

Legislative Analysis



PROHIBIT MARRIAGE OF MINORS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bills 209 (S-2), 210 (S-2), and 217 as passed by the Senate
Sponsor: Sen. Sarah Anthony

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 211 (S-2) as passed by the Senate
Sponsor: Sen. Sylvia A. Santana

Senate Bill 212 (S-1) as passed by the Senate
Sponsor: Sen. Veronica Klinefelt

Senate Bill 215 as passed by the Senate
Sponsor: Sen. Mark E. Huizenga

Senate Bill 213 (S-2) as passed by the Senate
Sponsor: Sen. Rosemary Bayer

Senate Bill 216 as passed by the Senate
Sponsor: Sen. Erika Geiss

Senate Bill 214 as passed by the Senate
Sponsor: Sen. Ruth A. Johnson

Senate Bill 246 as passed by the Senate
Sponsor: Sen. Roger Victory

Senate Committee: Civil Rights, Judiciary, and Public Safety
House Committee: Criminal Justice
Complete to 6-27-23

SUMMARY:

Taken together, Senate Bills 209 to 217 and 246 would amend different statutes to, among other things, prohibit marriage to or between individuals who are under 18 years of age; make 18 years of age the legal age to marry; remove references to marriage involving a minor; eliminate marriage as an automatic factor for emancipation; and remove certain marriage-related exceptions from criminal sexual conduct violations currently available to teachers, school employees, and school administrators.

Senate Bill 209 would amend 1921 PA 352, which currently prohibits the marriage of a person under 16 years of age and voids such a marriage, to prohibit the marriage of an individual under 18 years of age and to declare such a marriage void. The bill would also delete a provision stating that the act does not prohibit probate judges from exercising their powers to perform marriages as provided by 1897 PA 180 (see SB 211, below). The bill would apply to a marriage entered into on or after the bill's effective date, meaning that a marriage entered into before the bill's effective date in which one or both of the participants were under 18 years of age at the time would still be valid.

MCL 551.51

Senate Bill 210 would amend 1887 PA 128, which establishes the minimum age for contracting marriage, to eliminate a provision allowing a person who is 16 years of age but less than 18 years of age to marry with the written consent of one of their parents or their legal guardian. The bill would also delete requirements that the written consent be presented to the county clerk with the marriage application and be preserved on file in the office of the county clerk.

Further, a charter county with a population of over 2.0 million may now impose by ordinance a marriage license fee in a different amount than prescribed in the act. The bill would change the population threshold to over 1.5 million *based on the 2010 federal decennial census*. (This would be a closed set applying only to Wayne County, which is a charter county that had a population of 1.8 million in the 2010 census. Macomb County, now Michigan's only other charter county, had a population of just under 841,000 in the 2010 census.)

MCL 551.103

Senate Bill 211 would amend 1897 PA 180, which provides for the issuance of marriage licenses without publicity in certain cases. The act allows a probate judge to issue, without publicity, a marriage license to a person who “desires to keep the exact date of his or her marriage to a person *of the opposite sex* a secret,” if there is good reason that is both expressed in the application and determined sufficient by the judge. The bill would retain this provision without amending it to account for same-sex marriages.

The act also allows a probate judge to marry without publicity persons under marriageable age upon a written request of either of the following:

- All of the living parents of both parties, and their guardian or guardians if either or both parents are dead.
- If only one party to the marriage is under the marriageable age, that party's parents or guardians.

The bill would eliminate that authority and delete provisions pertaining to underage marriages.

MCL 551.201

Senate Bill 212 would amend the Estates and Protected Individuals Code to eliminate the authority of a guardian or limited guardian to consent to a minor ward's marriage. The bill would retain the current authority of a personal representative to distribute estate assets otherwise distributable in amounts of up to \$5,000 per year to a minor if married, but would limit this authority to apply only with regard to a minor married before the bill's effective date.

MCL 700.2519 et seq.

Senate Bill 213 would amend 1968 PA 293, which among other things establishes the conditions for emancipation of minors. Currently, an emancipation occurs by operation of law when a minor is validly *married*. The bill would revise this provision to instead provide that an emancipation would occur when a minor is validly *emancipated under the laws of another state*. In addition, the act confers on a minor who is emancipated various rights and responsibilities of an adult. One of the listed rights is the right to marry. The bill would delete that provision.

MCL 722.4 and 722.4e

Senate Bill 214 would amend 1846 RS 84 (“Of Divorce”), which allows a parent or guardian to bring an action to annul a marriage on the grounds that one of the parties was under the age of legal consent. The act does not allow the marriage to be annulled on the application of a

party who was of the age of legal consent at the time of the marriage. The act also does not allow the annulment *when it appears that the parties, after they had attained the age of consent, had freely inhabited as husband and wife*. The bill would delete the italicized text.

MCL 552.34

Senate Bill 215 would amend 2001 PA 125. Currently, a hotel or bed and breakfast may require an emancipated minor to present a marriage license or other evidence to document the minor's status as an emancipated minor when renting or leasing a room in the establishment. The bill would delete the reference to a marriage license.

MCL 427.304

Senate Bill 216 would amend the Safe Families for Children Act, which currently prohibits a parent or guardian from delegating the parent's or guardian's own power to consent to marriage of a minor child. The bill would delete the reference to marriage of a minor child from that provision and would explicitly provide that a parent is not authorized to consent to the marriage of a child who is under the legal age of marriage.

MCL 722.1555

Senate Bill 217 would amend the Michigan Penal Code.

Taking or enticing away minor under 16

The code now provides that a person who takes or entices away a minor under the age of 16 from the minor's parent, guardian, or other person having legal charge of the minor, without their consent, for the purpose of prostitution, concubinage, sexual intercourse, or marriage is guilty of a felony punishable by imprisonment for up to 10 years. The bill would remove the reference to marriage as an element of the crime.

Criminal sexual conduct in the third degree and fourth degree

Engaging in sexual penetration with another person under certain circumstances constitutes criminal sexual conduct (CSC) in the third degree, and engaging in sexual contact under certain circumstances constitutes CSC in the fourth degree. One of the circumstances for either offense is that the other person is at least 16 years of age but less than 18 and a student at a public or nonpublic school and the actor is a teacher, substitute teacher, or administrator of that school, school district, or intermediate school district. However, it is not third degree CSC or fourth degree CSC if the other person (minor) is emancipated *or if both persons are lawfully married to each other* at the time of the alleged violation. The bill would eliminate the italicized text.¹ It is also CSC in the third or fourth degree if the other person is at least 16 years of age but less than 26 years old and is receiving special education services and the actor is a teacher, substitute teacher, administrator, employee, or contractual service provider of the school, school district, or intermediate school district. However, this does not apply if both persons are

¹ **Note:** This bill does not appear to account for existing marriage contracted when, at the time of the marriage, it was legal for the actor and the minor to marry. For example, if one party is still under the age of 18 when the bill takes effect, or the statutes of limitations have not expired, and the circumstances described above for a third or fourth degree CSC violation are met, the language of the bill as currently written would appear to raise the question of whether the other party to the marriage would be guilty of CSC in the third or fourth degree.

lawfully married to each other at the time of the alleged violation. The bill would revise the exception to apply if both persons are *at least 18 years of age and were lawfully married to each at the time of the alleged violation.*

CSC in the first through fourth degrees and assault with intent to commit CSC

Currently, a person may be charged and convicted for criminal sexual conduct in the first through fourth degrees and assault with the intent to commit criminal sexual conduct in the first through third degrees even if the victim is the person's spouse. However, a person cannot be charged or convicted solely because the legal spouse is under the age of 16. The bill would delete this exemption.²

MCL 750.13 et seq.

Senate Bill 246 would amend 1919 PA 160. The act provides that the legal marriage of a minor releases the minor from parental control and entitles the minor's spouse to all the same rights, benefits, and privileges, and subjects the minor to the same duties, liabilities, and responsibilities, as if the minor spouse were of legal age at the time of the marriage.

The bill would limit this provision to apply only to a marriage entered into before the bill's effective date.

MCL 551.251

Tie-bars

As passed by the Senate, the bills are tie-barred as follows (a bill cannot take effect unless each bill to which it is tie-barred is also enacted):

- Senate Bill 209: House Bills 4294 to 4297.
- Senate Bill 210: Senate Bills 211 and 212 and House Bills 4293 and 4296.
- Senate Bill 211: Senate Bills 210 and 212 and House Bills 4293 and 4296.
- Senate Bill 212: House Bill 4293.
- Senate Bill 217: A bill with request number 01334'23. (House Bill 4293 has request number 01334'23 *.)
- Senate Bill 246: Senate Bills 209 to 212.

BACKGROUND:

As passed by the Senate, the bills are identical to the following versions of the following House bills³ (not including any differences in tie-bars):

- Senate Bill 209: House Bill 4293 (H-1) as reported from House committee.
- Senate Bill 210: House Bill 4294 (H-1) as reported from House committee.
- Senate Bill 211: House Bill 4295 as reported from House committee.
- Senate Bill 212: House Bill 4297 as reported from House committee.
- Senate Bill 213: House Bill 4301 (H-2) as reported from House committee.

² **Note:** The bill would appear to apply this provision to persons who lawfully married under the laws of other states as well as to a person whose marriage to a minor under the age of 16 was before the bill's effective date.

³ The HFA summary of the corresponding House bills as reported from the House Judiciary committee is available here: <https://www.legislature.mi.gov/documents/2023-2024/billanalysis/House/pdf/2023-HLA-4293-DB515F9C.pdf>

- Senate Bill 214: House Bill 4300 as reported from House committee.
- Senate Bill 215: House Bill 4299 as reported from House committee.
- Senate Bill 216: House Bill 4298 as reported from House committee.
- Senate Bill 217: House Bill 4302 as introduced.
- Senate Bill 246: House Bill 4296 as introduced.

BRIEF DISCUSSION:

According to Equality Now, child marriage is legal in 42 states,⁴ and nearly 300,000 children (less than 18 years of age) were married in the U.S. between 2000 and 2018. Most of these child marriages were girls who were married to adult men. Far from being examples of young love, such marriages are often forced and sometimes used to avoid prosecution for rape of a minor. Child marriages increase the risk for domestic violence in the relationship, as the one who was the minor is often subjected to physical and psychological abuse, yet a child under 18 cannot file for divorce or seek a protective order on their own. Known negative impacts on children who marry include health impacts, forced pregnancies, missed educational and economic opportunities, poverty, and a high divorce rate (about 70-80% of marriages with at least one partner younger than 18 end in divorce). There is currently a worldwide effort to end child marriages. The United States and 192 other countries have promised to end child marriage by 2030. Supporters argue that enactment of the bill package is in step with the rest of the world in ending what is considered to be an abuse of human rights.

Note that, as described above, Senate Bill 217 as currently written may subject certain individuals who married a minor before the bills become law to be charged with criminal sexual conduct in the third or fourth degree if the date of their marriage is still within the statutes of limitations for those crimes. Several other bills in the package provided that their amendatory language applied to marriages that occurred on or after the bills' effective dates to avoid such situations.

FISCAL IMPACT:

The bills would not have a significant fiscal impact on state expenditures to the Department of Health and Human Services (DHHS) or local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

⁴ Delaware, Massachusetts, Minnesota, New Jersey, Pennsylvania, Rhode Island, New York, and Vermont have established the legal age to marry at 18 years of age.