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HOUSE BILL NO. 703

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice on February 29, 2016)

(Patron Prior to Substitute—Delegate McClellan)

A BILL to amend and reenact §§ 16.1-331, 16.1-333, 20-45.1, 20-48, 20-89.1, and 20-90 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 16.1-333.1; and to repeal § 20-49 of the Code of Virginia, relating to legal age for marriage; emancipation petitions for minors intending to marry; written findings.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-331, 16.1-333, 20-45.1, 20-48, 20-89.1, and 20-90 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-333.1 as follows:

§ 16.1-331. Petition for emancipation.

Any minor who has reached his sixteenth birthday and is residing in this Commonwealth, or any parent or guardian of such minor, may petition the juvenile and domestic relations district court for the county or city in which either the minor or his parents or guardian resides for a determination that the minor named in the petition be emancipated. The petition shall contain, in addition to the information required by § 16.1-262, the gender of the minor and, if the petitioner is not the minor, the name of the petitioner and the relationship of the petitioner to the minor. *If the petition is based on the minor's desire to enter into a valid marriage, the petition shall also include the name, age, date of birth, if known, and residence of the intended spouse. The petitioner shall also attach copies of any criminal records of each individual intending to be married. The petitioner shall also attach copies of any protective order issued between the individuals to be married.*

§ 16.1-333. Findings necessary to order that minor is emancipated.

The court may enter an order declaring the minor emancipated if, after a hearing, it is found that: (i) the minor has entered into a valid marriage, whether or not that marriage has been terminated by dissolution; ~~or~~ (ii) the minor is on active duty with any of the armed forces of the United States of America; ~~or~~ (iii) the minor willingly lives separate and apart from his parents or guardian, with the consent or acquiescence of the parents or guardian, and that the minor is or is capable of supporting himself and competently managing his own financial affairs*; or (iv) the minor desires to enter into a valid marriage and the requirements of § 16.1-333.1 are met*.

§ 16.1-333.1. Written findings necessary to order that minor is emancipated on the basis of intent to marry.

The court may enter an order declaring such a minor who desires to get married emancipated if, after a hearing where both individuals intending to marry are present, the court makes written findings that:

1. It is the minor's own will that the minor enter into marriage, and the minor is not being compelled against the minor's will by force, threats, persuasions, menace, or duress;

2. The individuals to be married are mature enough to make such a decision to marry;

3. The marriage will not endanger the safety of the minor. In making this finding, the court shall consider (i) the age difference between the parties intending to be married; (ii) whether either individual to be married has a criminal record containing any conviction of an act of violence, as defined in § 19.2-297.1, or any conviction of an offense set forth in § 63.2-1719 or 63.2-1726; and (iii) any history of violence between the parties to be married; and

4. It is in the best interests of the minor petitioning for an order of emancipation that such order be entered. Neither a past or current pregnancy of either individual to be married or between the individuals to be married nor the wishes of the parents or legal guardians of the minor desiring to be married shall be sufficient evidence to establish that the best interests of the minor would be served by entering the order of emancipation.

§ 20-45.1. Void and voidable marriages.

~~(a)~~ *A.* All marriages ~~which~~ *that* are prohibited by § 20-38.1 ~~or where either or both of the parties are, at the time of the solemnization of the marriage, under the age of eighteen, and have not complied with the provisions of § 20-48 or § 20-49,~~ are void.

~~(b)~~ *B.* All marriages solemnized when either of the parties lacked capacity to consent to the marriage at the time the marriage was solemnized, because of mental incapacity or infirmity, shall be void from the time they shall be so declared by a decree of divorce or nullity.

C. All marriages solemnized on or after July 1, 2016, when either or both of the parties were, at the time of the solemnization, under the age of 18 and have not been emancipated as required by § 20-48

shall be void from the time they shall be so declared by a decree of divorce or nullity. Notwithstanding the foregoing, this section shall not apply to a lawful marriage entered in another state or country prior to the parties being domiciled in the Commonwealth.

§ 20-48. Minimum age of marriage.

The minimum age at which persons may marry~~, with consent of the parent or guardian,~~ shall be ~~sixteen~~ *18, unless a minor has been emancipated by court order. Upon application for a marriage license, an emancipated minor shall provide a certified copy of the order of emancipation.*

~~In case of pregnancy when either party is under sixteen, the clerk authorized to issue marriage licenses in the county or city wherein the female resides shall issue a proper marriage license with the consent of the parent or guardian of the person or persons under the age of sixteen only upon presentation of a doctor's certificate showing he has examined the female and that she is pregnant, or has been pregnant within the nine months previous to such examination, which certificate shall be filed by the clerk, and such marriage consummated under such circumstances shall be valid. If any such person under the age of sixteen is a ward of the Commonwealth by virtue of having been adjudicated a delinquent, dependent, or neglected child, instead of the consent of the parent or natural guardian there shall be required the consent of the judge having jurisdiction to control the custody of such person; or, if such person so adjudicated shall have been committed to the Department of Juvenile Justice or to any society, association, or institution approved by it for this purpose, such consent shall be given by some person thereto authorized by the Director of the Department of Juvenile Justice, or by the principal executive officer of such society, association, or institution, as the case may be.~~

§ 20-89.1. Suit to annul marriage.

~~(a)~~ *A.* When a marriage is alleged to be void or voidable for any of the causes mentioned in ~~§§~~ *§* 20-13, 20-38.1, *or* 20-45.1 or by virtue of fraud or duress, either party may institute a suit for annulling the same; and upon proof of the nullity of the marriage, it shall be decreed void by a decree of annulment.

~~(b)~~ *B.* In the case of natural or incurable impotency of body existing at the time of entering into the marriage contract, or when, prior to the marriage, either party, without the knowledge of the other, had been convicted of a felony, or when, at the time of the marriage, the wife, without the knowledge of the husband, was with child by some person other than the husband, or where the husband, without knowledge of the wife, had fathered a child born to a woman other than the wife within ~~ten~~ *10* months after the date of the solemnization of the marriage, or where, prior to the marriage, either party had been, without the knowledge of the other, a prostitute, a decree of annulment may be entered upon proof, on complaint of the party aggrieved.

~~(c)~~ *C.* No annulment for a marriage alleged to be void or voidable under subsection ~~(b)~~ *B* of § 20-45.1~~,~~ *or* subsection ~~(b)~~ *B* of this section or by virtue of fraud or duress shall be decreed if it appears that the party applying for such annulment has cohabited with the other after knowledge of the facts giving rise to what otherwise would have been grounds for annulment~~;~~, and~~,~~ in no event shall any such decree be entered if the parties had been married for a period of two years prior to the institution of such suit for annulment.

~~(d)~~ *D.* A party who, at the time of such marriage as is mentioned in § 20-48 ~~or § 20-49~~, was capable of consenting with a party not so capable~~,~~ shall not be permitted to institute a suit for the purpose of annulling such marriage.

§ 20-90. Suit to affirm marriage.

A. When the validity of any marriage shall be denied or doubted by either of the parties, the other party may institute a suit for affirmance of the marriage, and upon due proof of the validity thereof, it shall be decreed to be valid, and such decree shall be conclusive upon all persons concerned.

B. Notwithstanding § 20-13, a marriage of a couple where one of the parties was under the age of 18 at the time of solemnization may be decreed valid upon petition by the party who was under the age of 18 at the time of the solemnization that would otherwise be deemed voidable under subsection C of § 20-45.1 solely because of age, once such party has attained the age of 18. If both parties were under the age of 18 at the time of solemnization, such petition shall not be granted unless both parties have reached the age of 18 and join in the petition together.

2. That § 20-49 of the Code of Virginia is repealed.