

2019 DRAFTING REQUEST

Bill

For: **Jimmy Anderson (608) 266-8570** Drafter: **swalkenh**  
 By: **Joshua** Secondary Drafters:  
 Date: **6/6/2019** May Contact:

Same as LRB:

Submit via email: **YES**  
 Requester's email: **Rep.Anderson@legis.wisconsin.gov**  
 Carbon copy (CC) to: **sarah.walkenhorstbarber@legis.wisconsin.gov**  
**Elizabeth.wheeler@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Eliminating marriage for individuals under age 18

**Instructions:**

See attached--redraft LRB 17-3786

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	swalkenh 6/18/2019	ccarmich 6/18/2019			
/P1			dwalker 6/18/2019		
/1			mbarman 11/8/2019	mbarman 11/8/2019	

FE Sent For:

*Not Needed*

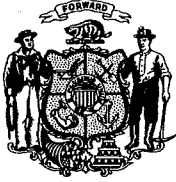
<END>



JWB

Discussed some proposed changes with Logan  
DO / PL portfolio to review

- All changes / LR suggestions and include  
renumbering 765.02(1) and adding change  
to annulment statute language



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-8786/P1  
SWB:jtd

3470/P1

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

IN 6/18  
Requested by 6/19  
PLS  
INSERT

SLV  
X-ref  
SLV

regen

- 1 AN ACT to repeal 765.02 (2); and to amend 765.30 (2) (a) and 765.11 (1) of the
- 2 statutes; relating to: age for marriage.

**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. This bill eliminates the written consent exception to the general requirement that a person must be 18 years of age or older in order to marry.

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

- 3 SECTION 1. 765.02 (2) of the statutes is repealed.
- 4 SECTION 2. 765.11 (1) of the statutes is amended to read:

INS  
1-3

1           765.11 (1) If any parent, grandparent, child, <sup>strike</sup> ~~or natural guardian of a minor~~  
2           ~~applicant for a marriage license, any, brother, sister, or guardian of either of the~~  
3           ~~applicants for a marriage license, either of the applicants, the district attorney, or a~~  
4           ~~circuit court commissioner believes that the statements of the application are false~~  
5           ~~or insufficient, or that an applicant is adjudicated incompetent without the right to~~  
6           ~~marry, that person may file with the court having probate jurisdiction in the county~~  
7           ~~in which the marriage license is applied for, a petition under oath, setting forth the~~  
8           ~~grounds of objection to the marriage, and asking for an order requiring the parties~~  
9           ~~making the application to show cause why the marriage license should not be~~  
10          ~~refused. Whereupon, the court, if satisfied that the grounds of objection are prima~~  
11          ~~facie valid, shall issue an order to show cause as aforesaid, returnable as the court~~  
12          ~~directs, but not more than 14 days after the date of the order, which shall be served~~  
13          ~~forthwith upon the applicants for the marriage license residing in the state, and upon~~  
14          ~~the clerk before whom the application has been made, and shall operate as a stay~~  
15          ~~upon the issuance of the marriage license until further ordered; if either or both of~~  
16          ~~the applicants are nonresidents of the state the order shall be served immediately~~  
17          ~~upon the nonresident by publication of a class 1 notice, under ch. 985, in the county~~  
18          ~~in which the application is pending, and by mailing a copy thereof to the nonresident~~  
19          ~~at the address contained in the application.~~

20           **SECTION 3.** 765.30 (2) (a) of the statutes is amended to read:

21           765.30 (2) (a) *Penalty for false statement.* Any person who in any affidavit or  
22           statement made under s. 765.02 (2), 765.09 or 765.11, willfully and falsely swears,  
23           or who procures another to swear falsely in regard to any material fact relating to  
24           the competency of either or both of the parties applying for a marriage license, or as

1 to the ages of such parties, if minors, or who falsely pretends to be the parent or  
2 guardian having authority to give consent to the marriage of such minor.

\*\*\*\*NOTE: I considered leaving the phrase "or as to the ages of such parties" or "or as to the ages of such parties, if minors" in the draft, but I believe that "any material fact relating to the competency" should cover all circumstances. I also believe leaving the other language in could cause confusion. I would be happy to discuss if you like.

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(END)

**2019-2020 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3470/?ins  
SWB:...

**INSERT 1-3**

1

2

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

**(END INSERT 1-3)**

**INSERT 3-3**

3

**SECTION 2.** 767.313 (1) (c) of the statutes is amended to read:

4

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

5

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

6

of age. Suit may be brought by the underaged party or a parent or guardian at any

7

time prior to the party's attaining the age of 18 years, but a parent or guardian must

8

bring suit within one year of obtaining knowledge of the marriage.

**History:** 1977 c. 105; 1979 c. 32 ss. 50, 92 (2); Stats. 1979 s. 767.03; 2005 a. 443 ss. 22, 23, 145; Stats. 2005 s. 767.313.

**NOTE:** 2005 Wis. Act 443 contains explanatory notes.

**(END INSERT 3-3)**

## Walkenhorst Barber, Sarah

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**From:** Miller, Joshua  
**Sent:** Thursday, November 07, 2019 8:48 PM  
**To:** Walkenhorst Barber, Sarah  
**Subject:** RE: Draft review: LRB -3470/P1

Sure! I'll let you know when/if we have a Senate lead as well.

Joshua Miller  
Office of Rep. Jimmy Anderson

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**From:** Walkenhorst Barber, Sarah <Sarah.WalkenhorstBarber@legis.wisconsin.gov>  
**Sent:** Thursday, November 07, 2019 8:47 PM  
**To:** Rep.Anderson <Rep.Anderson@legis.wisconsin.gov>; Miller, Joshua <Joshua.Miller@legis.wisconsin.gov>  
**Subject:** RE: Draft review: LRB -3470/P1

Hi Representative Anderson and Joshua,

Certainly, I'll get this changed over to a /1 introducible version. Would you like the jacket as well?

Best,  
Sarah

**Sarah Walkenhorst Barber**  
Senior Legislative Attorney  
Wisconsin Legislative Reference Bureau  
P.O. Box 2037  
Madison, WI 53701-2037  
**(608) 504-5826**  
[sarah.walkenhorstbarber@legis.wisconsin.gov](mailto:sarah.walkenhorstbarber@legis.wisconsin.gov)

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**From:** Rep.Anderson <Rep.Anderson@legis.wisconsin.gov>  
**Sent:** Thursday, November 07, 2019 8:42 PM  
**To:** Walkenhorst Barber, Sarah <Sarah.WalkenhorstBarber@legis.wisconsin.gov>  
**Subject:** RE: Draft review: LRB -3470/P1

Sarah,

All of the updates you mentioned below look great. Could you send us an introducible copy of this bill, rather than the preliminary draft? Thanks so much in advance.

Best,

Joshua Miller  
Office of Rep. Jimmy Anderson

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**From:** Walkenhorst Barber, Sarah <Sarah.WalkenhorstBarber@legis.wisconsin.gov>  
**Sent:** Tuesday, June 18, 2019 11:41 AM

To: Vidal, Logan <Logan.Vidal@legis.wisconsin.gov>

Subject: FW: Draft review: LRB -3470/P1

Hi Logan,

As discussed, attached is a preliminary version of LRB 3470, relating to elimination of marriage under age 18. Per our discussion, please note the following changes from last session:

- 1) I renumbered s. 765.02 (1) to s. 765.02 (without a subsection), as the draft repeals the only other subsection (subsection 2).
- 2) In Section 3 (s. 765.11 (1)), I struck out some additional words (“natural guardian”), as I decided it didn’t make much sense to leave that reference in with the other language in the list, including “guardian”. The term as used in the context of that sentence did not seem to add anything that “guardian” would not cover.
- 3) I added Section 5 on page 3. Section 767.313 relates to grounds for annulment. The draft now amends s. 767.313 (1) (c), which relates to age. Current law has specific language dealing with the 16 and 17 year olds (currently allowed to marry under certain conditions, including parental consent), so I modified it in the draft to simply refer to those under 18. Subsection (1) (c) is one of a list. Another ground for annulment is that the marriage is prohibited by the laws of this state (see s. 767.313 (1) (d)). As such, an alternative might be to eliminate (1) (c) altogether, as it could be considered to overlap somewhat with (1) (d). Since age was one of the specified grounds in current law, though, for purposes of this version, I opted to amend it and just update it regarding the age restriction. Please let me know if you would like to discuss that or make change—happy to do so, of course.

Best,  
Sarah

**Sarah Walkenhorst Barber**

Legislative Attorney

Wisconsin Legislative Reference Bureau

P.O. Box 2037

Madison, WI 53701-2037

**(608) 504-5826**

[sarah.walkenhorstbarber@legis.wisconsin.gov](mailto:sarah.walkenhorstbarber@legis.wisconsin.gov)

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**From:** LRB.Legal <[lrblegal@legis.wisconsin.gov](mailto:lrblegal@legis.wisconsin.gov)>

**Sent:** Tuesday, June 18, 2019 11:22 AM

**To:** Walkenhorst Barber, Sarah <[Sarah.WalkenhorstBarber@legis.wisconsin.gov](mailto:Sarah.WalkenhorstBarber@legis.wisconsin.gov)>

**Subject:** Draft review: LRB -3470/P1

**Draft Requester: Rep. Jimmy Anderson**

**Following is the PDF version of draft LRB -3470/P1.**





State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-3470/P1  
SWB:cdc

Handwritten marks: a circled '1' with an arrow pointing to the text below, and the number '12' written vertically.

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT** *to repeal* 765.02 (2); *to renumber* 765.02 (1); and *to amend* 765.11 (1),  
2           765.30 (2) (a) and 767.313 (1) (c) of the statutes; **relating to:** age for marriage.

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***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. This bill eliminates any exception to the general requirement that a person must be 18 years of age or older in order to marry.

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

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

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

1 ~~to the ages of such parties, if minors, or who falsely pretends to be the parent or~~  
2 ~~guardian having authority to give consent to the marriage of such minor.~~

3 **SECTION 5.** 767.313 (1) (c) of the statutes is amended to read:

4 767.313 (1) (c) A party was ~~16 or 17~~ years of age and did not have the consent  
5 of his or her parent or guardian or judicial approval, or a party was under ~~16~~ 18 years  
6 of age. Suit may be brought by the underaged party or a parent or guardian at any  
7 time prior to the party's attaining the age of 18 years, but a parent or guardian must  
8 bring suit within one year of obtaining knowledge of the marriage.

9 (END)

**Barman, Mike**

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**From:** LRB.Legal  
**To:** Rep.Anderson  
**Subject:** Draft review: LRB -3470/1  
**Attachments:** 19-3470/1

**State of Wisconsin - Legislative Reference Bureau**  
**One East Main Street - Suite 200 - Madison**

**The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent.** If you have any questions concerning the draft or would like to have it redrafted, please contact Sarah Walkenhorst Barber, Legislative Attorney, at (608) 504-5826, at [sarah.walkenhorstbarber@legis.wisconsin.gov](mailto:sarah.walkenhorstbarber@legis.wisconsin.gov), or at One East Main Street, Suite 200.

**We will jacket this draft for introduction in the Assembly.**

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will submit a request to DOA when the draft is introduced. You may obtain a fiscal estimate on the draft prior to introduction by contacting our program assistants at [LRB.Legal@legis.wisconsin.gov](mailto:LRB.Legal@legis.wisconsin.gov) or at (608) 266-3561. If you requested a fiscal estimate on an earlier version of this draft and would like to obtain a fiscal estimate on the current version before it is introduced, you will need to request a revised fiscal estimate from our program assistants.

**Please call our program assistants at (608) 266-3561 if you have any questions regarding this email.**