



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Dennis M. Papp

S.B. 198

132nd General Assembly
(As Introduced)

Sens. Yuko, Tavares, Thomas, Sykes, O'Brien, Schiavoni

BILL SUMMARY

- Modifies the statutory specification of the age at which persons may marry, to generally provide that only persons of the age of 18 years, not nearer of kin than second cousins, and not having a husband or wife living, may marry.
 - Provides an exception for minors to marry if the minors obtain consent of a specified nature.
 - Repeals existing statutory language, no longer valid under a U.S. Supreme Court decision, that bars same sex marriage and the recognition of same sex marriages.
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CONTENT AND OPERATION

Age at which a person can marry

In general

The bill modifies the existing statutory specification of the age at which a person may marry. Under the bill, subject to the exception described below in "**Marriage of a minor**," only persons of the age of 18 years, not nearer of kin than second cousins, and not having a husband or wife living, may be joined in marriage.¹

Currently the statute specifies that male persons of the age of 18 years, and female persons of the age of 16 years, not nearer of kin than second cousins and not having a husband or wife living, may be joined in marriage. Currently, a minor who

¹ R.C. 3101.01(A).

wishes to marry generally must obtain consent of a specified nature, described below in "**Marriage of a minor.**"²

Marriage of a minor

Operation of the bill

The bill provides an exception to its general "18 years of age" requirement for marriage that is described above. Under the bill, persons of age 16 or 17 may be joined in marriage if the juvenile court has filed a consent to the marriage, as described below in "**Probate court issuance of a license,**" and the person also has obtained consent from a specified person or entity, as described in the next four paragraphs.³

To satisfy the bill's requirement mentioned in the preceding paragraph that consent be obtained, the person of age 16 or 17 who is seeking consent to be joined in marriage must obtain the consent of the person's parents, surviving parent, parent who a court of competent jurisdiction has designated the residential parent and legal custodian of the person, guardian, or any one of the following who has been awarded permanent custody of the person by a court exercising juvenile jurisdiction: (1) an adult person, (2) the Department of Job and Family Services or a Department-certified child welfare organization, or (3) a public children services agency.⁴

A person of age 16 or 17 is not required, under the provision described in the preceding paragraph, to obtain the consent of a parent who: (1) resides in a foreign country, (2) has neglected or abandoned the person for at least one year immediately preceding the person's application for a marriage license, (3) has been adjudged incompetent, (4) is a state mental or correctional institution inmate, (5) has been permanently deprived of parental rights and responsibilities for the care of the person, the right to have the person live with the parent, and the right to be the legal custodian of the person by a court exercising juvenile jurisdiction, or (6) has been deprived of parental rights and responsibilities for the care of the person, the right to have the person live with the parent, and the right to be the legal custodian of the person by the appointment of a guardian of the person by any court of competent jurisdiction.⁵

² R.C. 3101.01(A) and (B).

³ R.C. 3101.02.

⁴ R.C. 3101.021.

⁵ R.C. 3101.022.



Under the bill, regarding the giving of the consent described in the third preceding paragraph, similar to existing law:⁶

(1) The consent must be personally given before the probate judge or a deputy clerk of the probate court, or certified under the hand of the person consenting, by two witnesses, one of whom must appear before the judge and make oath that the witness saw the person whose name is annexed to the certificate subscribe it, or heard the person consenting acknowledge it;

(2) If the parent or guardian of a person applying for a marriage license is a nonresident of, or is absent from, the county in which the application is made, the parent or guardian personally may appear before the official upon whose authority marriage licenses are issued in the county in which the parent or guardian then is domiciled, and give written consent to that marriage. The consent must be attested to by two witnesses, certified to by the official, and forwarded to the probate judge of the county in which the application is made.

Currently

Currently, to be married, a minor must first obtain the consent of the minor's parents, surviving parent, parent who is the minor's court-designated residential parent and legal custodian, guardian, or any of the persons or entities described above in (1) to (3) of the second paragraph under "**Operation of the bill.**" Currently, for purposes of this provision, a minor is not required to obtain the consent of a parent who meets any of the criteria described above in (1) to (6) of the third paragraph under "**Operation of the bill.**"⁷ The giving of consent currently is governed by provisions similar to those governing the giving of consent under the bill, as described in the fourth paragraph under "**Operation of the bill.**"⁸

Underage marriage with consent of juvenile court

Probate court issuance of a license

Under the bill, when a juvenile court files a consent to marriage pursuant to the Juvenile Rules (see "**Juvenile court consent,**" below), the probate court may thereupon issue a marriage license, notwithstanding either or both the contracting parties for the marriage are 16 or 17. The probate court may not issue the license until the parties have applied for the license, appeared before a specified probate court, made specified

⁶ R.C. 3101.023 and 3101.024.

⁷ R.C. 3101.01(A) and (B).

⁸ R.C. 3101.02 and 3101.03, renumbered by the bill as R.C. 3101.023 and 3101.024.



statements upon oath, provided other specified information, and if either applicant is 16 or 17, stated that they have received marriage counseling satisfactory to the court.⁹

Existing law is similar to the provisions of the bill described in the preceding paragraph, except that existing law refers to the contracting parties to the marriage being "under the minimum age prescribed" for marriage under existing law and also includes an additional restriction on the probate court's issuance of a marriage license (repealed by the bill), that specifies that, in addition to the other restrictions, the court may not issue the license "until such child has been born, or it is found beyond doubt by the juvenile court that the minor female is pregnant and intends to have the child."¹⁰

Juvenile court consent

Juvenile Rule 42, adopted by the Ohio Supreme Court under the mandate of Ohio Constitution, Article IV, Section 5(B) and governing Ohio all courts, pertains to court consent for an underage marriage.

The Rule provides that when a minor desires to marry and has no parent, guardian, or custodian whose consent to the marriage is required by law, the minor must file an application under oath in the county where the female resides requesting that the juvenile court judge give consent and approbation in the probate court for such marriage. The Rule specifies the required content of the application, which includes the reason why consent of a parent is not required and, if the minor alleges that parental consent is unnecessary because the parent has neglected or abandoned the child for at least one year immediately preceding the application, the name and address, if known, of the parent. If neglect or abandonment is alleged in the application and the parent's address is known, the court must cause notice of the date and time of hearing to be served upon the parent.¹¹

Separately, the Rule provides that, when a female is pregnant or delivered of a child born out of wedlock and the parents of the child seek to marry even though one or both of them is under the minimum age prescribed by law for persons who may marry, the persons must file an application under oath in the county in which the female resides requesting that the juvenile court judge give consent in the probate court to the marriage. The Rule specifies the required content of the application, which includes an indication of whether the female is pregnant or has already delivered her child. And if pregnancy is asserted, a certificate from a physician verifying pregnancy must be

⁹ R.C. 3101.04 and 3101.05

¹⁰ R.C. 3101.04 and 3101.05.

¹¹ Juvenile Rule 42(A), (B), and (F), not in the bill.



attached to the application, if an "illegitimate child" has been delivered, the birth certificate of the child must be attached to the application, and if consent to the marriage by a parent is required by law, the consent of each such parent whose consent is required must be indorsed on the application. Upon receipt of an application under this provision, the court has to require an investigation of the circumstances and conduct a hearing.¹²

If the court finds that the allegations in the application are true and that the granting of the application is in the best interest of the applicants, the court must grant the consent and make the applicant referred to in the second preceding paragraph a ward of the court. A copy of the court's judgment entry must be transmitted to the probate court.¹³

Repeal of statutory same sex marriage provisions

The bill repeals existing statutory language that purports to limit marriages to a union of one man and one woman, to bar same sex marriages in Ohio, and to deny recognition of same sex marriages entered into in another jurisdiction.¹⁴ The U.S. Supreme Court, in *Obergefell v. Hodges*, 576 U.S. ___, 135 S.Ct. 2584 (2015), held that the Fourteenth Amendment to the U.S. Constitution requires a state to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state. As a result, the existing statutory language no longer is valid.

The bill does not substantively change existing provisions that specify that the recognition or extension by the state of the specific statutory benefits of a legal marriage to nonmarital relationships between persons of the same sex or different sexes is against Ohio's strong public policy. Any public act, record, or judicial proceeding of the state that extends the specific statutory benefits of legal marriage to nonmarital relationships between persons of the same sex or different sexes is *void ab initio*. Nothing in this provision may be construed to either: (1) prohibit the extension of specific benefits otherwise enjoyed by all persons, married or unmarried, to nonmarital relationships between persons of the same sex or different sexes, including the extension of benefits conferred by any statute that is not expressly limited to married persons, which includes, but is not limited to, benefits available under R.C. Chapter 4117., or (2) affect the validity of private agreements that are otherwise valid under Ohio law. Any public act, record, or judicial proceeding of any other state, country, or other jurisdiction

¹² Juvenile Rule 42(C) to (E), not in the bill.

¹³ Juvenile Rule 42(G) and (H), not in the bill.

¹⁴ Repeal of language in R.C. 3101.01(A) and (C).



outside Ohio that extends the specific benefits of legal marriage to nonmarital relationships between persons of the same sex or different sexes must be considered and treated in all respects as having no legal force or effect in Ohio and may not be recognized by Ohio.¹⁵

HISTORY

ACTION	DATE
Introduced	09-20-17

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¹⁵ R.C. 3101.01(B) and (C) under the bill.

