

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

SESSION LAW 2001-62
HOUSE BILL 142

AN ACT TO AMEND THE MARRIAGE STATUTES TO BROADEN THE LIST OF PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGES; TO VALIDATE A MARRIAGE LICENSED AND SOLEMNIZED BY A FEDERALLY RECOGNIZED INDIAN TRIBE OR NATION; TO REQUIRE JUDICIAL AUTHORIZATION BEFORE A FOURTEEN- OR FIFTEEN-YEAR-OLD APPLICANT MAY BE MARRIED; TO PROHIBIT MARRIAGE BY ANYONE UNDER FOURTEEN YEARS OF AGE; 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.

A valid and sufficient marriage is created by the ~~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 either:~~

- (1) a. ~~in~~ In the presence of an ordained minister of any religious denomination, a 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, a magistrate;~~
and
- b. ~~and~~ With the consequent declaration by ~~such~~ the minister or ~~officer~~ magistrate that ~~such~~ the persons are husband and ~~wife,~~
wife; or
- (2) In accordance with any mode of solemnization recognized by any religious denomination, or federally or State recognized Indian Nation or Tribe.

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

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

"§ 51-2. Capacity to marry.

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

~~(a1) In addition, persons~~ Persons over 16 years of age and under 18 years of age may marry, and the register of deeds may issue a license for ~~such the~~ marriage, only after there shall have been filed with the register of deeds a written consent to ~~such the~~ marriage, said consent having been signed by the appropriate person as follows:

- ~~(1) By the father if the male or female child applying to marry resides with his or her father, but not with his or her mother;~~
- ~~(2) By the mother if the male or female child applying to marry resides with his or her mother, but not with his or her father;~~
- ~~(3)(1) By either the mother or father, without preference, if the male or female child applying to marry resides with his or her mother and father; a parent having full or joint legal custody of the underage party;~~
~~or~~
- ~~(4)(2) By a person, agency, or institution having legal eustody, standing in loco parentis, custody or serving as a guardian of such male or female child applying to marry. the underage party.~~

The written consent required by this subsection shall be either acknowledged before a notary public or signed in the presence of the register of deeds. 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. 51-2A.

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

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

(c) When a license to marry is procured by or on behalf of any person under 18 years of age by fraud or misrepresentation, a parent or person standing in loco parentis to such person under 18 years of age shall be a proper party plaintiff in 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. 51-2A(b) is a proper party to bring an action to annul said the marriage."

SECTION 3. Article 1 of Chapter 51 of the General Statutes is amended by adding a new section to read:

"§ 51-2A. 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 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. 51-2A(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.

(b) An underage party seeking an order granting judicial authorization to marry pursuant to this section shall file a civil action in the district court requesting judicial authorization to marry. The clerk shall collect court costs from the underage party in the amount set forth in G.S. 7A-305 for civil actions in district court. Upon the filing of the complaint, summons shall be issued in accordance with G.S. 1A-1, Rule 4, and the underage party shall be appointed a guardian ad litem in accordance with the provisions of G.S. 1A-1, Rule 17. The guardian ad litem appointed shall be an attorney and shall be governed by the provisions of subsection (d) of this section. The underage party shall serve a copy of the summons and complaint, in accordance with G.S. 1A-1, Rule 4, on the father of the underage party; the mother of the underage party; and any person, agency, or institution having legal custody or serving as a guardian of the underage party. The underage party also shall serve a copy of the complaint, either in accordance with G.S. 1A-1, Rule 4, or G.S. 1A-1, Rule 5, on the guardian ad litem appointed pursuant to this section. A party responding to the underage party's complaint shall serve his response within 30 days after service of the summons and complaint upon that person. The underage party may participate in the proceedings before the court on his or her own behalf. At the hearing conducted pursuant to this section, the court shall consider evidence, as provided in subsection (a) of this section, and shall make written findings of fact and conclusions of law.

(c) Any party to a proceeding under this section may be represented by counsel, but no party is entitled to appointed counsel, except as provided in this section.

(d) The guardian ad litem appointed pursuant to subsection (b) of this section shall represent the best interest of the underage party in all proceedings under this section and also has standing to institute an action under G.S. 51-2(c). The appointment shall terminate when the last judicial ruling rendering the authorization granted or denied is entered. Payment of the guardian ad litem shall be governed by G.S. 7A-451(f). The guardian ad litem shall make an investigation to determine the facts, the needs of the underage party, the available resources within the family and community to meet those needs, the impact of the marriage on the underage party, and the ability of the underage party to assume the responsibilities of marriage; facilitate, when appropriate, the settlement of disputed issues; offer evidence and examine witnesses at the hearing; and protect and promote the best interest of the underage party. In fulfilling the guardian ad litem's duties, the guardian ad litem shall assess and consider the emotional development, maturity, intellect, and understanding of the underage party. The guardian ad litem has the authority to obtain any information or reports, whether or not confidential, that the guardian ad litem deems relevant to the case. No privilege

other than attorney-client privilege may be invoked to prevent the guardian ad litem and the court from obtaining such information. The confidentiality of the information or reports shall be respected by the guardian ad litem, and no disclosure of any information or reports shall be made to anyone except by order of the court or unless otherwise provided by law.

(e) If the last judicial ruling in this proceeding denies the underage party judicial authorization to marry, the underage party shall not seek the authorization of any court again under this section until after one year from the date of the entry of the last judicial ruling rendering the authorization denied.

(f) Except as otherwise provided in this section, the rules of evidence in civil cases shall apply to proceedings under this section. All hearings pursuant to this section shall be recorded by stenographic notes or by electronic or mechanical means. Notwithstanding any other provision of law, no appeal of right lies from an order or judgment entered pursuant to this section."

SECTION 4. Article 1 of Chapter 51 of the General Statutes is amended by adding a new section to read:

"§ 51-2B. Parent includes adoptive parent.

As used in this Article, the terms "parent", "father", or "mother" includes one who has become a parent, father, or mother, respectively, by adoption."

SECTION 5. Article 1 of Chapter 51 of the General Statutes is amended by adding a new section to read:

"§ 51-3.2. Marriage licensed and solemnized by a federally recognized Indian Nation or Tribe.

(a) Subject to the restriction provided in subsection (b), a marriage between a man and a woman licensed and solemnized according to the law of a federally recognized Indian Nation or Tribe shall be valid and the parties to the marriage shall be lawfully married.

(b) When the law of a federally recognized Indian Nation or Tribe allows persons to obtain a marriage license from the register of deeds and the parties to a marriage do so, Chapter 51 of the General Statutes shall apply and the marriage shall be valid only if the issuance of the license and the solemnization of the marriage is conducted in compliance with this Chapter."

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

"§ 51-6. Solemnization without license unlawful.

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

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

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

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

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

SECTION 8. G.S. 51-8 reads as rewritten:

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

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

SECTION 9. Chapter 51 of the General Statutes is amended by adding the following new section:

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

If an applicant for a marriage license is over 18 years of age and is unable to appear in person at the register of deeds' office, the other party to the planned marriage must appear in person on behalf of the applicant and submit a sworn and notarized affidavit in lieu of the absent applicant's personal appearance.

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

_____, [applicant] appearing before the undersigned notary and being duly sworn, says that:

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

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

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

Name: _____

 First Middle Last

Residence: _____

State County City or Town

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 10. 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 11. 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 either of the parties is under 18 years of age, the license shall here contain the following:) And the written consent of G.H., father (or mother, etc., as the case may be) to the proposed marriage having been filed with me, and there being no legal impediment to such marriage known to me, you are hereby authorized, at any time within 60 days from the date hereof, to celebrate the proposed marriage at any place within the ~~said county~~ State. You are required within 10 days after you shall have

celebrated such marriage, to return this license to me at my office with your signature subscribed to the certificate under this license, and with the blanks therein filled according to the facts, under penalty of forfeiting two hundred dollars (\$200.00) to the use of any person who shall sue for the same.

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

Register of Deeds of _____ County

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

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

_____ N.O.

Witness present at the marriage:
S.T., of (here give residence)."

SECTION 12. G.S. 51-18.1 reads as rewritten:

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

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

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

SECTION 13. G.S. 7B-200 reads as rewritten:

"§ 7B-200. Jurisdiction.

(a) The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent. This jurisdiction does not extend to cases involving adult defendants alleged to be guilty of abuse or neglect.

The court also has exclusive original jurisdiction of the following proceedings:

(1) Proceedings under the Interstate Compact on the Placement of Children set forth in Article 38 of this Chapter;

- (2) Proceedings involving judicial consent for emergency surgical or medical treatment for a juvenile when the juvenile's parent, guardian, custodian, or other person who has assumed the status and obligation of a parent without being awarded legal custody of the juvenile by a court refuses to consent for treatment to be rendered;
- (3) Proceedings to determine whether a juvenile should be emancipated;
- (4) Proceedings to terminate parental rights;
- (5) Proceedings to review the placement of a juvenile in foster care pursuant to an agreement between the juvenile's parents or guardian and a county department of social services;
- (6) Proceedings in which a person is alleged to have obstructed or interfered with an investigation required by G.S. 7B-302; ~~and~~
- (7) Proceedings involving consent for an abortion on an unemancipated minor pursuant to Article 1A, Part 2 of Chapter 90 of the General Statutes; ~~and~~
- (8) Proceedings by an underage party seeking judicial authorization to marry, pursuant to Article 1 of Chapter 51 of the General Statutes.

(b) The court shall have jurisdiction over the parent or guardian of a juvenile who has been adjudicated abused, neglected, or dependent, as provided by G.S. 7B-904, provided the parent or guardian has been properly served with summons pursuant to G.S. 7B-406."

SECTION 14. G.S. 7A-451 is amended by adding a new subsection to read as follows:

"(f) A guardian ad litem shall be appointed to represent the best interest of an underage party seeking judicial authorization to marry pursuant to G.S. 51-2A. The appointment and duties of the guardian ad litem shall be governed by G.S. 51-2A. The procedure for compensation of the guardian ad litem shall comply with rules adopted by the Office of Indigent Defense Services."

SECTION 15. G.S. 130A-110 reads as rewritten:

"§ 130A-110. Registration of marriage certificates.

(a) On or before the fifteenth day of the month, the register of deeds shall transmit to the State Registrar a record of each marriage ceremony performed in the county during the preceding calendar month. The State Registrar shall prescribe a form containing the information required by ~~G.S. 50-16~~ G.S. 51-16 and additional information to conform with the requirements of the federal agency responsible for national vital statistics. The form shall be the official form of a marriage license, certificate of marriage and application for marriage license.

(b) Each form signed and issued by the register of deeds, assistant register of deeds or deputy register of deeds shall constitute an original or a duplicate original. Upon request, the State Registrar shall furnish a true copy of the marriage registration. The copy shall have the same evidentiary value as the original.

(c) The register of deeds shall provide copies or abstracts of marriage certificates to any person upon request. Certified copies of these certificates shall be provided only to those persons described in G.S. 130A-93(c).

(d) Marriage certificates maintained by the local register of deeds shall be open to inspection and examination."

SECTION 16. The Administrative Office of the Courts shall develop any and all forms necessary for carrying out the purpose of this act and distribute them to the Office of the Clerk of Superior Court in each county.

SECTION 17. 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~~ regular resident superior court judge

of this State, or of a magistrate, and the consequent declaration by such ~~minister~~ minister, judge, or officer that such persons are husband and wife, shall be a valid and sufficient 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 Chapter: Provided further, that marriages solemnized and witnessed by a local spiritual assembly of the Baha'is, according to the usage of their religious community, shall be valid; provided further, marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not ordained, are validated from their consummation."

SECTION 18. Section 17 of this act becomes effective May 19, 2001, and expires May 28, 2001. The remainder of this act becomes effective October 1, 2001.

In the General Assembly read three times and ratified this the 2nd day of May, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 6:19 p.m. this 10th day of May, 2001