2023 SENATE BILL 1030

February 19, 2024 – Introduced by Senators Spreitzer, Smith, Agard and Larson, cosponsored by Representatives J. Anderson, Conley, C. Anderson, Andraca, Bare, Clancy, Considine, Doyle, Emerson, Hong, Jacobson, Joers, Moore Omokunde, Neubauer, Ohnstad, Palmeri, Ratcliff, Shankland, Shelton, Sinicki, Snodgrass and Subeck. Referred to Committee on Mental Health, Substance Abuse Prevention, Children and Families.

1   An Act *to repeal* 765.02 (2); *to renumber* 765.02 (1); *to amend* 48.14 (6), 765.11

2   (1), 765.30 (2) (a), 767.313 (1) (c), 948.09 and 948.093; and *to create* 767.185

3   of the statutes; **relating to:** the age for marriage and eliminating spousal

4   exceptions for certain sex crimes against children.

Analysis by the Legislative Reference Bureau

This bill eliminates an existing exception to the marriageable age for certain minors between the ages of 16 and 18 and, accordingly, establishes that all persons must be 18 years of age or older in order to marry.

Under current law, a person who is at least 16 years old, but under 18 years old, may obtain a marriage license if the person provides the county clerk with written consent from the person's parents, guardian, custodian, or parent having the actual care, custody, and control of the person. The required written consent must meet certain formal requirements for verification and must be filed with the county clerk at the time the person files an application for a marriage license. In certain limited circumstances, a court may provide the required written consent. The bill eliminates any exception to the general requirement that a person must be 18 years of age or older in order to marry.

Under current law, a person who is at least 19 years old who has sexual intercourse with a child who is at least 16 years old is guilty of a Class A misdemeanor, unless the child is the person's spouse. Current law also provides that a person who is under 19 who has sexual contact with a child who is 15 years old or who has sexual intercourse with a child who is at least 15 is guilty of a Class A

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misdemeanor unless the person is the child's spouse. The bill eliminates these spousal exceptions unless the person was a child when the marriage occurred.

Current law provides that a court may annul a marriage on certain grounds, including if a party was 16 or 17 years of age and did not have the consent of a parent or guardian or judicial approval or if the party was under 16 years of age. In those circumstances, current law allows the underaged person or a parent or guardian to bring suit at any time before the underaged person turns 18 but requires that the parent or guardian bring suit within one year of obtaining knowledge of the marriage. Under the bill, a person who was under the age of 18 at the time of the marriage may bring suit for annulment within 10 years of the marriage. The bill also allows a parent or guardian to bring suit for annulment at any time prior to the underaged party turning 18 and eliminates the requirement that such a suit be brought within one year of obtaining knowledge of the marriage.

Finally, the bill expressly provides that a married minor may file an action for divorce or legal separation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1   **SECTION 1.** 48.14 (6) of the statutes is amended to read:

2   48.14 **(6)** Consent to marry under s. 765.02, 2021 stats.

3   **SECTION 2.** 765.02 (1) of the statutes is renumbered 765.02.

4   **SECTION 3.** 765.02 (2) of the statutes is repealed.

5   **SECTION 4.** 765.11 (1) of the statutes is amended to read:

6   765.11 **(1)** If any parent, grandparent, child, ~~or natural guardian of a minor~~

7   ~~applicant for a marriage license, any~~ brother, sister, or guardian of either of the

8   applicants for a marriage license, either of the applicants, the district attorney, or a

9   circuit court commissioner believes that the statements of the application are false

10   or insufficient, or that an applicant is adjudicated incompetent without the right to

11   marry, that person may file with the court having probate jurisdiction in the county

12   in which the marriage license is applied for, a petition under oath, setting forth the

13   grounds of objection to the marriage, and asking for an order requiring the parties

14   making the application to show cause why the marriage license should not be

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1   refused. Whereupon, the court, if satisfied that the grounds of objection are prima

2   facie valid, shall issue an order to show cause as aforesaid, returnable as the court

3   directs, but not more than 14 days after the date of the order, which shall be served

4   forthwith upon the applicants for the marriage license residing in the state, and upon

5   the clerk before whom the application has been made, and shall operate as a stay

6   upon the issuance of the marriage license until further ordered; if either or both of

7   the applicants are nonresidents of the state the order shall be served immediately

8   upon the nonresident by publication of a class 1 notice, under ch. 985, in the county

9   in which the application is pending, and by mailing a copy thereof to the nonresident

10   at the address contained in the application.

11   **SECTION 5.** 765.30 (2) (a) of the statutes is amended to read:

12   765.30 **(2)** (a) *Penalty for false statement.* Any person who in any affidavit or

13   statement made under s. ~~765.02 (2),~~ 765.09 or 765.11, willfully and falsely swears,

14   or who procures another to swear falsely in regard to any material fact relating to

15   the competency of either or both of the parties applying for a marriage license~~, or as~~

16   ~~to the ages of such parties, if minors, or who falsely pretends to be the parent or~~

17   ~~guardian having authority to give consent to the marriage of such minor~~.

18   **SECTION 6.** 767.185 of the statutes is created to read:

19   **767.185 Action for divorce or legal separation by minor.** A person who

20   is under the age of 18 and who is married may file an action for divorce or legal

21   separation.

22   **SECTION 7.** 767.313 (1) (c) of the statutes is amended to read:

23   767.313 **(1)** (c) A party was ~~16 or 17 years of age and did not have the consent~~

24   ~~of his or her parent or guardian or judicial approval, or a party was~~ under ~~16~~ 18 years

25   of age. Suit may be brought by the underaged party ~~or~~ within 10 years of the

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1   marriage or by a parent or guardian at any time prior to the party's attaining the age

2   of 18 years, but a parent or guardian must bring suit within one year of obtaining

3   knowledge of the marriage.

4   SECTION 8. 948.09 of the statutes is amended to read:

5   **948.09 Sexual intercourse with a child age 16 or older.** Whoever has

6   sexual intercourse with a child who is not the defendant's spouse and who has

7   attained the age of 16 years is guilty of a Class A misdemeanor if the defendant has

8   attained the age of 19 years when the violation occurs. This section does not apply

9   if the child is the defendant's spouse and the defendant was a child when the

10   marriage occurred.

11   SECTION 9. 948.093 of the statutes is amended to read:

12   **948.093 Underage sexual activity.** Whoever has sexual contact with a child

13   who has attained the age of 15 years but has not attained the age of 16 years, or

14   whoever has sexual intercourse with a child who has attained the age of 15 years, is

15   guilty of a Class A misdemeanor if the actor has not attained the age of 19 years when

16   the violation occurs. This section does not apply if the actor is the child's spouse and

17   the actor was a child when the marriage occurred.

18   **SECTION 10. Initial applicability.**

19   (1) The treatment of ss. 948.09 and 948.093 first applies to an action that occurs

20   on the effective date of this subsection.

21   (2) The treatment of s. 767.313 (1) (c) first applies to an action for annulment

22   filed on the effective date of this subsection.

23   **(END)**