Ballinger of the 23rd, Jones of the 47th, Oliver of the 82nd, Holcomb of the 81st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 3 of Title 19 of the Official Code of Georgia Annotated, relating to
2 marriage generally, so as to change the minimum age of marriage of a child from 16 to 17
3 years of age and to require any person who is 17 years of age to have been emancipated; to
4 prevent forced or coerced marriages involving children; to require documentary proof of
5 emancipation, completion of premarital education and a certificate of completion, and certain
6 other conditions for the issuance of a marriage license for any person who is 17 years of age;
7 to require proof of age for the issuance of a marriage license; to require the Department of
8 Public Health to prepare and distribute a fact sheet concerning certain information about
9 marriage and available resources for persons who are victims of certain crimes; to require
10 that premarital education providers distribute such fact sheet; to provide for rules and
11 regulations; to revise provisions regarding marriages solemnized in another state; to amend
12 Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to child custody
13 proceedings, so as to correct a cross-reference; to amend Article 10 of Chapter 11 of Title
14 15 of the Official Code of Georgia Annotated, relating to emancipation, so as to provide for
15 requirements for filing a petition for emancipation for petitioners who desire to enter into a
16 marriage; to require the appointment of an attorney for the petitioner in any case in which a
17 petition for emancipation is filed; to provide for conditions whereby the court shall not issue
18 an emancipation order; to revise a definition; to provide for related matters; to repeal
19 conflicting laws; and for other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

21 **PART I**
22 **SECTION 1-1.**

23 Chapter 3 of Title 19 of the Official Code of Georgia Annotated, relating to marriage
24 generally, is amended by revising Code Section 19-3-2, relating to who may contract
25 marriage and parental consent, as follows:

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26 "19-3-2.

27 (a) To be able to contract marriage, a person must:

28 (1) Be of sound mind;

29 (2) Except as provided in subsection (b) of this Code section, be at least 18 years of age;

30 (3) Have no living spouse of a previous undissolved marriage. The dissolution of a
31 previous marriage in divorce proceedings must be affirmatively established and will not
32 be presumed. Nothing in this paragraph shall be construed to affect the legitimacy of
33 children; and

34 (4) Not be related to the prospective spouse by blood or marriage within the prohibited
35 degrees.

36 (b) If either applicant for marriage is ~~16 or~~ 17 years of age, ~~parental consent as provided~~
37 ~~in Code Section 19-3-37~~ documentary proof that such applicant was emancipated by
38 operation of law or pursuant to a petition filed with the court as provided in Article 10 of
39 Chapter 11 of Title 15 shall be required before a license may be issued pursuant to Article 2
40 of this chapter; provided, in addition, that:

41 (1) If the emancipation was pursuant to a petition filed with the court, a certified copy
42 of the order providing for the emancipation shall be provided as documentary proof;

43 (2) At least 15 days shall have passed since such emancipation shall have occurred by
44 operation of law or pursuant to a petition filed with the court;

45 (3) The older party to the marriage contract shall not be more than four years older than
46 the younger party to the marriage contract; and

47 (4) Each party to the marriage contract who is 17 years of age shall present a certificate
48 of completion of premarital education as provided under Code Section 19-3-30.1.

49 (c) No license provided for under Article 2 of this chapter shall be issued for the marriage
50 of any party who is under 17 years of age."

51 **SECTION 1-2.**

52 Said chapter is further amended by revising Code Section 19-3-30.1, relating to premarital
53 education, as follows:

54 "19-3-30.1.

55 (a) The premarital education provided for under this Code section shall include at least six
56 hours of instruction involving marital issues, which may include but not be limited to
57 conflict management, communication skills, financial responsibilities, child and parenting
58 responsibilities, and extended family roles. The premarital education shall be completed
59 within 12 months prior to the application for a marriage license and the couple shall
60 undergo the premarital education together, except as provided for in subsection (d) of this
61 Code section. The premarital education shall be performed by:

62 (1) A professional counselor, social worker, or marriage and family therapist who is
 63 licensed pursuant to Chapter 10A of Title 43;

64 (2) A psychiatrist who is licensed as a physician pursuant to Chapter 34 of Title 43;

65 (3) A psychologist who is licensed pursuant to Chapter 39 of Title 43; or

66 (4) An active member of the clergy when in the course of his or her service as clergy or
 67 his or her designee, including retired clergy, provided that a designee is trained and
 68 skilled in premarital education; provided, further, that any active or retired member of the
 69 clergy or his or her designee performing the premarital education for a party who is 17
 70 years of age shall also be a professional counselor, social worker, or marriage and family
 71 therapist who is licensed pursuant to Chapter 10A of Title 43.

72 (b) Each premarital education provider provided for in paragraphs (1) through (4) of
 73 subsection (a) of this Code section shall furnish each participant who completes the
 74 premarital education under his or her performance a certificate of completion.

75 (c) If both persons ~~In applying for a marriage license, a man and woman~~ are 18 years of
 76 age or older and ~~who~~ certify on the application for a marriage license that they have
 77 successfully completed a qualifying premarital education program, then such persons shall
 78 not be charged a fee for a marriage license. ~~The premarital education shall include at least~~
 79 ~~six hours of instruction involving marital issues, which may include but not be limited to~~
 80 ~~conflict management, communication skills, financial responsibilities, child and parenting~~
 81 ~~responsibilities, and extended family roles. The premarital education shall be completed~~
 82 ~~within 12 months prior to the application for a marriage license and the couple shall~~
 83 ~~undergo the premarital education together. The premarital education shall be performed~~
 84 ~~by:~~

85 ~~(1) A professional counselor, social worker, or marriage and family therapist who is~~
 86 ~~licensed pursuant to Chapter 10A of Title 43;~~

87 ~~(2) A psychiatrist who is licensed as a physician pursuant to Chapter 34 of Title 43;~~

88 ~~(3) A psychologist who is licensed pursuant to Chapter 39 of Title 43; or~~

89 ~~(4) An active member of the clergy when in the course of his or her service as clergy or~~
 90 ~~his or her designee, including retired clergy, provided that a designee is trained and~~
 91 ~~skilled in premarital education.~~

92 ~~(b) Each premarital education provider shall furnish each participant who completes the~~
 93 ~~premarital education required by this Code section a certificate of completion.~~

94 (d) If either person applying for a marriage license is 17 years of age:

95 (1) No fee shall be charged for the issuance of a marriage license;

96 (2) A certificate of completion of premarital education by any such person as provided
 97 in subsection (b) of this Code section shall be provided to the judge of the probate court.

98 The requirement of this paragraph shall not be waived regardless of whether the persons
 99 applying for a marriage license are willing to be charged a fee for the marriage license;
 100 (3) Each person shall undergo the premarital education separately from the other person;
 101 and
 102 (4) In addition to the topics provided for under subsection (a) of this Code section, the
 103 premarital education shall include instruction on the potential risks of marrying young,
 104 including, but not limited to, high divorce rates, increased rates of noncompletion of
 105 education, greater likelihood of poverty, medical and mental health problems, and
 106 information contained within the fact sheet provided for under Code Section 19-3-41.1,
 107 including, but not limited to, information on domestic violence and website and telephone
 108 resources for victims of domestic violence, dating violence, sexual assault, stalking, and
 109 human trafficking."

110 **SECTION 1-3.**

111 Said chapter is further amended by revising Code Section 19-3-36, relating to proof of age
 112 of applicants, as follows:

113 "19-3-36.

114 The judge of the probate court to whom the application for a marriage license is made shall
 115 satisfy himself or herself that the provisions set forth in Code Section 19-3-2 regarding age
 116 limitations are met. ~~If the judge does not know of his or her own knowledge the age of a~~
 117 ~~party for whom a marriage license is sought, the~~ The judge shall require the applicant all
 118 applicants to furnish the court with documentary evidence of proof of age in the form of
 119 a birth certificate, driver's license, baptismal certificate, certificate of birth registration,
 120 selective service card, court record, passport, immigration papers, alien papers, citizenship
 121 papers, armed forces discharge papers, armed forces identification card, or hospital
 122 admission card containing the full name and date of birth. ~~In the event an applicant does~~
 123 ~~not possess any of the above but appears to the judge to be at least 25 years of age, the~~
 124 ~~applicant, in lieu of furnishing the judge with one of the above, may give an affidavit to the~~
 125 ~~judge stating the applicant's age.~~ Applicants who have satisfactorily proved that they have
 126 reached the age of majority may be issued a marriage license immediately."

127 **SECTION 1-4.**

128 Said chapter is further amended by repealing Code Section 19-3-37, relating to parental
 129 consent to marriage of underage applicants, when necessary, and how obtained, in its entirety
 130 and designating such Code section as reserved.

131 **SECTION 1-5.**

132 Said chapter is further amended by adding a new Code section to read as follows:

133 "19-3-41.1.

134 (a) The Department of Public Health shall prepare a fact sheet for public availability and
 135 for distribution by premarital education providers. The Department of Public Health shall
 136 make such fact sheet available in electronic form, including, but not limited to, a version
 137 that can be legibly printed in a poster size of up to 24 by 36 inches.

138 (b) The fact sheet provided for in subsection (a) of this Code section shall:

139 (1) Include basic information about the legal rights and responsibilities of parties to a
 140 marriage as well as information about dating violence, sexual assault, stalking, domestic
 141 violence, and human trafficking, including, but not limited to, the warning signs and
 142 behaviors of an abusive partner and the dynamics of domestic violence and other forms
 143 of coercive control. Such fact sheet shall also include basic information about the rights
 144 of victims of such violence and the resources available to them, including, but not limited
 145 to, website and telephone resources, legal assistance, confidential shelters, and civil
 146 protective orders; and

147 (2) Be developed in partnership with the Georgia Commission on Family Violence and
 148 any other agencies in the discretion of the Department of Public Health that serve
 149 survivors of dating violence, sexual assault, and human trafficking.

150 (c) The Department of Public Health shall promulgate rules and regulations to implement
 151 this Code section."

152 **SECTION 1-6.**153 Said chapter is further amended by revising Code Section 19-3-43, relating to marriage in
154 another state and effect in this state, as follows:155 "19-3-43.

156 (a) All marriages solemnized in another state by parties intending at the time to reside in
 157 this state shall have the same legal consequences and effect as if solemnized in this state.
 158 Parties residing in this state may not evade any of the laws of this state as to marriage,
 159 including, but not limited to, the age limitations provided for in Code Section 19-3-2, by
 160 going into another state for the solemnization of the marriage ceremony.

161 (b) Notwithstanding subsection (a) of this Code section, the age limitations provided for
 162 in Code Section 19-3-2 shall not apply to a lawful marriage solemnized in another state or
 163 country prior to either party residing in this state."

164 **SECTION 1-7.**

165 Chapter 9 of Title 19 of the Official Code of Georgia Annotated, relating to child custody
 166 proceedings, is amended by revising paragraph (6) of Code Section 19-9-121, relating to
 167 definitions, as follows:

168 ~~"(6) 'Parent' shall have the same meaning as provided in Code Section 19-3-37~~ means:

169 (A) Both parents if the parents are living together;

170 (B) The individual who has sole custody of a child if the parents are divorced,
 171 separated, or widowed; or

172 (C) Either parent if the parents are living together but one parent is unavailable because
 173 of illness or infirmity or because he or she is not within the boundaries of this state or
 174 because physical presence is impossible."

175 **PART II**

176 **SECTION 2-1.**

177 Article 10 of Chapter 11 of Title 15 of the Official Code of Georgia Annotated, relating to
 178 emancipation, is amended by revising Code Section 15-11-721, relating to petition
 179 requirements, as follows:

180 "15-11-721.

181 (a) A child seeking emancipation shall file a petition for emancipation in the juvenile court
 182 in the county where such child resides. The petition shall be signed and verified by the
 183 petitioner; and shall include:

184 (1) The petitioner's full name and birth date and the county and state where the petitioner
 185 was born;

186 (2) A certified copy of the petitioner's birth certificate;

187 (3) The name and last known address of the petitioner's parent, guardian, or legal
 188 custodian and, if no parent, guardian, or legal custodian can be found, the name and
 189 address of the petitioner's nearest living relative residing within this state;

190 (4) The petitioner's present address and length of residency at that address;

191 (5) A declaration by the petitioner demonstrating the ability to manage his or her
 192 financial affairs together with any information necessary to support the declaration;

193 (6) A declaration by the petitioner demonstrating the ability to manage his or her
 194 personal and social affairs together with any information necessary to support the
 195 declaration; and

196 (7) The names of individuals who have personal knowledge of the petitioner's
 197 circumstances and believe that under those circumstances emancipation is in the best
 198 interests of the petitioner. Such individuals may include any of the following:

- 199 (A) A licensed physician, physician assistant, or osteopath;
 200 (B) A registered professional nurse or licensed practical nurse;
 201 (C) A licensed psychologist;
 202 (D) A licensed professional counselor, social worker, or marriage and family therapist;
 203 (E) A school guidance counselor, school social worker, or school psychologist;
 204 (F) A school administrator, school principal, or school teacher;
 205 (G) A member of the clergy;
 206 (H) A law enforcement officer; or
 207 (I) An attorney.

208 (b) If the petition provided for under subsection (a) of this Code section is based on the
 209 petitioner's desire to enter into a valid marriage, the petitioner shall:

- 210 (1) Be at least 17 years of age;
 211 (2) In addition to the requirements provided for under subsection (a) of this Code section,
 212 include in such petition the name, age, date of birth, and address of residence of the
 213 intended spouse;
 214 (3) Include a statement of the reasons why the petitioner desires to marry, how the
 215 parties came to know each other, and how long they have known each other; and
 216 (4) Attach copies of any criminal records of either party to be married and of any family
 217 violence or stalking protective order issued to protect or restrain either party to be
 218 married."

219 **SECTION 2-2.**

220 Said article is further amended by revising Code Section 15-11-723, relating to appointment
 221 of attorney and guardian ad litem and affidavits of adults supporting emancipation, as
 222 follows:

223 "15-11-723.

224 (a) After a petition for emancipation is filed, the court shall appoint an attorney for the
 225 petitioner and may:

- 226 (1) Appoint a guardian ad litem to investigate the allegations of the petition and to file
 227 a report with the court, including a recommendation as to whether it is in the best
 228 interests of the petitioner that the petition for emancipation be granted; and
 229 (2) ~~Appoint an attorney for the petitioner; and~~
 230 ~~(3)~~ Appoint an attorney for the petitioner's parent, guardian, or legal custodian if he or
 231 she is an indigent person and if he or she opposes the petition.

232 (b) After a petition for emancipation is filed, the court shall seek an affidavit from each
 233 person identified in the petition pursuant to paragraph (7) of subsection (a) of Code Section
 234 15-11-721 that describes why that person believes the petitioner should be emancipated."

235 **SECTION 2-3.**

236 Said article is further amended by revising Code Section 15-11-725, relating to emancipation
 237 hearing and findings, as follows:

238 "15-11-725.

239 (a)(1) Except as provided for in paragraph (2) of this subsection, the ~~The~~ court shall issue
 240 an emancipation order if, after a hearing, it determines that emancipation is in the best
 241 interests of the child and such child has established:

242 ~~(1)(A)~~ (A) That his or her parent, guardian, or legal custodian does not object to the
 243 petition; or, if a parent, guardian, or legal custodian objects to the petition, that the best
 244 interests of the child are served by allowing the emancipation to occur by court order;

245 ~~(2)(B)~~ (B) That he or she is a resident of this state;

246 ~~(3)(C)~~ (C) That he or she has demonstrated the ability to manage his or her financial
 247 affairs, including proof of employment or other means of support. 'Other means of
 248 support' shall not include general assistance or aid received from means-tested public
 249 assistance programs such as Temporary Assistance for Needy Families as provided in
 250 Article 9 of Chapter 4 of Title 49 or similar programs under Title IV-A of the federal
 251 Social Security Act;

252 ~~(4)(D)~~ (D) That he or she has the ability to manage his or her personal and social affairs,
 253 including, but not limited to, proof of housing; and

254 ~~(5)(E)~~ (E) That he or she understands his or her rights and responsibilities under this article
 255 as an emancipated child.

256 (2) If the court finds that the petition for emancipation is based upon the petitioner's
 257 desire to enter into a valid marriage, the court shall not issue an emancipation order if the
 258 court further finds that:

259 (A) The petitioner is being compelled to marry against the petitioner's will by force,
 260 fraud, or coercion;

261 (B) The petitioner is younger than 17 years of age, or the age difference between the
 262 parties is more than four years;

263 (C) The intended spouse was or is in a position of authority or special trust as defined
 264 in Code Section 16-6-5.1 in relation to the petitioner;

265 (D) The intended spouse has been convicted of or entered into a diversion program for
 266 a crime against a person under Chapter 5 of Title 16 that involves an act of violence or
 267 includes a child victim or is for a crime defined as a sexual offense under Chapter 6 of
 268 Title 16;

269 (E) There is a preponderance of evidence that the petitioner was the victim and the
 270 intended spouse was the perpetrator of statutory rape as defined in Code Section 16-6-3,
 271 including, but not limited to:

- 272 (i) A petition for legitimation of a child filed under Code Section 19-7-22;
 273 (ii) An administrative determination of paternity under Code Section 19-7-40;
 274 (iii) Evidence or acknowledgment of paternity as defined by Code Section 19-7-46.1;
 275 or
 276 (iv) A court order establishing paternity under Code Section 19-7-49;
 277 (F) The intended spouse has previously been enjoined by a family violence or stalking
 278 protective order, regardless of whether or not the person to be protected by the order
 279 was the petitioner; and
 280 (G) The intended marriage is otherwise not in the best interests of the petitioner.
 281 Neither a past or current pregnancy of the petitioner or the intended spouse nor the
 282 wishes of the parents or legal guardians of the petitioner shall be sufficient evidence to
 283 establish that the best interests of the minor would be served by entering the order of
 284 emancipation.
- 285 (b) If the court issues an emancipation order, the court shall retain a copy of the order until
 286 the emancipated child becomes 25 years of age.
- 287 (c) An emancipation obtained by fraud is voidable. Voiding an emancipation order shall
 288 not affect an obligation, responsibility, right, or interest that arose during the period of time
 289 the order was in effect.
- 290 (d) A child or his or her parent, guardian, or legal custodian may appeal the court's grant
 291 or denial of an emancipation petition."

292

PART III

293

SECTION 3-1.

294 All laws and parts of laws in conflict with this Act are repealed.