

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 152*

Short Title: Amend Marriage Statutes.

(Public)

Sponsors: Senators Lucas; Albertson, Ballance, Carter, Dannelly, Garwood, Gulley, Horton, Kinnaird, Lee, Martin of Guilford, Metcalf, Robinson, Shaw of Cumberland, Warren, and Weinstein.

Referred to: Judiciary I.

February 19, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE MARRIAGE STATUTES TO BROADEN THE LIST OF PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGES AND TO REQUIRE THAT THOSE PERSONS BE REGISTERED WITH THE SECRETARY OF STATE; TO REQUIRE JUDICIAL APPROVAL BEFORE A TWELVE- OR THIRTEEN-YEAR-OLD APPLICANT MAY BE MARRIED; TO LIMIT THE REGISTER OF DEEDS' RESPONSIBILITY IN ISSUING MARRIAGE LICENSES TO VERIFYING OBJECTIVE REQUIREMENTS; TO PROVIDE A PROCEDURE BY WHICH A PERSON MAY APPLY FOR A MARRIAGE LICENSE WITHOUT APPEARING IN PERSON; TO EXPAND THE GEOGRAPHICAL SCOPE OF A MARRIAGE LICENSE; TO MAKE INCLUSION OF RACE ON THE LICENSE OPTIONAL; AND TO ALLOW FOR CORRECTIONS OF ERRORS IN THE APPLICATION OR LICENSE, AS RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

The General Assembly of North Carolina enacts:

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

"§ 51-1. Requisites of marriage; solemnization.

The consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other, and in the presence of an ordained minister of any religious denomination, minister authorized by his a church, or of a magistrate, and the consequent declaration by such minister or officer that such persons are husband and wife, or in accordance with any mode of solemnization recognized by any religious denomination, Indian Nation or Tribe, shall be a valid and sufficient ~~marriage~~: marriage. ~~Provided, that the rite of marriage among the Society of Friends, according to a form and custom peculiar to themselves, shall not be interfered with by the provisions of this~~

1 Chapter: ~~Provided further, that marriages solemnized and witnessed by a local spiritual~~
2 ~~assembly of the Baha'is, according to the usage of their religious community, shall be~~
3 ~~valid; provided further, marriages~~ Marriages solemnized before March 9, 1909, by
4 ministers of the gospel licensed, but not ordained, are validated from their
5 consummation."

6 **SECTION 2.** G.S. 51-2 reads as rewritten:

7 "**§ 51-2. Capacity to marry.**

8 (a) All unmarried persons of 18 years, or older, may lawfully marry, except as
9 hereinafter forbidden. In addition, persons over 16 years of age and under 18 years of
10 age may marry, and the register of deeds may issue a license for such marriage, only
11 after there shall have been filed with the register of deeds a written consent to such
12 marriage, said consent having been signed by the appropriate person as follows:

13 (1) ~~By the father if the male or female child applying to marry resides with~~
14 ~~his or her father, but not with his or her mother;~~

15 (2) ~~By the mother if the male or female child applying to marry resides~~
16 ~~with his or her mother, but not with his or her father;~~

17 ~~(3)-(1)By either the mother or father, without preference, if the male or~~
18 ~~female child applying to marry resides with his or her mother and~~
19 ~~father; father of the male or female child applying to marry; or~~

20 ~~(4)-(2)By a person, agency, or institution having legal eustody, standing in~~
21 ~~loeo parentis, custody or serving as a guardian of such male or female~~
22 ~~child applying to marry.~~

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

27 (b) When an unmarried female who is 14 or 15 years of age is pregnant or has
28 given birth to a child and the unmarried female and the putative father of the child,
29 either born or unborn, agree to marry, or an unmarried male who is 14 or 15 years of
30 age is the putative father of a child, either born or unborn, and the unmarried male and
31 the mother of the child agree to marry, and consent in writing to the marriage, as set out
32 in subsection (a), subdivisions (1) and (2) above, is given on the part of the underage
33 male or female applying to marry, the register of deeds is authorized to issue to said
34 parties a license to marry, and it shall be lawful for them to marry in accordance with
35 the provisions of this Chapter.

36 (c) When an unmarried female who is ~~more than 12 years old, but less than 18~~ 14
37 years old, is pregnant or has given birth to a child and ~~such the~~ unmarried female and
38 the putative father of the child, either born or unborn, ~~shall~~ agree to marry, or an
39 unmarried male who is less than 14 years old, is the putative father of a child, either
40 born or unborn, and the unmarried male and the mother of the child agree to marry, ~~and~~
41 consent in writing to such marriage, as set out in subsection (a), subdivisions (1), (2),
42 (3) or (4) above, or by the director of social services of the county of residence of either
43 party, is given on the part of the female, the register of deeds is authorized to issue to
44 said parties a license to marry, and it shall be lawful for them to marry in accordance

1 with the provisions of this ~~Chapter.~~ Chapter, only if a district or family court finds that
2 the underage party is capable of assuming the responsibilities of marriage and the
3 marriage will serve his or her best interest. Pregnancy alone does not establish that the
4 best interest of the party will be served.

5 ~~(e)(d)~~ When a license to marry is procured by ~~or on behalf of~~ any person under 18
6 years of age by fraud or misrepresentation, a parent or ~~person standing in loco parentis~~
7 ~~to such person under 18 years of age shall be a proper party plaintiff in a person,~~
8 agency, or institution having legal custody or serving as a guardian of the underage
9 applicant is a proper party to bring an action to annul said ~~the~~ marriage."

10 **SECTION 3.** G.S. 51-6 reads as rewritten:

11 "**§ 51-6. Solemnization without license unlawful.**

12 No ~~minister or officer~~ minister, officer, or any other person authorized to solemnize
13 a marriage under the laws of this State, shall perform a ceremony of marriage between a
14 man and woman, or shall declare them to be husband and wife, until there is delivered
15 to ~~him~~ that person a license for the marriage of the said persons, signed by the register
16 of deeds of the county in which the marriage is intended to take place ~~license was issued~~
17 or by ~~his~~ a lawful deputy. There must be at least two witnesses to the marriage
18 ceremony.

19 Whenever a man and woman have been lawfully married in accordance with the
20 laws of the state in which the marriage ceremony took place, and said marriage was
21 performed by a ~~justice of the peace~~ magistrate or some other civil official duly
22 authorized to perform such ceremony, and the parties thereafter wish to confirm their
23 marriage vows before an ordained minister or minister authorized by ~~his~~ a church, or in
24 a ceremony recognized by any religious denomination, Indian Nation or Tribe, nothing
25 herein shall be deemed to prohibit such confirmation ceremony; provided, however, that
26 such confirmation ceremony shall not be deemed in law to be a marriage ceremony,
27 such confirmation ceremony shall in no way affect the validity or invalidity of the prior
28 marriage ceremony performed by a civil official, no license for such confirmation
29 ceremony shall be issued by a register of deeds, and no record of such confirmation
30 ceremony may be kept by a register of deeds."

31 **SECTION 4.** G.S. 51-7 reads as rewritten:

32 "**§ 51-7. Penalty for solemnizing without license.**

33 Every ~~minister or officer~~ minister, officer, or any other person authorized to
34 solemnize a marriage under the laws of this State, who marries any couple without a
35 license being first delivered to ~~him~~, that person, as required by law, or after the
36 expiration of such license, or who fails to return such license to the register of deeds
37 within 10 days after any marriage celebrated by virtue thereof, with the certificate
38 appended thereto duly filled up and signed, shall forfeit and pay two hundred dollars
39 (\$200.00) to any person who sues therefore, and ~~he~~ shall also be guilty of a Class 1
40 misdemeanor."

41 **SECTION 5.** G.S. 51-8 reads as rewritten:

42 "**§ 51-8. License issued by register of deeds.**

43 Every register of deeds shall, upon proper application, issue a license for the
44 marriage of any two persons if it appears that such persons who are able to answer the

1 questions regarding age, marital status, and intention to marry, and, based on the
2 answers, the register of deeds determines the persons are authorized to be married in
3 accordance with the laws of this State. In making a determination as to whether or not
4 the parties are authorized to be married under the laws of this State, the register of deeds
5 may require the applicants for the license to marry to present certified copies of birth
6 certificates or birth registration cards provided for in G.S. 130-73, or such other
7 evidence as the register of deeds deems necessary to such determination. The register of
8 deeds may administer an oath to any person presenting evidence relating to whether or
9 not parties applying for a marriage license are eligible to be married pursuant to the
10 laws of this State. Each applicant for a marriage license shall provide on the application
11 the applicant's social security number. If an applicant does not have a social security
12 number and is ineligible to obtain one, the applicant shall present a statement to that
13 effect, sworn to or affirmed before an officer authorized to administer oaths. Upon
14 presentation of a sworn or affirmed statement, the register of deeds shall issue the
15 license, provided all other requirements are met, and retain the statement with the
16 register's copy of the license. The register of deeds shall not issue a marriage license
17 unless all of the requirements of this section have been met."

18 SECTION 6. Chapter 51 of the General Statutes is amended by adding the
19 following new section:

20 "§ 51-8.2. Issuance of marriage license when applicant is unable to appear.

21 If an applicant for a marriage license is over 18 years of age and is unable to appear
22 in person at the register of deeds' office, the applicant may submit a sworn and notarized
23 affidavit in lieu of personal appearance.

24 The affidavit shall be in the following or some equivalent form:

25 _____, (Applicant) appearing before the
26 undersigned notary and being duly sworn, says that:

27 1. I, _____, [applicant's name] am
28 applying for a license in _____ County, NC to marry
29 _____ [name of other applicant] in North
30 Carolina within the next 60 days and I am authorized under G.S. 51-
31 8.2 to complete this Affidavit in Lieu of Personal Appearance for
32 Marriage License Application.

33 I attach: (1) documentation that I am over 18 years of age as required
34 in county of marriage; and (2) documentation of divorce as
35 required by county of marriage.

36 2. I submit the following information in applying for a marriage license:

37 Name: _____

38 _____
39 First Middle Last

40 Residence: _____

41 _____
42 State County City or Town

43 _____
44 _____
45 Street and Number Inside City Limits (Yes or No)

Birthplace: _____ Birth Date _____ Age: _____
County & State or Country

Father: _____
Name State of Birth Address (if living) or Deceased

Mother: _____
Name State of Birth Address (if living) or Deceased

Race (Optional): _____ Number of this marriage: _____
1st, 2nd, etc.

Last Marriage Ended by: _____ Date Marriage Ended: _____
Death, Divorce, Annulment

Specify Highest Grade Completed in School (Optional): _____

Social Security # _____ (If applicant does not have
Social Security number, attach affidavit of ineligibility)

I hereby make application to the Register of Deeds for a Marriage License and solemnly swear that all of the statements contained in the above application are true and I further make oath that there is no legal impediment to such marriage.

Signature of Applicant

Sworn to (or affirmed) and subscribed before me
this _____ day of _____, _____.

[Seal] _____
Notary Public

My commission expires: _____

[Notary's typed or printed name]"

SECTION 7. G.S. 51-15 reads as rewritten:

"§ 51-15. Obtaining license by false representation misdemeanor.

If any person shall ~~obtain~~ obtain, or aid and abet in obtaining, a marriage license by misrepresentation or false pretenses, ~~he~~ that person shall be guilty of a Class 31 misdemeanor. "

Section 8. G.S. 51-16 reads as rewritten:

"§ 51-16. Form of license.

License shall be in the following or some equivalent form:

To any ordained minister of any religious denomination, minister authorized by his-a church, ~~or to any magistrate for _____~~ County: magistrate, or any other person authorized to solemnize a marriage under the laws of this State: A.B. having applied to me for a license for the marriage of C.D. (the name of the man to be written in full) of (here state his residence), aged _____ years (race, as the case may be), the son of (here state the father and mother, if known; state whether they are living or dead, and their residence, if known; if any of these facts are not known, so state), and E.F. (write the name of the woman in full) of (here state her residence), aged _____ years (race, as the case may be), the daughter of (here state names and residences of the parents, if known, as is required above with respect to the man). (If

1 either of the parties is under 18 years of age, the license shall here contain the
 2 following:) And the written consent of G.H., father (or mother, etc., as the case may
 3 be) to the proposed marriage having been filed with me, and there being no legal
 4 impediment to such marriage known to me, you are hereby authorized, at any time
 5 within 60 days from the date hereof, to celebrate the proposed marriage at any place
 6 within the ~~said county, State.~~ You are required within 10 days after you shall have
 7 celebrated such marriage, to return this license to me at my office with your signature
 8 subscribed to the certificate under this license, and with the blanks therein filled
 9 according to the facts, under penalty of forfeiting two hundred dollars (\$200.00) to the
 10 use of any person who shall sue for the same.

11 Issued this _____ day of _____,
 12 _____ L.M.

13 Register of Deeds of _____ County

14 Every register of deeds ~~shall shall~~, at the request of an applicant, designate in ~~every a~~
 15 marriage license issued the race of the persons proposing to marry by inserting in the
 16 blank after the word "race" the words "white," "~~colored,~~ or "Indian," "black," "African
 17 American," "American _____ Indian," "Alaska _____ Native," "Asian
 18 Indian," "Chinese," "Filipino," "Japanese," "Korean," "Vietnamese," "Other Asian," "Native
 19 Hawaiian," "Guamarian," "Chamorro," "Samoan," "Other _____ Pacific
 20 Islander," "Mexican," "Mexican American," "Chicano," "Puerto Rican," "Cuban," "Other
 21 Spanish/Hispanic/Latino," or "other," as the case may be. The certificate shall be filled up
 22 and signed by the ~~minister or officer~~ minister, officer, or other authorized individual
 23 celebrating the marriage, and also be signed by two witnesses present at the marriage,
 24 who shall add to their names their place of residence, as follows:

25 I, N.O., an ordained or authorized minister or other authorized individual of (here
 26 state to what religious denomination, or magistrate, as the case may be), united in
 27 matrimony (here name the parties), the parties licensed above, on the _____ day of
 28 _____, _____, at the house of P.R., in (here name the town, if any, the
 29 township and county), according to law.

30 _____ N.O.

31 Witness present at the marriage:

32 S.T., of (here give residence)."

33 **SECTION 9.** G.S. 51-18.1 reads as rewritten:

34 "**§ 51-18.1. Correction of errors in ~~names in application or license; amendment of~~**
 35 **names in application or license.**

36 (a) When it shall appear to the register of deeds of any county in this State that
 37 ~~the names of either or both parties to a marriage~~ information is incorrectly stated on an
 38 application for a marriage license, or upon a marriage license issued thereunder, or upon
 39 a return or certificate of an officiating officer, the register of deeds is authorized to
 40 correct such record or records ~~to show the true name and names of the parties to the~~
 41 ~~marriage~~ upon being furnished with an affidavit signed by one or both of the applicants
 42 for the marriage license, accompanied by affidavits of at least two other persons who
 43 know the ~~true name or names of the person or persons seeking such correction.~~ correct
 44 information.

1 (b) When the name of a party to a marriage has been changed by court order as a
2 result of a legitimation action or other cause of action, and the party whose name is
3 changed ~~present~~presents a signed affidavit to the register of deeds indicating the name
4 change and requesting that the application for a marriage license, the marriage license,
5 and the marriage certificate of the officiating officer be amended by substituting the
6 changed name for the original name, the register of deeds may amend the records as
7 requested by the party, provided the other party named in the records consents to the
8 amendment."

9 **SECTION 10.** This act is effective when it becomes law.