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SENATE BILL NO. 415

Offered January 13, 2016

Prefiled January 12, 2016

A BILL to amend and reenact §§ 20-45.1, 20-48, 20-89.1, and 20-90 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 16.1-331.1 and 20-40.1; and to repeal § 20-49 of the Code of Virginia, relating to legal age for marriage; penalty.

Patrons—Vogel, Dance and Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 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 sections numbered 16.1-331.1 and 20-40.1 as follows:

§ 16.1-331.1. Registration of foreign emancipation.

A. An order of emancipation issued by a court of appropriate jurisdiction in another state may be registered in the Commonwealth by the emancipated minor, who shall submit to the juvenile and domestic relations district court for the county or city in which the emancipated minor resides (i) a request for registration; (ii) two copies, including one certified copy, of the order of emancipation; and (iii) the name, age, date of birth, gender, and residence of the emancipated minor, under penalty of perjury. Upon receipt of such documentation, the court shall register the order.

B. If a minor has been emancipated by operation of law in another state, the minor may petition the court pursuant to § 16.1-331 to obtain an order of emancipation pursuant to the laws of the Commonwealth.

§ 20-40.1. Punishment for violation of requirements for minimum age for marriage.

A. Any person who (i) marries a person under the age of 18 or (ii) causes a person under the age of 18 to marry, or attempts to do so, in a marriage solemnized in the Commonwealth in violation of § 20-48 shall be confined in jail not exceeding six months, or fined not exceeding \$500, in the discretion of the jury.

B. Any person who knowingly removes or causes the removal of a person under the age of 18 from the Commonwealth to another jurisdiction for the purposes of a marriage that would violate § 20-48 if it were solemnized in the Commonwealth, or attempts to do so, shall be confined in jail not exceeding six months, or fined not exceeding \$500, in the discretion of the jury, and the marriage shall be governed by the same law as if it had been solemnized in the Commonwealth.

C. It shall be an affirmative defense to prosecution under this section that the person to be prosecuted was (i) under the age of 18 at the time of the marriage or (ii) compelled by force, threat, persuasion, menace, or duress to marry against his will.

§ 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 complied with the provisions of § 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, so long as the subject marriage would not violate subsection B of § 20-40.1.

§ 20-48. Minimum age of marriage.

The minimum age at which persons may marry; with consent of the parent or guardian, shall be sixteen.

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

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59 by the clerk, and such marriage consummated under such circumstances shall be valid. If any such
60 person under the age of sixteen is a ward of the Commonwealth by virtue of having been adjudicated a
61 delinquent, dependent, or neglected child, instead of the consent of the parent or natural guardian there
62 shall be required the consent of the judge having jurisdiction to control the custody of such person; or,
63 if such person so adjudicated shall have been committed to the Department of Juvenile Justice or to any
64 society, association, or institution approved by it for this purpose, such consent shall be given by some
65 person thereto authorized by the Director of the Department of Juvenile Justice, or by the principal
66 executive officer of such society, association, or institution, as the case may be. 18, unless a minor has
67 been emancipated by court order or has registered a foreign order of emancipation as provided under
68 Article 15 (§ 16.1-331 et seq.) of Chapter 11 of Title 16.1. An emancipated minor who applies for a
69 license to marry shall provide to the issuing authority pursuant to § 20-14 a certified copy of the order
70 of emancipation or proof that a foreign order of emancipation has been registered in the
71 Commonwealth pursuant to § 16.1-331.1.

72 **§ 20-89.1. Suit to annul marriage.**

73 (a)A. When a marriage is alleged to be void or voidable for any of the causes mentioned in §§ §
74 20-13, 20-38.1, or 20-45.1 or by virtue of fraud or duress, either party may institute a suit for annulling
75 the same; and upon proof of the nullity of the marriage, it shall be decreed void by a decree of
76 annulment.

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

85 (c)C. No annulment for a marriage alleged to be void or voidable under subsection (b) B of
86 § 20-45.1; or subsection (b) B of this section or by virtue of fraud or duress shall be decreed if it
87 appears that the party applying for such annulment has cohabited with the other after knowledge of the
88 facts giving rise to what otherwise would have been grounds for annulment; and, in no event shall any
89 such decree be entered if the parties had been married for a period of two years prior to the institution
90 of such suit for annulment.

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

94 **§ 20-90. Suit to affirm marriage.**

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

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

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