

CHAPTER 36

(SB 48)

AN ACT relating to child marriage.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 402.020 is amended to read as follows:

(1) Marriage is prohibited and void:

- (a) With a person who has been adjudged mentally disabled by a court of competent jurisdiction;
- (b) Where there is a husband or wife living, from whom the person marrying has not been divorced;
- (c) When not solemnized or contracted in the presence of an authorized person or society;
- (d) Between members of the same sex;
- (e) Between more than two (2) persons; and
- (f) ~~1. —~~ Except as provided in *Section 4 of this Act* ~~[subparagraph 3. of this paragraph, when at the time of the marriage], with a [the] person who at the time of marriage is under eighteen (18) [sixteen (16)] years of age[;]~~
~~2. —~~ Except as provided in ~~subparagraph 3. of this paragraph, when at the time of marriage, the person is under eighteen (18) but over sixteen (16) years of age, if the marriage is without the consent of:~~
 - a. — The father or the mother of the person under eighteen (18) but over sixteen (16), if the parents are married, the parents are not legally separated, no legal guardian has been appointed for the person under eighteen (18) but over sixteen (16), and no court order has been issued granting custody of the person under eighteen (18) but over sixteen (16) to a party other than the father or mother;
 - b. — Both the father and the mother, if both be living and the parents are divorced or legally separated, and a court order of joint custody to the parents of the person under eighteen (18) but over sixteen (16) has been issued and is in effect;
 - c. — The surviving parent, if the parents were divorced or legally separated, and a court order of joint custody to the parents of the person under eighteen (18) but over sixteen (16) was issued prior to the death of either the father or mother, which order remains in effect;
 - d. — The custodial parent, as established by a court order which has not been superseded, where the parents are divorced or legally separated and joint custody of the person under eighteen (18) but over sixteen (16) has not been ordered; or
 - e. — Another person having lawful custodial charge of the person under eighteen (18) but over sixteen (16), but~~3. — In case of pregnancy the male and female, or either of them, specified in subparagraph 1. or 2. of this paragraph, may apply to a District Judge for permission to marry, which application may be granted, in the form of a written court order, in the discretion of the judge. There shall be a fee of five dollars (\$5) for hearing each such application}.~~

(2) *Subsection (1)(f) of this section shall not apply to a lawful marriage entered into in the Commonwealth of Kentucky prior to the effective date of this Act or to a lawful marriage in another state or country prior to the parties' residence in the Commonwealth of Kentucky* ~~[For purposes of this section "parent," "father," or "mother" means the natural parent, father, or mother of a child under eighteen (18) unless an adoption takes place pursuant to legal process, in which case the adoptive parent, father, or mother shall be considered the parent, father, or mother to the exclusion of the natural parent, father, or mother, as applicable].~~

➔Section 2. KRS 402.030 is amended to read as follows:

- (1) Courts having general jurisdiction may declare void any marriage obtained by force or fraud, *or, provided that the petition is brought by a party who was under the age of majority as defined by KRS 2.015 at the time of marriage, a marriage obtained by duress.*
- (2) At the instance of any next friend, courts having general jurisdiction may declare any marriage void where the person was under eighteen (18) ~~but over sixteen (16)~~ years of age at the time of the marriage, and the marriage was without the consent required by *Section 4 of this Act* ~~[KRS 402.020(1)(f) and has not been ratified by cohabitation after that age].~~

~~[(3) At the instance of any next friend, courts having general jurisdiction may declare void any marriage where:~~

- ~~(a) The person was under sixteen (16) years of age at the time of the marriage;~~
- ~~(b) The marriage was not conducted with the permission of a District Judge, as required by KRS 402.020(1)(f)3., in the form of a written court order; and~~
- ~~(c) The marriage has not been ratified by cohabitation after the person reached eighteen (18) years of age.]~~

➔ Section 3. KRS 402.080 is amended to read as follows:

No marriage shall be solemnized without a license therefor. The license shall be issued by the clerk of the county in which the female resides at the time, unless the female is eighteen (18) years of age or over or a widow, and the license is issued on her application in person ~~or by writing signed by her~~, in which case it may be issued by any county clerk.

➔ Section 4. KRS 402.210 is amended to read as follows:

- (1) *Both parties to a marriage shall:* ~~[If either of the parties is under eighteen (18) but over sixteen (16) years of age and not before married, no license shall issue without the consent required by KRS 402.020(1)(f), personally given or certified in writing to the clerk over the signature of the person consenting in accordance with KRS 402.020(1)(f), attested by two (2) subscribing witnesses and proved by the oath of one (1) of the witnesses, administered by the clerk. If the parties are personally unknown to the clerk, a license shall not issue until bond, with good surety, in the penalty of one hundred dollars (\$100) is given to the Commonwealth, with condition that there is no lawful cause to obstruct the marriage]~~

(a) *Be present for a marriage license to be issued; and*

(b) *Present to the county clerk documentary proof of age in the form of:*

1. *A copy of a birth record;*
2. *A certification of birth issued by the state department of health, a local registrar of vital statistics, or other public office charged with similar duties by the laws of another state, territory, or country;*
3. *A baptismal record showing the individual's date of birth;*
4. *A passport;*
5. *An automobile driver's license;*
6. *Any government or school issued identification card showing the individual's date of birth;*
7. *An immigration record showing the individual's date of birth;*
8. *A naturalization record showing the individual's date of birth; or*
9. *A court record or any other document or record issued by a government entity showing the individual's date of birth.*

- (2) If either of the parties is under *seventeen (17)* ~~[sixteen (16)]~~ years of age, no license shall *be issued* ~~[issue without the permission of a District Judge, as required by KRS 402.020(1)(f)3., in the form of a certified copy of a written court order].~~

- (3) *If either of the parties is seventeen (17) years of age, a marriage license shall not be issued unless:*

(a) *The party who is seventeen (17) years of age presents to the clerk a certified copy of a court order by a family court or District Court judge that grants the party permission to marry and removes the party's disability of minority, as provided in Section 7 of this Act; and*

(b) *At least fifteen (15) days have elapsed since the court order was granted.*

➔Section 5. KRS 402.250 is amended to read as follows:

Where doubt is felt as to the validity of a marriage, either party may, by petition in Circuit Court, demand its avoidance or affirmance; but where one (1) of the parties was ~~of [within]~~ the age of *majority, as defined by KRS 2.015[consent]* at the time of marriage, the party who is of proper age may not bring such a proceeding for that cause against the party under age.

➔Section 6. The following KRS section is repealed:

402.260 Receivership for person under eighteen who marries without judicial consent.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 402 IS CREATED TO READ AS FOLLOWS:

- (1) *A minor who is seventeen (17) years of age may petition the family court in the county in which the minor resides, or the District Court in that county if a family court division has not been established in that county, for an order granting permission to marry. The petition shall contain the following:*
- (a) *The petitioner's name, gender, age, date of birth, address, and how long the petitioner has resided at that address, as well as prior addresses and dates of residence for the six (6) months preceding the petition;*
 - (b) *The intended spouse's name, gender, age, date of birth, address, and how long the intended spouse has resided at that address, as well as prior addresses and dates of residence for the six (6) months preceding the petition;*
 - (c) *An affidavit attesting to the consent to marry signed by:*
 - 1. *The father or the mother of the petitioner, if the parents are married, the parents are not legally separated, no legal guardian has been appointed for petitioner, and no court order has been issued granting custody of petitioner to a party other than the father or mother;*
 - 2. *Both the father and the mother, if both are living and the parents are divorced or legally separated, and a court order of joint custody to the parents of the petitioner has been issued and is in effect;*
 - 3. *The surviving parent, if the parents were divorced or legally separated, and a court order of joint custody to the parents of the petitioner was issued prior to the death of either the father or mother, which order remains in effect;*
 - 4. *The custodial parent, as established by a court order which has not been superseded, where the parents are divorced or legally separated and joint custody of the petitioner has not been ordered; or*
 - 5. *Another person having lawful custodial charge of the petitioner;*
 - (d) *A statement of the reasons why the petitioner desires to marry, how the parties came to know each other, and how long they have known each other;*
 - (e) *Evidence of the petitioner's maturity and capacity for self-sufficiency independent of the petitioner's parents and the intended spouse, including but not limited to:*
 - 1. *Proof that the petitioner has maintained stable housing or employment for at least three (3) consecutive months prior to the petition; and*
 - 2. *Proof that the petitioner has completed high school, obtained a High School Equivalency Diploma, or completed a vocational training or certificate program;*
 - (e) *Copies of any criminal records of either party to be married; and*
 - (f) *Copies of any domestic violence order or interpersonal protective order involving either party to be married.*
- (2) *Upon the filing of the petition for permission to marry, the court shall set a date for an evidentiary hearing on the petition that is no sooner than thirty (30) days but not later than sixty (60) days from the date of the filing.*
- (3) *The petitioner may be represented by counsel in court proceeding pertaining to the petition to marry.*

- (4) *The court shall take reasonable measures to ensure that any representations made by a minor party are free of coercion, undue influence, or duress. Reasonable measures shall include, but are not limited to, in camera interviews.*
- (5) *Following an evidentiary hearing, the court shall grant the minor's petition for permission to marry unless:*
 - (a) *The age difference between the parties is more than four (4) years;*
 - (b) *The intended spouse was or is a person in a position of authority or a position of special trust as defined in KRS 532.045 in relation to the minor;*
 - (c) *The intended spouse has previously been enjoined by a domestic violence order or interpersonal protective order, regardless of whether or not the person to be protected by the order was the minor petitioner;*
 - (d) *The intended spouse has been convicted of or entered into a diversion program for a criminal offense against a victim who is a minor as defined in KRS 17.500 or for a violent or sexual criminal offense under KRS Chapter 506, 507, 507A, 508, 509, 510, 529, 530, or 531;*
 - (e) *The court finds by a preponderance of the evidence that the minor was a victim and that the intended spouse was the perpetrator of a sexual offense against the minor under KRS 510.040, 510.050, 510.060, 510.110, 510.120, or 510.130;*
 - (f) *The court finds by a preponderance of the evidence that abuse, coercion, undue influence, or duress is present; or*
 - (g) *The court finds that it would otherwise not be in the minor party's best interest to grant the petition to marry.*
- (6) *A past or current pregnancy of the minor or the intended spouse shall not be sufficient evidence to establish that the best interests of the minor would be served by granting the petition for marriage.*
- (7) *The granting of a petition for permission to marry filed under subsection (1) of this section shall remove the disabilities of minority. A minor emancipated by the petition shall be considered to have all the rights and responsibilities of an adult, except for specific constitutional or statutory age requirements, including but not limited to voting, the use of alcoholic beverages, and other health and safety regulations relevant to him or her because of his or her age.*
- (8) *The minor shall be advised by the court of the rights and responsibilities of parties to a marriage and of emancipated minors. The minor shall be provided with a fact sheet on these rights and responsibilities to be developed by the Office of the Attorney General and the Cabinet for Health and Family Services. The fact sheet shall include referral information for legal aid agencies in the Commonwealth and national hotlines for domestic violence and sexual assault.*
- (9) *The court may make any other orders that the court deems appropriate for the minor's protection and may impose any other condition on the grant of the petition that the court determines is reasonable under the circumstances for the minor's protection.*
- (10) *The court may set a fee not to exceed twenty dollars (\$20) to file a petition for permission to marry under this section.*

Signed by Governor March 29, 2018.