

HB 2731

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WEST VIRGINIA LEGISLATURE

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FIRST REGULAR SESSION, 1999



# ENROLLED

## House Bill No. 2731

(By Delegates Staton, Hines, Capito,  
Johnson, Faircloth, Linch and Hunt)



Passed March 4, 1999

In Effect Ninety Days from Passage

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OFFICE OF THE CLERK  
SENATE OF WEST VIRGINIA

**ENROLLED**  
**H. B. 2731**

(BY DELEGATES STATON, HINES, CAPITO,  
JOHNSON, FAIRCLOTH, LINCH AND HUNT)

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[Passed March 4, 1999; in effect ninety days from passage.]

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AN ACT to repeal sections six-a, six-b, six-c, six-d and twenty, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six of said article; and to further amend said article by adding thereto three new sections, designated sections seven, eight and eight-a, all relating to applications for a marriage license; eliminating requirements for a blood test; prescribing which county clerks may issue licenses, based on residency of applicants; establishing a three-day waiting period before a license may issue if either or both applicants is under eighteen years of age; providing for a circuit judge to dispense with or shorten the waiting period in case of emergency or extraordinary circumstances; setting forth the contents of an application for a marriage license; providing for execution and recordation of the marriage license; requiring proof of age by applicants; and prohibiting certain unlawful acts by the clerk of the county commission, and defining misdemeanor offenses and establishing penalties.

*Be it enacted by the Legislature of West Virginia:*

That sections six-a, six-b, six-c, six-d and twenty, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section six of said article be amended and reenacted; and that said article be further amended by adding thereto three new sections, designated sections seven, eight and eight-a, all to read as follows:

**ARTICLE 1. MARRIAGE.**

**§48-1-6. Waiting period before issuance of marriage license; issuance of license in case of emergency or extraordinary circumstances.**

1 (a) If one or both of the applicants are residents of this  
2 state, they may apply for a marriage license to be issued by the  
3 clerk of the county commission of the county in which a  
4 resident applicant usually resides. If both parties are nonresi-  
5 dents of this state, they may apply for a license to be issued by  
6 the clerk of the county commission in any county in this state.

7 (b) Except as otherwise provided in subsection (c) of this  
8 section, if either or both of the applicants for a marriage license  
9 is under eighteen years of age, the clerk of the county commis-  
10 sion may not issue a marriage license until two full days elapse  
11 after the day the license application is filed.

12 (c) In case of an emergency or extraordinary circumstances,  
13 as shown by affidavit or other proof, a circuit judge of the  
14 county in which an application for a marriage license will be  
15 filed may order the clerk of the county commission to issue a  
16 license at any time before the expiration of the waiting period  
17 prescribed in subsection (b) of this section. The clerk of the  
18 county commission shall attach a certified copy of the judge's  
19 order to the application and issue the marriage license in  
20 accordance with the order. If the judge or judges of the county  
21 in which the application will be filed are absent or incapaci-  
22 tated, the order may be made and directed to the clerk of the  
23 county commission of the county by a circuit judge in any  
24 adjoining judicial circuit, or a special judge appointed by the  
25 supreme court of appeals.

26 (d) Applications for licenses may be received and licenses  
27 may be issued by the clerk of the county commission at anytime

28 the office of the clerk is officially open for the conduct of  
29 business.

**§48-1-7. Contents of application for marriage license; execution  
of application; recordation of application.**

1 (a) The application for a marriage license must contain a  
2 statement of the full names of both parties, their social security  
3 account numbers, dates of birth, places of birth and residence  
4 addresses. If either of the parties is a legal alien in the United  
5 States of America and has no social security account number,  
6 the tourist or visitor visa number or number equivalent to a  
7 United States social security account number must be provided.

8 (b) Every application for a marriage license must contain  
9 the following statement:

10 “The laws of this state affirm your right to enter into this  
11 marriage and at the same time to live within the marriage free  
12 from violence and abuse. Neither of you is the property of the  
13 other. Physical abuse, sexual abuse, battery and assault of a  
14 spouse or other family member, and other provisions of the  
15 criminal laws of this state are applicable to spouses and other  
16 family members and these violations are punishable by law.”

17 (c) Both parties to a contemplated marriage are required to  
18 sign the application for a marriage license, under oath, before  
19 the clerk of the county commission or another person autho-  
20 rized to administer oaths under the laws of this state.

21 (d) The clerk shall record the application for a marriage  
22 license in the register of marriages provided for in section  
23 eleven of this article. The clerk shall note the date of the filing  
24 of the application in the register. The notation, or a certified  
25 copy thereof, is legal evidence of the facts contained in the  
26 license.

**§48-1-8. Proof of age.**

1 (a) At the time of the execution of the application, the clerk  
2 or the person administering the oath to the applicants shall  
3 require evidence of the age of each of the applicants. Evidence  
4 of age may be as follows:

- 5 (1) A certified copy of a birth certificate or a duplicate
- 6 thereof produced by any means that accurately reproduces the
- 7 original;
- 8 (2) A voter's registration certificate;
- 9 (3) An operator's or chauffeur's license;
- 10 (4) The affidavit of both parents or the legal guardian of the
- 11 applicant; or
- 12 (5) Other good and sufficient evidence.
- 13 (b) If an affidavit is relied upon as evidence of the age of an
- 14 applicant, and if one parent is dead, the affidavit of the surviv-
- 15 ing parent or of the guardian of the applicant is sufficient. If
- 16 both parents are dead, the affidavit of the guardian of the
- 17 applicant is sufficient. If the parents of the applicant live
- 18 separate and apart, the affidavit of the parent having legal
- 19 custody of the applicant is sufficient.

**§48-1-8a. Unlawful acts by clerk of the county commission;  
penalties.**

- 1 (a) It is unlawful for a clerk of the county commission to do
- 2 any of the following acts:
  - 3 (1) To make a false entry as to the date of application for a
  - 4 marriage license;
  - 5 (2) To issue a marriage license prior to the end of the
  - 6 required three-day period (unless a circuit judge dispenses with
  - 7 this requirement by order pursuant to subsection (c), section six
  - 8 of this article);
  - 9 (3) To issue a license on any Sunday or a legal holiday; or
  - 10 (4) To receive an application for a marriage license or issue
  - 11 a marriage license in any place other than the office of the clerk
  - 12 of the county commission.
- 13 (b) A clerk of the county commission who violates the
- 14 provisions of subsection (a) of this section is guilty of a
- 15 misdemeanor and, upon conviction thereof, shall be punished
- 16 by a fine of not less than two hundred dollars nor more than one

17 thousand dollars, or by confinement in jail for not less than  
18 three months nor more than nine months, or by both such fine  
19 and confinement, in the discretion of the court.

20 (c) A clerk of the county commission who otherwise  
21 knowingly issues a marriage license contrary to law is guilty of  
22 a misdemeanor and, upon conviction thereof, shall be punished  
23 by a fine not exceeding five hundred dollars, or by confinement  
24 in jail for not more than one year, or by both such fine and  
25 confinement, in the discretion of the court.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Paul Johnson*  
Chairman Senate Committee

*Joe Smith*  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Darrell Thomas*  
Clerk of the Senate

*Bruce M. Bony*  
Clerk of the House of Delegates

*Carl Ray Tomblin*  
President of the Senate

*[Signature]*  
Speaker of the House of Delegates

The within *approved* this the *18th*  
day of *March*, 1999.

*[Signature]*  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/12/99

Time 9:30 am