

JAN 18 2019

A BILL FOR AN ACT

RELATING TO MARRIAGE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that numerous states are
2 reviewing existing laws to consider amending the minimum age for
3 marriage in order to protect young adults under the age of
4 eighteen. Proponents for raising the legal age for marriage are
5 concerned that allowing young adults, who are minors under the
6 law, to marry may contribute to sex trafficking or marriages
7 obtained by force or duress. According to an analysis conducted
8 by Public Broadcasting Service's Frontline, more than two
9 hundred seven thousand individuals under the age of eighteen
10 were married in the United States between 2000 and 2014. While
11 most minors were sixteen or seventeen years of age at the time
12 of marriage, some were as young as twelve years of age. The
13 vast majority of these marriages were between a minor female and
14 an adult male. In Hawai'i, existing state law allows minors as
15 young as sixteen years of age to marry. State law further
16 authorizes the family court to approve a marriage of a minor of
17 fifteen years of age.



1 The legislature further finds that in 2018, Delaware and
2 New Jersey respectively became the first and second states to
3 require that individuals seeking marriage be at least eighteen
4 years of age. There are more states, including Pennsylvania,
5 that have pending legislation or are considering introducing
6 similar legislation to raise the minimum age requirement for
7 marriage to eighteen years of age. The legislature notes that
8 Sustainable Development Goal 5 under the United Nations'
9 Sustainable Development Goals relating to gender equality sets
10 the year 2030 as a target for ending child marriage.

11 The purpose of this Act is to:

- 12 (1) Raise the minimum age requirement to enter into
13 marriage from sixteen to eighteen years of age;
- 14 (2) Remove the parental consent and written approval by
15 the family court requirements for a minor to marry;
- 16 (3) Require, rather than permit, the family court to
17 declare void the marriage contract on the ground that
18 the parties, or either of them, had not attained the
19 legal age of marriage at the time of the marriage;



1 (4) Remove spousal cohabitation after the parties attain
2 legal age as an exception for an annulment based on
3 nonage; and

4 (5) Make conforming amendments to reflect the raise in the
5 legal age for marriage and repeal of certain parental
6 and judicial consent requirements for marriage.

7 SECTION 2. Section 386-43, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) The weekly benefits to dependents shall continue:

10 (1) To a surviving spouse or reciprocal beneficiary, until
11 death, remarriage, marriage, or entry into a new
12 reciprocal beneficiary relationship with two years'
13 compensation in one sum upon remarriage, marriage, or
14 entry into a new reciprocal beneficiary relationship;

15 (2) To or for a child:

16 (A) [~~So long as unmarried, until~~] Until attainment of
17 the age of eighteen;

18 (B) So long as unmarried, until attainment of the age
19 of:



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- 1 (i) Twenty if the child is a full-time student
2 at a high school, business school, technical
3 school; or
4 (ii) Twenty-two if the child is a full-time
5 undergraduate student at a college; or
6 (C) So long as unmarried, until termination of the
7 child's incapability of self-support; ~~or~~
8 ~~(D) Until marriage, except that in the case of a~~
9 ~~married child under eighteen, weekly benefits~~
10 ~~shall continue during the period of actual~~
11 ~~dependency until attainment of the age of~~
12 ~~eighteen,]~~
13 (3) To a parent or grandparent, for the duration, whether
14 continuous or not, of the actual dependency, provided
15 that the amount of the weekly benefits shall at no
16 time exceed the amount payable at the time of death;
17 and
18 (4) To or for a grandchild, brother, or sister, for the
19 period in which that grandchild, brother, or sister
20 remains actually and wholly dependent until attainment



1 of the age of eighteen or termination of the
2 incapability of self-support."

3 SECTION 3. Section 571-2, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending the definition of "guardianship of a minor"
6 to read:

7 ""Guardianship of a minor" means the duty and authority to
8 make important decisions in matters having a permanent effect on
9 the life and development of the minor and to be concerned about
10 the minor's general welfare. It includes, but shall not
11 necessarily be limited, in either number or kind to:

12 (1) The authority to consent [~~to marriage~~⁷] to enlistment
13 in the armed forces of the United States[⁷] or to
14 major medical, psychiatric, and surgical treatment; to
15 represent the minor in legal actions; or to make other
16 decisions concerning the minor of substantial legal
17 significance;

18 (2) The authority and duty of reasonable visitation,
19 except to the extent that the right of visitation has
20 been limited by court order;



1 (3) The rights and responsibilities of legal custody when
2 guardianship is exercised by the natural or adoptive
3 parent, except where legal custody has been vested in
4 another individual, agency, or institution; and

5 (4) The authority to consent to the adoption of the minor
6 and to make any other decision concerning the minor
7 that the minor's parents could make, when the rights
8 of the minor's parents, or only living parent, have
9 been judicially terminated as provided for in the
10 statutes governing termination of parental rights to
11 facilitate legal adoption, or when both of the minor's
12 legal parents are deceased."

13 2. By amending the definition of "residual parental rights
14 and responsibilities" to read:

15 "Residual parental rights and responsibilities" means
16 those rights and responsibilities remaining with the parent
17 after the transfer of legal custody or guardianship of the
18 person, including, but not necessarily limited to, the right to
19 reasonable visitation, consent to adoption [~~or marriage~~], and
20 the responsibility for support."



1 SECTION 4. Section 571-11, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§571-11 Jurisdiction; children. Except as otherwise
4 provided in this chapter, the court shall have exclusive
5 original jurisdiction in proceedings:

6 (1) Concerning any person who is alleged to have committed
7 an act prior to achieving eighteen years of age that
8 would constitute a violation or attempted violation of
9 any federal, state, or local law or county ordinance.

10 Regardless of where the violation occurred,
11 jurisdiction may be taken by the court of the circuit
12 where the person resides, is living, or is found, or
13 in which the offense is alleged to have occurred;

14 (2) Concerning any child living or found within the
15 circuit:

16 (A) Who is neglected as to or deprived of educational
17 services because of the failure of any person or
18 agency to exercise that degree of care for which
19 it is legally responsible;



- 1 (B) Who is beyond the control of the child's parent
2 or other custodian or whose behavior is injurious
3 to the child's own or others' welfare;
- 4 (C) Who is neither attending school nor receiving
5 educational services required by law whether
6 through the child's own misbehavior or
7 nonattendance or otherwise; or
- 8 (D) Who is in violation of curfew;
- 9 (3) To determine the custody of any child or appoint a
10 guardian of any child;
- 11 (4) For the adoption of a person under chapter 578;
- 12 (5) For the termination of parental rights under sections
13 571-61 through 571-63;
- 14 (6) For judicial consent to the [~~marriage~~] employment[~~7~~]
15 or enlistment of a child[~~7~~] when consent is required
16 by law;
- 17 (7) For the treatment or commitment of a mentally
18 defective or mentally ill child, or a child with an
19 intellectual disability;



- 1 (8) Under the Interstate Compact on Juveniles under
- 2 chapter 582 or the Interstate Compact for Juveniles
- 3 under chapter 582D;
- 4 (9) For the protection of any child under chapter 587A;
- 5 and
- 6 (10) For a change of name as provided in section 574-
- 7 5 (a) (2) (C) ."

8 SECTION 5. Section 572-1, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§572-1 Requisites of valid marriage contract.** In order
11 to make valid the marriage contract, which shall be permitted
12 between two individuals without regard to gender, it shall be
13 necessary that:

- 14 (1) The respective parties do not stand in relation to
- 15 each other of ancestor and descendant of any degree
- 16 whatsoever, two siblings of the half as well as to the
- 17 whole blood, uncle and niece, uncle and nephew, aunt
- 18 and nephew, or aunt and niece, whether the
- 19 relationship is the result of the issue of parents
- 20 married or not married to each other or parents who



- 1 are partners in a civil union or not partners in a
2 civil union;
- 3 (2) Each of the parties at the time of contracting the
4 marriage is at least [~~sixteen~~] eighteen years of age;
5 ~~[provided that with the written approval of the family~~
6 ~~court of the circuit within which the minor resides,~~
7 ~~it shall be lawful for a person under the age of~~
8 ~~sixteen years, but in no event under the age of~~
9 ~~fifteen years, to marry, subject to section 572-2,]~~
- 10 (3) Neither party has at the time any lawful wife,
11 husband, or civil union partner living, except as
12 provided in section 572-1.7;
- 13 (4) Consent of neither party to the marriage has been
14 obtained by force, duress, or fraud;
- 15 (5) Neither of the parties is a person afflicted with any
16 loathsome disease concealed from, and unknown to, the
17 other party;
- 18 (6) The parties to be married in the State shall have duly
19 obtained a license for that purpose from the agent
20 appointed to grant marriage licenses; and



1 (7) The marriage ceremony be performed in the State by a
2 person or society with a valid license to solemnize
3 marriages and the parties to be married and the person
4 performing the marriage ceremony be all physically
5 present at the same place and time for the marriage
6 ceremony."

7 SECTION 6. Section 572-10, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "~~§572-10 [Applicant apparently under age. If] Age of~~
10 applicant. For any applicant for a license to marry [~~appears to~~
11 ~~any agent to be under the age of eighteen years]~~, the agent
12 shall, before granting a license to marry, require the
13 production of a certificate of birth or other satisfactory proof
14 showing the age of the applicant."

15 SECTION 7. Section 580-21, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "~~§580-21~~ **Grounds for annulment.** (a) The family court, by
18 a decree of nullity, may declare void the marriage contract for
19 any of the following causes, existing at the time of the
20 marriage:



- 1 (1) That the parties stood in relation to each other of
2 ancestor and descendant of any degree whatsoever,
3 ~~[brother and sister]~~ two siblings of the half as well
4 as the whole blood, uncle and niece, uncle and nephew,
5 aunt and nephew, or aunt and niece, whether the
6 relationship is the result of the issue of parents
7 married or not married to each other;
- 8 ~~[-2-] That the parties, or either of them, had not attained~~
9 ~~the legal age of marriage;~~
- 10 ~~[-3-]~~ (2) That the husband had an undivorced wife living,
11 or the wife had an undivorced husband living;
- 12 ~~[-4-]~~ (3) That one of the parties lacked the mental
13 capacity to consent to the marriage;
- 14 ~~[-5-]~~ (4) That consent to the marriage of the party
15 applying for annulment was obtained by force, duress,
16 or fraud, and there has been no subsequent
17 cohabitation; and
- 18 ~~[-6-]~~ (5) That one of the parties was a sufferer of or
19 afflicted with any loathsome disease and the fact was
20 concealed from, and unknown to, the party applying for
21 annulment.



1 (b) The family court, by a decree of nullity, shall
2 declare void the marriage contract on the ground that the
3 parties, or either of them, had not attained the legal age of
4 marriage at the time of the marriage."

5 SECTION 8. Section 580-22, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§580-22 Nonage.** An action to annul a marriage on the
8 ground that one of the parties was under legal age, may be
9 brought by the parent or guardian entitled to the custody of the
10 minor, or by any person admitted by the court to prosecute as
11 the friend of the minor. In no case shall the marriage be
12 annulled on the application of a party who was of legal age at
13 the time it was contracted[~~; nor when it appears that the~~
14 ~~parties, after they attained the legal age, had for any time~~
15 ~~freely cohabited as man and wife]."~~

16 SECTION 9. Section 572-2, Hawaii Revised Statutes, is
17 repealed.

18 ~~["§572-2 Consent of parent or guardian. Whenever any~~
19 ~~person who is under the age of eighteen is to be married, the~~
20 ~~written consent of his or her parents, or guardian or other~~
21 ~~person in whose care and custody he or she may be, shall~~



1 ~~accompany the application for a license to marry. No license~~
2 ~~shall be issued to any minor who is under the jurisdiction of~~
3 ~~the family court without the written consent of a judge of such~~
4 ~~court."]~~

5 SECTION 10. Section 572-9, Hawaii Revised Statutes, is
6 repealed.

7 [~~"§572-9 Persons under age. Whenever any person who is~~
8 ~~under the age of eighteen, whose parents are dead, or who is a~~
9 ~~ward of a family court, applies for a license to marry, he or~~
10 ~~she shall set forth in the statement accompanying the~~
11 ~~application, the name of his or her guardian or of any other~~
12 ~~person in whose care and custody he or she may be."]~~

13 SECTION 11. Section 577-25, Hawaii Revised Statutes, is
14 repealed.

15 [~~"[§577-25] Emancipation of certain minors. Any law to~~
16 ~~the contrary notwithstanding, a minor who has been married~~
17 ~~pursuant to chapter 572 shall be deemed to be emancipated and~~
18 ~~shall be regarded as though he or she were of legal age and~~
19 ~~shall have all the rights, duties, privileges, and~~
20 ~~responsibilities provided by the civil law to a person who has~~
21 ~~reached the age of majority under civil law; provided that:~~



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Report Title:

Marriage; Legal Age; Annulment

Description:

Raises the minimum age requirement to enter into marriage from sixteen to eighteen years of age. Removes the parental consent and written approval by the family court requirements for a minor to marry. Requires, rather than permits, the family court to declare void the marriage contract on the ground that the parties, or either of them, had not attained the legal age of marriage at the time of the marriage. Removes spousal cohabitation after the parties attain legal age as an exception for an annulment based on nonage. Makes conforming amendments.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

