WEST VIRGINIA CODE CHAPTER 48 ARTICLE 2

WV Legislature

PART 1. APPLICATION FOR MARRIAGE LICENSE.

§48-2-101. Necessity of marriage license.

Every marriage in this state must be solemnized under a marriage license issued by a clerk of the county commission in accordance with the provisions of this article. If a ceremony of marriage is performed without a license, the attempted marriage is void, and the parties do not attain the legal status of husband and wife.

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§48-2-102. Where an application for a marriage license may be made; when an application may be received and a license issued; application by mail.

(a) Applicants, regardless of their state or county residency, may apply for a license to be issued by the clerk of the county commission in any county in this state.

(b) Applications for licenses may be received and licenses may be issued by the clerk of the county commission when the office of the clerk is officially open for the conduct of business.

WV Legislature

§48-2-103. Waiting period before issuance of marriage license; issuance of license in case of emergency or extraordinary circumstances.

[Repealed.]

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PART I. APPLICATION FOR MARRIAGE LICENSE

§48-2-104. Contents of the application for a marriage license.

(a) The application for a marriage license must contain a statement of the full names of both the female and the male parties, their social security account numbers, dates of birth, places of birth and residence addresses. The application must state whether or not the persons seeking the license have completed premarital education pursuant to section seven hundred one, article two, chapter forty-eight of this code. If the application states that the applicants seeking issuance of the license have completed premarital education, then the applicants must submit a signed and dated certificate of completion issued by the premarital education provider.

(b) If either of the parties is a legal alien in the United States of America and has no social security account number, a tourist or visitor visa number or number equivalent to a United States social security account number must be provided.

(c) Every application for a marriage license must contain the following statement: "Marriage is designed to be a loving and lifelong union between a woman and a man.

The laws of this state affirm your right to enter into this marriage and to live within the marriage free from violence and abuse. Neither of you is the property of the other. Physical abuse, sexual abuse, battery and assault of a spouse or other family member, and other provisions of the criminal laws of this state are applicable to spouses and other family members, and these violations are punishable by law."

WV Legislature

§48-2-105. Execution of the application for a marriage license.

Both female and male parties to a contemplated marriage are required to sign the application for a marriage license, under oath. The application must be signed before the clerk of the county commission or another person authorized to administer oaths under the laws of this state.

WV Legislature

§48-2-106. Proof of age.

At the time of the execution of the application, the clerk or other person administering the oath to the applicants shall require evidence of the age of each of the applicants and shall not issue a license until it has been confirmed that each applicant satisfies the age requirements for marriage set forth by §48-2-301 of this code. Evidence of age may be as follows:

(1) A certified copy of a birth certificate or a duplicate certificate produced by any means that accurately reproduces the original;

(2) A voter's registration certificate;

(3) An operator's or chauffeur's license;

(4) The affidavit of both parents or the legal guardian of the applicant; or

(5) Other good and sufficient evidence.

PART 3. CAPACITY TO MARRY.

WV Legislature

§48-2-107. Recording an application for a marriage license.

The clerk of the county commission shall record the application for a marriage license in the register of marriages provided for in section 2-203. The clerk shall note the date of the filing of the application in the register. The clerk's notation, or a certified copy thereof, is legal evidence of the facts contained in the license.

WV Legislature

PART 2. MARRIAGE LICENSE.

§48-2-201. Form of marriage license.

The marriage license shall be in form substantially as follows:

Marriage License.

State of West Virginia, County of _____, to wit:

To any person authorized to celebrate marriages:

You are hereby authorized to join together in matrimony _____ and _____

Given under my hand, as clerk of the county commission of the county of _____, this _____ day of _____, 2_____.

_____

Clerk as aforesaid.

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§48-2-202. Endorsement and return of licenses by persons solemnizing marriage; duties of clerk pertaining thereto.

(a) The person solemnizing a marriage shall retain the marriage license and place an endorsement on it establishing the fact of the marriage and the time and place it was celebrated.

(b) Before the sixth day of the month after the month in which the marriage was celebrated, the person who solemnized the marriage shall forward the original of the marriage license to the clerk who issued the license.

(c) In the event that the marriage authorized by the license is not solemnized within sixty days from the date of its issuance, then the license is null and void. If the county clerk has not received the original license within sixty days after the expiration date on the license, the clerk shall notify each of the applicants of that fact, by certified mail, return receipt requested.

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§48-2-203. Register of marriages.

(a) The clerk of the county commission is required to maintain a suitable book to be used as a register of marriages. The clerk shall keep a complete record of the following information:

(1) Factual information that relates to the eligibility of a person to obtain a marriage license: Provided, That if the license is issued because the female is pregnant, the pregnancy will not be noted by the clerk in the register of marriages;

(2) Each marriage license issued by the clerk; and

(3) An endorsement by a minister, priest, rabbi, or judge certifying that the marriage was solemnized.

(b) The clerk shall index the register of marriages in the names of both parties to the marriage.

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§48-2-204. Record of marriage celebrated outside of state.

If at the time of celebrating any marriage out of this state, either or both of the parties thereto is a resident of this state, a certificate or statement of that fact, verified by the affidavit of any person present at such celebration, or a transcript of the marriage record, certified by the custodian of such records, from the state where the marriage was celebrated, may be returned to the clerk of the county commission of the county in which the husband resides, if he is a resident, or otherwise to the clerk of the county in which the wife resides, and an abstract thereof shall be recorded by the clerk in the register of marriages and indexed in the name of both parties.

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§48-2-301. Age of consent for marriage; exception.

(a) The age of consent for marriage for all persons, both male and female, is 18 years of age. A person under the age of 18 lacks the capacity to marry without the consents required by this section.

(b) The clerk of the county commission may issue a marriage license to an applicant who is under the age of 18 but at least 16 years of age if the clerk obtains valid written consent from the applicant and from the applicant's parent or parents or the applicant's legal guardian or guardians as outlined in this section: *Provided*, That a marriage license may not be issued to an applicant who is under the age of 18 but who is at least 16 years of age if the person whom the applicant seeks to marry is more than four years older than the applicant.

(c) An applicant who is under the age of 18 but who is at least 16 years of age must give his or her signed and acknowledged affirmation that he or she is freely and voluntarily choosing to enter into a marriage with the person named in the application as part of the written consent required by this section. The applicant must also provide, as part of the same written consent, a signed and acknowledged affirmation that his or her decision to enter into the marriage is not the product of duress or coercion by any person.

(d) A consent to marry must be duly acknowledged before an officer authorized to acknowledge a deed. If the parents of the applicant are living together at the time the application for a marriage license is made and the consent is given, the signatures of both parents or the signature of the applicant's legal guardian or guardians is required. If one parent is dead, the signature of the surviving parent or the applicant's legal guardian or guardians is required. If both parents are dead, the signature of the applicant's legal guardian or guardians is required. If the parents of the applicant are living separate and apart, the signature of the parent or parents having decision-making authority for the applicant, or the applicant's legal guardian or guardians is required: *Provided*, That, if the applicant's parents are separate and apart or divorced but have substantially equal parenting rights over the applicant, the signature of both parents is required.

(e) A person who is under the age of 18 but at least 16 years of age and who is married in accordance with the provisions of this section may petition, without the consent of his or her parents or legal guardian or guardians, for an annulment of that marriage until he or she reaches 18 years of age.

(f) Nothing in this section may serve to annul or void a marriage entered into prior to the re-enactment of this statute during the 2023 Regular Session of the Legislature, nor shall it serve to annul or void an otherwise legal marriage entered into in a jurisdiction outside of the State of West Virginia.

WV Legislature

§48-2-302. Prohibition against marriage of persons related within certain degrees.

(a) A man is prohibited from marrying his mother, grandmother, sister, daughter, granddaughter, half sister, aunt, brother's daughter, sister's daughter, first cousin or double cousin. A woman is prohibited from marrying her father, grandfather, brother, son, grandson, half brother, uncle, brother's son, sister's son, first cousin or double cousin.

(b) The prohibitions described in subsection (a) of this section are applicable to consanguineous relationships where persons are blood related by virtue of having a common ancestor.

(c) The prohibitions described in subsection (a) of this section are applicable to persons related by affinity, where the relationship is founded on a marriage, and the prohibition continues in force even though the marriage is terminated by death or divorce, unless the divorce was ordered for a cause which made the marriage, originally, unlawful or void.

WV Legislature

§48-2-303. Prohibition against marriage not to include persons related by adoption.

For the purpose of section 2-302, cousin or double cousin does not include persons whose relationship is created solely by adoption. If it necessary to open and examine the record of any adoption proceeding in the state to ascertain that a relationship of cousin or double cousin is created solely by adoption, then an application may be made to the circuit court that held the adoption proceeding, by the clerk of the county commission seeking to issue the marriage license, or either party applying for the license, to open the record and cause it to be examined. Upon such application, the judge shall examine the record confidentially and report to the clerk whether the record discloses any consanguinity prohibited by this section and may grant such other relief prayed for which may be proper under article 22 of this chapter.

WV Legislature

PART 4. MARRIAGE CEREMONY.

§48-2-401. Persons authorized to perform marriages.

A religious representative who has complied with the provisions of section 2-402, a family court judge, a circuit judge or a justice of the Supreme Court of Appeals, is authorized to celebrate the rites of marriage in any county of this state. Celebration or solemnization of a marriage means the performance of the formal act or ceremony by which a man and woman contract marriage and assume the status of husband and wife.

For purposes of this chapter, the term "religious representative" means a minister, priest or rabbi and includes, without being limited to, a leader or representative of a generally recognized spiritual assembly, church or religious organization which does not formally designate or recognize persons as ministers, priests or rabbis.

WV Legislature

§48-2-402. Qualifications of religious representative for celebrating marriages; registry of persons authorized to perform marriage ceremonies; special revenue fund.

(a) Beginning September 1, 2001, the Secretary of State shall, upon payment of the registration fee established by the Secretary of State pursuant to subsection (d) of this section, make an order authorizing a person who is a religious representative to celebrate the rites of marriage in all the counties of the state, upon proof that the person:

(1) Is eighteen years of age or older;

(2) Is duly authorized to perform marriages by his or her church, synagogue, spiritual assembly or religious organization; and

(3) Is in regular communion with the church, synagogue, spiritual assembly or religious organization of which he or she is a member.

(b) The Secretary of State shall establish a central registry of persons authorized to celebrate marriages in this state. Every person authorized under the provisions of subsection (a) of this section to celebrate marriages shall be listed in this registry. Every county clerk shall, prior to October 1, 2001, transmit to the Secretary of State the name of every person authorized to celebrate marriages by order issued in his or her county since 1960 and the Secretary of State shall include these names in the registry. The completed registry and periodic updates shall be transmitted to every county clerk.

(c)(1) Upon written request from the registrant, the Secretary of State shall designate the registrant as inactive on the registry.

(2) Upon written notice from the governing body of the registrant's authorizing body that the registrant has died or that the registrant's authority to perform marriages has been revoked, the Secretary of State shall attempt to notify the registrant of the change in the registrant's status by United States mail addressed to the registrant's last known address. If the registrant fails to provide the Secretary of State with proof of good standing with his or her authorizing body within thirty days, the registrant shall be designated on the registry as inactive.

(d) A fee not to exceed $25 may be charged by the Secretary of State for each registration or reactivation of an individual designated as inactive on the registry received on or after September 1, 2001, and all money received shall be deposited in a special revenue revolving fund designated the Marriage Celebrants Registration Fee Administration Fund in the state Treasury to be administered by the Secretary of State. Expenses incurred by the secretary in the implementation and operation of the registry program shall be paid from the fund.

(e) No marriage performed by a person authorized by law to celebrate marriages may be invalidated solely because the person was not listed in the registry provided for in this

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section.

(f) The Secretary of State shall promulgate rules to implement the provisions of this section.

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§48-2-403. Ritual for ceremony of marriage by a religious representative.

A religious representative authorized to celebrate the rites of marriage shall perform the ceremony of marriage according to the rites and ceremonies of his or her religious denomination, church, synagogue, spiritual assembly or religious organization and the laws of the State of West Virginia.

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§48-2-404. Ritual for ceremony of marriage by a judge or justice.

The ritual for the ceremony of marriages by a family court judge, a circuit judge or a justice of the Supreme Court of Appeals may be as follows: At the time appointed, the persons to be married, being qualified according to the law of the State of West Virginia, standing together facing the judge, the man at the judge's left hand and the woman at the right, the judge shall say:

"We are gathered here, in the presence of these witnesses, to join together this man and this woman in matrimony. It is not to be entered into unadvisedly but discreetly, sincerely and in dedication of life."

(Then shall the judge say to the man, using his christian name:)

"N., wilt thou have this woman to be thy wedded wife, to live together in the bonds of matrimony? Wilt thou love her, comfort her, honor and keep her in sickness and in health?"

(Then the man shall answer:)

"I will."

(Then the judge shall say to the woman, using her christian name:)

"N., wilt thou have this man to be thy wedded husband, to live together in the bonds of matrimony? Wilt thou love him comfort him honor and keep him in sickness and health?"

(The woman shall answer:)

"I will."

(Then may the judge say:)

"Who giveth this woman to be married to this man?"

(The father of the woman, or whoever giveth her in marriage, shall answer:)

"I do."

(Then the judge shall ask the man to say after him)

"I, N., take thee, N., to be my wedded wife, to have and to hold, from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, to love and to cherish, as long as life shall last, and thereto I pledge thee my faith."

(Then the judge shall ask the woman to repeat after him)

"I, N., take thee, N., to be my wedded husband, to have and to hold, from this day forward,

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for better, for worse, for richer, for poorer, in sickness and in health, to love and to cherish, as long as life shall last, and thereto I pledge thee my faith."

(Then, if there be a ring, the judge shall say:)

"The wedding ring is an outward and visible sign--signifying unto all, the uniting of this man and this woman in matrimony."

(The judge then shall deliver the ring to the man to put on the third finger of the woman's left hand. The man shall say after the judge:)

"In token and pledge of the vow between us made, with this ring, I thee wed."

(Then, if there be a second ring, the judge shall deliver it to the woman to put upon the third finger of the man's left hand; and the woman shall say after the judge:)

"In token and pledge of the vow between us made, with this ring, I thee wed."

(Then shall the judge say:)

"Forasmuch as N. and N. have consented together in wedlock, and have witnessed the same each to the other and before these witnesses and thereto have pledged their faith each to the other, and have declared the same by giving (and receiving) a ring, by virtue of the authority vested in me as judge of this court, I pronounce that they are husband and wife together."

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§48-2-405. Record of marriage to be kept by person officiating.

A record of each marriage performed, with the names of the parties, their respective places of residence prior to marriage, and the date of marriage, shall be kept by the officiating religious representative in the permanent record of the church, synagogue, spiritual assembly or religious organization which he or she serves.

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PART IV. Marriage Ceremony.

§48-2-406. Federal judges authorized to perform marriages.

Notwithstanding any provision of this code to the contrary, active and senior status judges appointed under Article III of the United States Constitution and federal magistrate-judges, who are residents of this state, are authorized to perform marriages in any county of this state.

WV Legislature

PART 5. OFFENSES AND PENALTIES.

§48-2-501. Unlawful acts by clerk of the county commission; penalties.

(a) It is unlawful for a clerk of the county commission to do any of the following acts:

(1) To make a false entry as to the date of application for a marriage license;

(2) To issue a marriage license prior to the end of the required three-day period (unless a circuit judge dispenses with this requirement by order pursuant to section 2-103);

(3) To issue a license on any Sunday or a legal holiday; or

(4) To receive an application for a marriage license or issue a marriage license in any place other than the office of the clerk of the county commission.

(b) A clerk of the county commission who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $200 nor more than $1,000, or by confinement in the county or regional jail for not less than three months nor more than nine months, or by both such fine and confinement, in the discretion of the court.

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§48-2-502. Issuing marriage license contrary to law; penalty.

A clerk of the county commission who knowingly issues a marriage license contrary to law is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding $500, or by confinement in the county or regional jail for not more than one year, or by both such fine and confinement, in the discretion of the court.

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§48-2-503. Consanguineous marriage; penalty.

(a) If a person marries another who is within the degrees of relationship described in section 2-302, and the relationship is founded on consanguinity, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500, or be confined in the county or regional jail for not more than six months, or both, in the discretion of the court.

(b) If a person who is a resident of this state marries in another state or country, the person violates subsection (a) of this section if:

(1) The persons married are within the degrees of relationship described in section 2-302 and the relationship is founded on consanguinity;

(2) The person intends to evade the law of this state;

(3) The person intends to return and reside in this state; and

(4) The persons, after marrying, return to this state and cohabit as man and wife.

(c) For purposes of this section, the fact of cohabitation of the persons as man and wife is evidence of their marriage.

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§48-2-504. Failure to endorse and return license; penalties.

If a person who is authorized to celebrate marriages in this state willfully fails to comply with the provisions of section 2-202, relating to the endorsement and return of a license, his or her authority must be suspended for a period of not less than six months nor more than one year. If the person gave bond under the provisions of section 2-402, the conditions of the bond are deemed to be broken and the bond must be forfeited as otherwise provided by law. The county clerk shall notify the prosecuting attorney of the county of any failure to comply with section 2-202. The prosecuting attorney shall institute proceedings before the circuit court to suspend the person's authority to celebrate marriages. The court shall determine all questions of law and fact.

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§48-2-505. Unlawful solicitation of a celebration of marriage.

(a) It is unlawful for any religious representative in any manner to solicit the celebration of a marriage ceremony.

(b) It is unlawful for a religious representative to give anything of value, directly or indirectly, as a reward to any person who may accompany, bring, send or direct the holders of a marriage license to the religious representative.

(c) If a person violates the provisions of subsection (a) or (b) of this section, his or her license to celebrate marriages shall be revoked, and no such license shall thereafter be issued to the person. It is the duty of the prosecuting attorney of the county in which the violation occurs to institute proceedings in the circuit court to revoke the license. Reasonable notice of proceedings to revoke a license shall be given to the licensee. The court shall determine all questions of law and fact.

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PART VI. MISCELLANEOUS PROVISIONS.

§48-2-601. Belief of parties in lawful marriage validates certain defects.

If a marriage is solemnized by a person professing to be authorized to celebrate marriages when, in fact, the person is not authorized, or if a marriage is solemnized after the license is expired, the marriage is not void and subject to a judgment of nullity based on that fact alone if:

(1) The marriage is lawful in all other respects, and

(2) The marriage is consummated with a full belief on the part of either or both of the persons married that they have been lawfully joined in marriage.

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§48-2-602. Marriage out of state to evade law.

If a resident of this state marries in another state or country, the marriage is governed by the same law, in all respects, as if it had been solemnized in this state if, at the time of the marriage:

(1) The marriage would have been in violation of section 3-103 if performed in this state;

(2) The person intended to evade the law of this state; and

(3) The person intended to return and reside in this state.

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§48-2-603. Certain acts, records, and proceedings not to be given effect in this state.

A public act, record or judicial proceeding of any other state, territory, possession or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of the other state, territory, possession, or tribe, or a right or claim arising from such relationship, shall not be given effect by this state.

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§48-2-604.

Repealed.

Acts, 2013 Reg. Sess., Ch. 29.

WV Legislature

§48-2-701. Premarital education encouraged; requirements.

(a) Persons applying for a marriage license may attend a premarital education course of at least four hours during the twelve months immediately preceding the date of the application for the license.

(b) A premarital education course offers instruction involving marital issues which may include, but not be limited to, the following:

(1) Conflict management;

(2) Communication skills;

(3) Managing finances;

(4) Child and parenting responsibilities;

(5) Extended family roles; and

(6) Key components of a successful marriage.

(c) Premarital education course instructors must have training in skills-based and research-based marriage preparation curricula.

(d) Premarital education courses may be performed by the following:

(1) A professional counselor or marriage and family therapist licensed pursuant to article thirty-one, chapter thirty of this code;

(2) A social worker licensed pursuant to article thirty, chapter thirty of this code;

(3) A psychiatrist who is licensed as a physician pursuant to article three, chapter thirty of this code;

(4) A psychologist who is licensed pursuant to article twenty-one, chapter thirty of this code; or

(5) An active member of the clergy or his or her designee, including retired clergy, provided that a designee is trained in skills-based and research-based marriage preparation curricula premarital education.

(e) The premarital education course curricula must meet the requirements of this section and provide a skills-based and research-based curricula of the following:

(1) The National Healthy Marriage Resource Center;

(2) A church, spiritual assembly, or religious organization; or

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(3) Other substantially similar resource.

(f) The Department of Human Services shall maintain an Internet website on which individuals and organizations described in subsection (c) may electronically register with the department to indicate the skills-based and research-based curriculum in which the registrant is trained.

(g) The premarital education provider shall furnish each participant, who completes the premarital education required by this section, a certificate of completion.

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§48-2-702. Marriage education fund.

(a) There is created a special revenue account within the State Treasury known as the Marriage Education Fund. The account shall be administered by the Secretary of the Department of Human Services.

(b) Any balance in the account at the end of each fiscal year shall not revert to the general revenue fund but shall remain in the account and be expended as provided by in this section.

(c) The account shall consist of all fees collected under the provisions of §59-1-10(c)(4)(C) of this code, legislative appropriations, and all interest or other returned earned from investment of the fund.

(d) Expenditures from the account shall be made by the secretary for the purposes set forth in section seven-hundred-one of this article, and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of this code: *Provided*, That for fiscal year ending June 30, 2013, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature.

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