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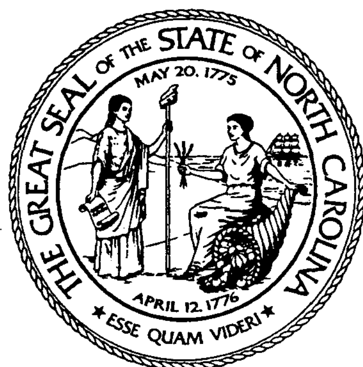
2001

LEGISLATIVE RESEARCH COMMISSION

MARRIAGE LICENSE LAWS



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REPORT TO THE

2001 SESSION OF THE

2001 GENERAL ASSEMBLY

OF NORTH CAROLINA

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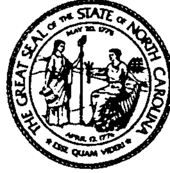
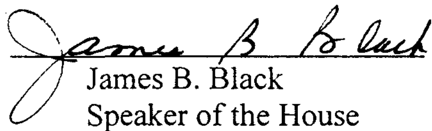


January 10, 2001

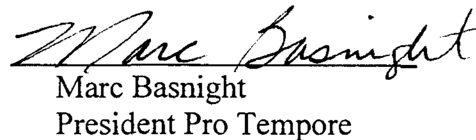
TO THE MEMBERS OF THE 2001 GENERAL ASSEMBLY (REGULAR SESSION 2001):

The Legislative Research Commission herewith submits to you for your consideration its 2001 final report on marriage license laws issues. The report was prepared by the Legislative Research Commission's Committee on Marriage License Laws pursuant to G.S. 120-30.17(1).

Respectfully submitted,



James B. Black
Speaker of the House



Marc Basnight
President Pro Tempore

Cochairs
Legislative Research Commission

1999 - 2000

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House of Representatives and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1998 Session and 1999 Sessions, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of marriage license laws was authorized by Section 2.1 of Part II of Chapter 395 of the 1999 Session Laws (Regular Session, 1999). Part II of S.L. 1999-395 allows for studies authorized by that Part for the Legislative Research Commission to consider House Joint Resolution 1365 in determining the nature, scope and aspects of the study. The relevant portions of Chapter 395 and House Joint Resolution 1365 are included in Appendix A.

The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Human Resources and Health Issues area under the

direction of Senator Ed N. Warren. The Committee was chaired by Senator Jeanne Lucas and Representative Ronnie Sutton. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library following the 1999-2000 biennium.

COMMITTEE PROCEEDINGS

The Marriage License Laws Committee held two meetings before the 2000 Session of the 1999 General Assembly. The Committee decided not to report to the 2000 General Assembly, but to continue its study after the Short Session. The Committee held three meetings after the 2000 Session of the 1999 General Assembly.

First Meeting – March 24, 2000

At its first meeting, held on March 24, 2000, Wendy Graf, Committee Counsel, began by explaining the Committee's charge. The Committee was specifically directed to study the following issues:

- The responsibility of the Register of Deeds in issuing marriage licenses.
- The requirements for issuing licenses to underage applicants.
- Who is authorized to give consent to the marriage of an underage applicant.
- Who is authorized to solemnize marriages in North Carolina.
- Penalties for those who solemnize marriages without a license.
- The duration and geographical scope of a marriage license.
- Any other issues the Committee deems relevant.

Next the Committee heard from William A. Campbell from the Institute of Government at the University of North Carolina. Mr. Campbell gave the Committee an overview of the marriage license laws in North Carolina. A copy of Mr. Campbell's article, *North Carolina Marriage Laws: Some Questions*, was distributed to the Committee members at the meeting.

Mr. Campbell then walked the Committee through the procedures an individual must go through to get a marriage license. He explained to the Committee that an unmarried male and female must appear in person at the Register of Deeds office to apply for the marriage license. After answering the appropriate questions and furnishing a photo ID, the Register of Deeds issues the license. (Ms. Ann Shaw, President of the North Carolina Association of Registers of Deeds and the Register of Deeds for Randolph County, agreed to provide the Committee members with a list of questions they ask couples when they apply for a marriage license.) The couple must then be married by a person authorized to solemnize a marriage, in the county in which the license was issued, within 60 days of the date of issuance. The individual who solemnized the marriage then returns the license to the Register of Deeds to be filed.

Mr. Campbell then explained to the Committee that the marriage license laws in North Carolina have been in existence for over 100 years and that, over time, several issues have arisen which are either not clearly addressed by the outdated statutes or that were not anticipated, and therefore not addressed,

when the statutes were first enacted. Mr. Campbell then provided the Committee with a list of seven key issues that he felt should be addressed by the Committee.

- Who should be authorized to solemnize marriages in North Carolina? The statutes currently allow only a very narrow list of individuals to solemnize a marriage. This has raised constitutional questions because the effect of the statute is that certain religious groups are given preferential treatment. Marriages performed according to the customs of some religious beliefs are not recognized under North Carolina law as valid because they are not solemnized by a person authorized to solemnize marriages under this narrow statute. In addition, there are specific exceptions carved out for two religious groups, the Society of Friends and the Baha'is, singling them out over other groups and making their marriages valid. The statute causes confusion as a practical matter as well because a couple may be married by someone they believe is authorized to solemnize their marriage only to find out later that their marriage is not valid under the law.

- Geographical scope of a marriage license. Under the current law, a marriage license is only valid in the county in which it is issued. This has presented problems in our increasingly mobile society for individuals who live in one county, but wish to marry in another.

- Designation of race on the marriage license. The marriage license statutes currently require that race be designated on the marriage license, however the options listed for applicants to choose from are "white", "colored", or "Indian". Mr. Campbell pointed out to the Committee that this terminology is outdated and is not inclusive of all races. The question was also raised as to whether there is a need to continue to require that this information be included on the license.

- Determination of mental competence of applicants for a marriage license. Over time, and with the elimination of requirements for medical examinations, the burden of determining whether an applicant for a marriage license is mentally competent has fallen on the Register of Deeds. The problem is that the statutes are vague as to what exactly the Register of Deeds is required to determine about the applicant before issuing the license. Registers of Deeds have been put in a position where they may be required to make determinations of things they are not qualified to determine.

- Issuing marriage licenses to underage applicants. Under the current statute, a female applicant between the ages of 12 and 16, who is pregnant or has given birth to a child, may marry the putative father of the child with the appropriate consent. However, the statute does not address male applicants under the age of 16. Another problem with the statute is that it is not always clear who is authorized to give consent for the underage applicant to marry. Specifically, it is often difficult for a Register of Deeds to determine when someone is standing in loco parentis. Mr. Campbell also pointed out that the statute is very permissive with regard to very young applicants, and that, as a policy issue, the Committee may want to examine whether the State should be emphasizing the importance of legitimating children through marriage over the interests of the underage applicants.

- Marriage of prisoners. Under the current statutes, both applicants are required to appear at the Register of Deeds office to apply for a marriage license. The Supreme Court has held that prisoners have a constitutional right to marry, but the statutes do not address situations where an individual is incarcerated and is unable to appear in person. Registers of Deeds are not required by law to go to prisons so that prisoners may apply for a license and have refused to do so. Therefore, in effect, these individuals are being denied their constitutional right to marry.

- Correction of errors in a marriage license. The marriage license statutes currently provide a procedure by which corrections can be made to the names of the parties when there is a mistake on the application or license. However, there is no procedure set out in the statutes for the correction of other technical errors.

Following Mr. Campbell's presentation, Representative Hill told the Committee that he had been contacted by the American Civil Liberties Union (ACLU), and that they indicated to him that they have concerns about the marriage license statutes as they are now, one of which involves who may solemnize a marriage. He further indicated that the ACLU intends to pursue these issues based on their belief that much of the law is unconstitutional.

Second Meeting – April 28, 2000

At the second meeting, held on April 28, 2000, Committee Counsel, Wendy Graf, first reviewed the research materials provided to the Committee members. These materials included:

- A summary of issues discussed at the first meeting provided by Mr. William Campbell.
- A memorandum from Ms. Ann Shaw which included the list of questions asked of applicants for a marriage license and a copy of the current marriage license application.
- A copy of the Uniform Marriage and Divorce Act.
- A list of states that have adopted the Uniform Act in whole or in part.
- A chart comparing the marriage laws of the fifty states, DC and Puerto Rico.
- A National Conference of State Legislatures sample listing of state laws regarding persons authorized to solemnize marriages.

Next, Ms. Deborah Ross, Executive and Legal Director of the American Civil Liberties Union (ACLU), addressed the Committee. Ms. Ross began by explaining why the Committee was initially formed. The ACLU had received several complaints regarding the constitutionality of the requirement that Social Security Numbers be provided before a marriage license could be issued. This issue was resolved when the General Assembly passed Senate Bill 1018 which allowed applicants to submit an affidavit stating that he or she does not have a Social Security Number. The bill also included a provision for continuing a study of the marriage license procedure.

Ms. Ross went on to explain that the ACLU responds to complaints from individuals who feel that their rights have been violated, and they have received several complaints from individuals who feel their

constitutional rights are being violated by the statute that sets forth who may solemnize a marriage in North Carolina. Ms. Ross made a recommendation to the Committee that the language in the statute be broadened to include all religious groups. An example of this would be the language used in the Uniform Marriage and Divorce Act.

Discussion ensued regarding whether the language in the Uniform Act was too broad and how it can be determined if a religious belief is valid or not. Ms. Ross pointed out that the issue is not whether a religious belief is valid or legitimate according to a standard set forth by the State, but whether the religious belief is sincerely held. The problem is that there are many religious groups and beliefs that the General Assembly is unfamiliar with, and it is those people's rights that are being discriminated against.

The Committee then discussed the possibility of licensing or registering individuals who are authorized to solemnize a marriage so that the State would have some record of those individuals and some control over the process. It was pointed out to the Committee that constitutionality issues could arise if the State were allowed to investigate the legitimacy of a religious belief and refuse to license an individual on that basis.

Next, the Committee heard from Senator Kinnaird, an attorney with Prisoner Legal Services. Senator Kinnaird gave the Committee a brief overview of the constitutional issues involved with prisoner marriages. She stated that, although in some cases Registers of Deeds have arranged to go to prisons so that prisoners may apply for marriage licenses, other Registers of Deeds have refused, thereby denying prisoners their constitutional right to marry.

Mr. Campbell, with input from Ms. Shaw, then reviewed the seven issues addressed at the first meeting. The Committee then discussed and prioritized these issues, agreeing that several of the issues can be resolved fairly easily, but that the issue of who should be authorized to solemnize a marriage is the key issue to be addressed above all others.

Third Meeting – September 28, 2000

The third meeting, held on September 28, 2000, began with Committee Counsel, Wendy Graf, giving the Committee a brief overview of the seven issues addressed at the first two meetings held before the Short Session, along with some possible solutions. Committee discussion followed on each of the issues.

- **Persons authorized to solemnize a marriage.** Several examples of language to broaden the statute regarding persons who are authorized to solemnize marriages were discussed, including examples of statutes from other states. It was agreed that the statute needs to be amended so that particular religious groups are not singled out and given preferential treatment. Representative Sutton added that he would like to see a registration process included in the statute so that citizens would have some assurance that their marriage will be recognized as a valid marriage in North Carolina.

- **Geographical scope of a marriage license.** The Committee agreed with the proposal to amend the statute to make a marriage license valid in any county in North Carolina as there is no compelling reason to limit the geographical scope.

- **Designation of race on a marriage license.** The Committee discussed whether the requirement of designation of race on the marriage license should be left in the statute with an expansion of the options to choose from or eliminated altogether. Committee members questioned the purpose of the requirement. Mr. A. Torrey McLean, NC State Registrar of Vital Records, informed the committee that the information is used for genealogical research. In light of this information the Committee agreed that the designation of race should remain on the marriage license, with an expansion of options, but that it should be optional as it is on the North Carolina drivers license and other public records.

- **Determination of mental competence of applicant.** Committee members agreed that it was unfair to place the burden of determining mental competence of an applicant on the Register of Deeds when they are not qualified to make such a determination. The Committee agreed with the proposal of requiring only that the Register of Deeds verify objective requirements.

- **Marriage of underage applicants.** It was agreed that the statute should be amended to reflect the same restrictions on male applicants that are put on female applicants. The majority of Committee members expressed the opinion that the consent requirements should be more restrictive, especially with very young applicants where the female is pregnant or has given birth, although it was generally felt that more research needed to be done on this issue. There was disagreement among Committee members as to which interest should carry greater weight – the interest in legitimating the child or the best interest of the underage applicant.

- **Marriage of prisoners.** The Committee agreed with the proposal that a procedure should be included in the statutes by which an incarcerated applicant, who is unable to appear in person at the Register of Deeds office, could apply for a marriage license. It was also brought out through discussion that there are other individuals who may not be able to appear in person. Representative Sutton suggested that a form for an affidavit be designed, with the help of the Registers of Deeds, to be submitted by applicants in lieu of personal appearance when circumstances prevent them from appearing in person.

- **Correction of errors on a marriage license.** The Committee agreed that the statute should be amended to allow the correction of all errors on a marriage license through the same procedure that is set forth for the correction of errors in the names of the parties so that the parties do not have to go through the process of getting a court order to make technical corrections.

Following the Committee discussion, Senator Lucas informed the Committee that the chairs would meet with staff to work on a proposed bill draft that would incorporated the ideas discussed at the meeting. Senator Lucas added that if Committee members or other interested parties had any further

suggestions for a bill draft, they could send proposals to the chairs or staff prior to the next Committee meeting.

Fourth Meeting – December 11, 2000

At the fourth meeting, held on December 11, 2000, the Committee first heard a brief presentation from Ann Winner from the North Carolina Chapter of the National Organization for Women. Ms. Winner provided the Committee with some statistics on marriages of females between the ages of 12 and 14. She encouraged the Committee to approve a bill draft that requires judicial approval for applicants under the age of 16, as is required in the Uniform Marriage and Divorce Act. She emphasized the importance of promoting the best interests of the applicants over the interest of legitimating children. Committee discussion ensued regarding these competing interests. Ms. Winner pointed out that there are processes available, under current North Carolina laws, to legitimate a child other than allowing the underage applicant to marry.

The Committee then heard a presentation from Committee Counsel, Wendy Graf, on a proposed bill draft that included provisions suggested at previous meetings. This bill draft does the following:

- Broadens the list of persons authorized to solemnize a marriage to be more inclusive.
- Expands the geographical scope of a marriage license so that the license is valid in any county in North Carolina, as long as the license is returned to the Register of Deeds in the county in which it was issued.
- Makes designation of race on a marriage license optional, and expands the list of opti[illegible] choose from if an applicant chooses to include race on their application.
- Clarifies the responsibilities of the Register of Deeds to require that they only verify objective requirements of applicants.
- Requires judicial approval for applicants between the ages of 12 and 14 where the female applicant is pregnant or has given birth, clarifies who is authorized to consent to the marriage of underage applicants, and makes the requirements for underage male applicants the same as underage female applicants.
- Provides a process by which an applicant who is unable to appear in person at the Register of Deeds office can submit a sworn and notarized affidavit in lieu of personal appearance.
- Allows for the correction of all errors on a marriage license or application through the same procedure currently allowed for the corrections of errors in the parties' names.

Following the presentation, the Committee discussed the provisions of the bill draft, and suggested several clarifying changes to be included in the bill draft for the final report..

Fifth Meeting – January 5, 2001

The Committee held its final meeting on January 5, 2001. The Committee reviewed and approved its final report to the Legislative Research Commission.

FINDINGS AND RECOMMENDATIONS

The Legislative Research Commission's Committee on Marriage License Laws met five times. The primary focus of these meetings was the review of the marriage license statutes in North Carolina. In its study the Committee found that these statutes have been in place for over 100 years and need to be updated. In recent years several issues have arisen that are not clearly addressed in the statutes, some even raising questions about the statutes' constitutionality. After extensive study and discussion the Committee found that the marriage license statutes should be amended to address the key issues raised at its meetings.

FINDING 1: The Committee found that the current law regarding who may solemnize a marriage in North Carolina is so narrow that it excludes many religious groups, while singling out two specific religious groups, the Society of Friends and the Baha'is, as exceptions. The Committee found that the statute, in showing preferential treatment to certain religious groups, raises serious constitutional questions. The Committee found that the statute also raises practical concerns in that individuals may be married by a person they believe to be authorized to solemnize a marriage, only to find out later that they were not, making their marriage invalid in North Carolina.

RECOMMENDATION 1: That the General Assembly amend G.S. 51-1 to broaden the list of persons authorized to solemnize marriages to be more inclusive. (See LEGISLATIVE PROPOSAL 1 at Appendix J)

FINDING 2: The Committee found that, although the current law requires a marriage to be performed in the county in which the marriage license was issued, it has become more and more common over the years, in a more mobile society, for people to live in one county and want to be married in another. The Committee found that there was not a compelling reason for this restriction because, as long as the license was returned to the Register of Deeds in the county in which it was issued, expanding the geographical scope of the license would not create any additional record keeping burdens for the Registers of Deeds.

RECOMMENDATION 2: That the General Assembly amend G.S. 51-16 to make a marriage license issued in North Carolina valid in any county in North Carolina, as long as it is returned to the Register of Deeds in the issuing county. (See LEGISLATIVE PROPOSAL 1 at Appendix J)

FINDING 3: The Committee found that, while information regarding an applicant's race can be useful for genealogical research, this use is not compelling enough to require designation of race on the license. The Committee also found that the terminology used in the current statute is outdated and certainly not inclusive of all races.

RECOMMENDATION 3: That the General Assembly amend G.S. 51-16 to make the designation of race on a marriage license optional, and to update and expand the options an applican[illegible] to choose from to be inclusive of all races. (See LEGISLATIVE PROPOSAL 1 at Appendix J)

FINDING 4: The Committee found that, over the years, the burden of determining whether an applicant for a marriage license is mentally competent has fallen to the Register of Deeds who issues the license. However, the statute is vague as to what exactly the Register of Deeds responsibilities are in issuing a license. The Committee found that the Register of Deeds should only be responsible for verifying requirements that they are qualified to verify.

RECOMMENDATION 4: That the General Assembly amend G.S. 51-8 to specifically require that a Register of Deeds only has to verify objective requirements before issuing a marriage license. (See LEGISLATIVE PROPOSAL 1 at Appendix J)

FINDING 5: The Committee found that the current statute regarding applicants for a marriage license who are under the age of 18 presents problems in that it is vague in some instances, too permissive in some instances, and simply fails to address some situations. The Committee found the statute to be vague as far as who is authorized to give consent for an underage applicant to marry. The Committee found the statute to be too permissive with regard to female applicants under the age of 14 who are pregnant or have given birth and wish to marry the putative father. The Committee also found that there is no provision in the statute concerning consent on behalf of a male applicant under the age of 16 when he seeks to marry a female who is pregnant with, or has given birth to, his child, and that this situatio[illegible] needs to be addressed.

RECOMMENDATION 5: That the General Assembly amend G.S. 51-2 to clarify who is authorized to consent to the marriage of an applicant between the ages of 16 and 18, to require the same type of consent for applicants who are 14 or 15 years old when the female applicant is pregnant or has given birth, to require judicial approval in cases where an applicant is 12 or 13 years old and the female applicant is pregnant, and to make all of the provisions applicable to both male and female applicants. (See LEGISLATIVE PROPOSAL 1 at Appendix J)

FINDING 6: The Committee found that, although the Supreme Court has held that prisoners have a constitutional right to marry, some prisoners are being denied that right because they are unable to appear in person at the Register of Deeds office to apply for a marriage license. In addition, the Committee found that there may be other circumstances, such as a physical disability, that prevent an individual from physically appearing to apply for a license, and the current statutes do not address these types of situations.

RECOMMENDATION 6: That the General Assembly enact a new provision that creates a procedure whereby an individual who is unable to appear in person at the Register of Deeds' office may apply for a marriage license by submitting a sworn and notarized affidavit in lieu of personal appearance. (See LEGISLATIVE PROPOSAL 1 at Appendix J)

FINDING 7: The Committee found that the current marriage license statutes allow for corrections of errors in the names of the parties on an application or license, but do not allow for corrections of other errors. The Committee found no compelling reason why the same procedure should not be available for correcting other types of mistakes on the application or license.

RECOMMENDATION 7: That the.General Assembly amend G.S. 51-18.1 to allow all errors on an application or license to be corrected through the same procedure set out in the statute for the correction of errors in the names of the parties. (See LEGISLATIVE PROPOSAL 1 at Appendix J)

FINDING 8: The Committee found that, while the current marriage license statutes provide a penalty for a person obtaining a license by misrepresentation, there is not a penalty for a person aiding in obtaining the license.

RECOMMENDATION 8: That the General Assembly amend G.S. 51-15 to provide the same penalty for a person aiding and abetting in obtaining a license by misrepresentation as for the person obtaining the license, and to increase the penalty from a Class 3 misdemeanor to a Class 1 misdemeanor. (See LEGISLATIVE PROPOSAL 1 at Appendix J)

APPENDIX A

CHAPTER 395
1999 Session Laws (1999 Session)

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE VARIOUS STUDY COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, AND TO AMEND OTHER LAWS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE
Section 1. This act shall be known as "The Studies Act of 1999".

PART II.-----LEGISLATIVE RESEARCH COMMISSION
Section 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. Unless otherwise specified, the listed bill or resolution refers to the measure introduced in the 1999 Regular Session of the 1999 General Assembly. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The following groupings are for reference only:

...(4) Human Resources and Health Issues:

...f. Marriage license laws (H.J.R. 1365 – Hill; H.B. 973 – Hill; S.B. 1018 – Dalton)...

PART XXII.-----BILL AND RESOLUTIONS REFERENCES
Section 22.1. The listing of the original bill or resolution in this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

PART XXIII.-----EFFECTIVE DATE AND APPLICABILITY
Section 23.1. Except as otherwise specifically provided, this act becomes effective July 1, 1999. If a study is authorized both in this act and the Current Operations Appropriations Act of 1999, the study shall be implemented in accordance with the Current Operations Appropriations Act of 1999 as ratified.
In the General Assembly read three times and ratified this the 21st day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 9:03 p.m. this 5th day of August, 1999

APPENDIX B

MEMBERSHIP
MARRIAGE LICENSE LAWS COMMITTEE (LRC)
1999-2001
S.L. 1999-395

Pro Tem's Appointment

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APPENDIX C

North Carolina Marriage Laws: Some Questions

William A. Campbell

For most people, the legal aspects of getting married in North Carolina are the most problem-free features of the entire process: they present themselves at the local register of deeds' office, fill out an application, pay a fee of $40, and receive a license, which they take to the minister or magistrate who is to perform the ceremony. After they recite their vows, the person who performed the ceremony returns the license to the register's office, and the register records and indexes this legal evidence of the marriage. The procedure does not always run so smoothly, however, and in a number of situations the North Carolina marriage laws either give no guidance about the factors that govern whether the marriage is valid or dictate a result that may be questionable as a matter of public policy. That is not surprising, since the North Carolina marriage statutes have not been comprehensively reviewed in over a century. This article raises some questions about the general clarity of those statutes and the social policies that they reflect.

Consider the following situations:

1. A couple obtains a marriage license in Wake County on March 18, 1997. They are married by a minister in Orange County on April 3. Is the marriage valid?
2. A man and a woman arrive at the register of deeds' office to apply for a marriage license. The woman appears to be distracted and constantly talks to herself. She appears to be addressing some invisible companion. When the register asks whether she understands that she is applying for a marriage license, the woman responds, "I think so." Must the register issue the license even though she has doubts about the woman's mental competence?
3. Two Muslims who have lived in North Carolina[1] for their entire lives wish to be married according to Islamic customs. Does North Carolina law authorize such a marriage?
4. A fourteen-year-old girl who ran away from her parents in Ohio has been living with her seventeen-year-old boyfriend and his father in North Carolina for six months. The father provides her shelter and pays for her food and clothing. She is pregnant. She and her boyfriend, accompanied by his father, appear at the register's office to apply for a marriage license, and the father offers to give his consent to the marriage on the girl's behalf. May he do so?

Before addressing the issues raised in these four situations, we need to look at North Carolina's marriage statutes.[2] Two single persons, male and female,

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The author is an Institute of Government faculty member whose areas of specialization include state and local taxation and duties of registers of deeds.

[illegible]re at least eighteen years old may apply for a li[illegible] marry.[3] The statutes do not require that the a[illegible]nts be residents of North Carolina or even that they be United States citizens. Nor do the statutes require a waiting period between the date the license was applied for and the date it was issued or between the date the license was issued and the date of the marriage. Further, the law does not require applicants to present the results of a medical examination in order to obtain a license.

An applicant between sixteen and eighteen years of age may obtain a license only with the written consent of one of the following parties: (1) the applicant's mother or father if the applicant lives with both parents; (2) the applicant's father if the applicant lives with the father but not with the mother; (3) the applicant's mother if the applicant lives with the mother but not with the father; and (4) a "person, agency, or institution having legal custody, standing in loco parentis, or serving as guardian of such male or female child applying to marry."[4] If a female applicant is pregnant or has borne a child, is at least twelve years old, and wishes to marry the putative father of the [illegible] written consent may be given by any of the per[illegible]isted above and also by the director of the de[illegible]nt of social services of the county of residence o[illegible]er applicant.[5]

The license is valid for sixty days, and it is valid for a marriage only in the county where it was issued.[6]

The North Carolina Supreme Court has said that North Carolina does not recognize marriage by consent (common-law marriage) and requires that the vows be recited in the presence of one of the statutorily recognized officiants.[7] Even so, during some periods in the state's history, marriages by consent were in fact recognized.[8] Be that as it may, the statute now requires that a marriage be solemnized in the presence of a magistrate, an ordained minister of any religious denomination, or a "minister authorized by his church." Marriages performed according to the customs of the Society of Friends and the Baha'is are excepted from this provision. Ministers and magistrates may not marry couples without a valid license,[9] and a $200 penalty may be assessed against a person who violates this prohibition.[10] The minister or magistrate must return the license to the register of deeds [illegible]in ten days of the ceremony; the penalty for fail[illegible] do so is $200.[11]

[illegible]e statutory requirements regarding who may [illegible]nize a marriage have teeth. If an unqualified person performs the marriage ceremony, the marriage is invalid. We know this from *State v. Lynch*,[12] in which a marriage performed by a person who had obtained a mail-order certificate giving him the "credentials of minister" in the Universal Life Church, Inc., was held void for purposes of a bigamy prosecution. Although the court in that case said that such a person was not an ordained minister or "minister authorized by his church," it unfortunately provided little guidance regarding what characteristics are necessary to meet the statutory requirements. Thus a couple who chooses someone not in the mainstream of ordained or otherwise authorized clergy to solemnize their marriage risks being held not married.

Certain marriages are declared void by statute. These are marriages between persons who are nearer of kin than first cousins, between persons either of whom is under the age of sixteen unless the female is pregnant or a child has been born to the parties, between persons either of whom is impotent, between persons either of whom is incapable of contracting for want of will or understanding, and between parties one of whom is already married.[13] Although the statute provides that these marriages are void, in every case but one the court has held that such marriages are not void but voidable; that is, the marriage is valid for all civil purposes until it is annulled by a court.[14] The exception is when one of the parties to the marriage was already married; such a marriage (bigamous) is absolutely void.[15]

With this background in mind, we can examine the four situations described above.

• The first one dealt with a couple who obtained a marriage license in Wake County but was married in Orange County. A couple's obtaining a marriage license in one county and being married in another county happens fairly often for several reasons. Sometimes the register of deeds or his or her deputy or assistant forgets to tell the couple that the license is valid only in the county where issued; sometimes the couple is told about the jurisdictional limits of the license but forgets; and sometimes, especially when the wedding is held in a rural church, there is genuine uncertainty about which county the wedding is to be performed in. The statute is clear, however, that the license is valid only in the county where it was issued.[16]

Nevertheless, the marriage is valid, even though the license was not. This is one of the interesting twists of North Carolina marriage law: even though the statutes require a marriage license, and even

though a minister or magistrate is subject to a penalty for solemnizing a marriage without a license, the state supreme court has held that a marriage performed by one of the statutorily authorized persons without a license or with an invalid license is still a valid marriage.[17]

Whatever policy reason there may have been for limiting the effectiveness of a marriage license to the county where it was issued, the limitation has been rendered meaningless by court decisions. But it still can cause trouble. Couples who were married in a county other than the one where the license was issued may become concerned about the validity of their marriage. Registers of deeds frequently are uncertain about how they should handle such a license when it is returned. Section 204 of the Uniform Marriage and Divorce Act makes the license effective statewide, and this would seem to be a sensible resolution of the issue in North Carolina.[18] (The Uniform Marriage and Divorce Act is one of a number of uniform acts drafted and recommended by the National Conference of Commissioners on Uniform State Laws for adoption by the states. As of 1996, all or substantial portions of the Uniform Marriage and Divorce Act had been adopted by eight states.)

- The second situation involved an applicant for a license who is visibly disturbed mentally and emotionally. We know from the general discussion of marriage requirements that the marriage of a person who was incapable of understanding that he or she was entering a marriage contract is voidable. The question here is the responsibility of the register of deeds in deciding whether to issue a license when the register has reason to believe that one of the applicants may not be mentally competent. Before 1994, when the requirement for a medical examination was repealed, the examining physician had to certify whether the applicant was mentally competent.[19] This certification relieved the register of responsibility in the matter. Now, however, the register must consider the provisions of G.S. 51-8 and G.S. 51-17. G.S. 51-8 states that a license is to be issued "if it appears that such persons are authorized to be married in accordance with the laws of this State." G.S. 51-17 imposes a $200 penalty on a register who issues a license "for the marriage of any two persons to which there is any lawful impediment, or where either of the persons is under the age of 18 years, without the consent required by law." The matter is further complicated by a decision of the North Carolina Court of Appeals that mental competency to marry is to be determined as of the date the person was married.[20] Thus a register who takes these statutes seriously is forced to make a guess at the time the license is issued about the mental competence of the applicant on some future date.

It should go without saying that G.S. 51-8 and G.S. 51-17 require registers to make decisions regarding the fitness of the applicants that they are neither qualified to make nor, as a practical matter, able to make. In issuing a license, the register of deeds should be responsible for determining that the applicants meet the age or consent requirements and should require statements from the applicants regarding the termination of any prior marriages—matters capable of objective verification—and nothing more.

- The third situation involved a Muslim couple who desires to be married according to Islamic practices. Although practices may vary among different sects, in a typical Islamic wedding ceremony, the marriage contract is witnessed and signed by two adult male Muslims; an "imam" then holds the couple's hands and recites a prayer. The presence of the two witnesses is essential to the validity of the marriage.[21] An imam is a prayer leader at a mosque and may have some advanced religious training.[22] How does such a method of solemnization square with the North Carolina statutory requirements? There is no difficulty with the two witnesses because they are required by North Carolina law.[23] Of more concern is the imam's role. He is not an "ordained minister," terminology applied to Protestant Christians, and it is stretching the meaning of the words considerably to contend that he is a "minister authorized by his church." First, though an imam is a leader of prayers, he is not a minister in the Christian sense. Second, he is not formally authorized to solemnize marriages but gains his role from the respect he is given by other Muslims. Third, while Islam is one of the world's major religions, it is not a "church."

North Carolina's failure to provide for the solemnization of marriages according to Islamic practices represents more than an inconvenience to Muslims, who must choose between a possibly invalid religious ceremony and a civil ceremony before a magistrate. It also is a matter of constitutional concern because under the First Amendment of the United States Constitution,[24] a state may not prohibit the free exercise of religion,[25] and being married according to the practices of one's religious faith would seem to be an important element in the free exercise of religion. The North Carolina statute appears to be especially vulnerable to challenge under the First Amendment because

kes special exceptions for the Society of Friends the Baha'is, but not for Muslims or those who other religious faiths.

The Uniform Marriage and Divorce Act[26] handles the issue by authorizing solemnization "in accordance with any mode of solemnization recognized by any religious denomination, Indian Nation or Tribe, or Native Group."[27] Although, strictly speaking, Islam is a religion, not a religious denomination—as is, for example, the United Methodist Church—the Uniform Act clearly makes a broader grant of solemnization authority than does the North Carolina statute, probably broad enough to avoid constitutional difficulties.

- The last situation involved a pregnant fourteen-year-old living with her seventeen-year-old boyfriend, who is the putative father of her child, and his father. The boyfriend's father agrees to consent to the marriage on the girl's behalf. May he do so? Yes, apparently so. The statute authorizes consent to be given in a situation like this by a person "standing in loco parentis" to the applicant.[28] The marriage statutes do not say what constitutes standing in loco parentis, but the North Carolina Juvenile Code defines a person stands in loco parentis as one "other than parents legal guardian, who has assumed the status and tion of a parent without being awarded the le custody of a juvenile by a court."[29] Absent any other definition, it appears that the boyfriend's father fits this definition because for six months he has provided the girl with food, clothing, and shelter—some of the basic obligations of a parent. Thus, with the father's consent, the register of deeds will probably issue the license and the couple will be married.

Is this sound as a matter of public policy, even though the girl's parents might have objected? The North Carolina statutes have a bias toward enabling a marriage when the female applicant for a license, though younger than eighteen, is pregnant or has borne a child to the male applicant—as is shown by the fact that the statute grants consent authority to someone who stands in loco parentis and, as a last resort, to the director of social services. The reason for this bias is probably a concern that the child be legitimate, but it subordinates other interests, such as those of the parents or guardian of the underage applicant the long-term welfare of both the child and its er.

The Uniform Marriage and Divorce Act is more retive regarding consent to the marriage of persons ger than eighteen, and it makes no exceptions even when the underage female applicant is pregnant. For applicants between the ages of sixteen and eighteen, the act requires (1) the consent of both parents or the guardian or (2) judicial approval. No other persons may give consent.[30] If no parent or guardian can be located to give consent, or if consent is refused, then a court may order the issuance of a marriage license. In every case in which one of the applicants is under age sixteen, the license may be issued only by the court's order.[31] In contrast to the North Carolina statute's liberal policy in allowing the marriage of underage applicants, the Uniform Act provides that a court may order a license issued when one of the applicants is under age "only if the court finds that the underage party is capable of assuming the responsibilities of marriage and the marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served."[32]

There are three fundamental questions to be asked regarding any state's marriage laws: What are the minimum requirements necessary for a valid marriage contract? Who is authorized to give consent to the marriage of underage applicants? What are the precise responsibilities of the public officials who issue marriage licenses? North Carolina's statutes in some cases give uncertain answers to these questions and in others give answers that are questionable as a matter of social policy. This is not surprising, since a comprehensive review of the marriage laws has not been undertaken in the twentieth century. The legislature needs to undertake such a review. The Uniform Marriage and Divorce Act provides a useful starting point and gives guidance on many issues, but its recommendations must be considered in the context of other family and juvenile laws and in light of contemporary society's understanding of the necessary legal prerequisites for a marriage contract.

Notes

1. Albert Shakir, the imam of the Islamic Center in Durham, North Carolina, estimates that about 10,000 Muslims live in the Research Triangle area. Merrill Wolf, "Baha'i to Buddhist, believers cite tolerance," *News & Observer* (Raleigh, N.C.), November 29, 1996, sec. E, p. 2.

2. For a more complete discussion of these statutes, see Janet Mason, *North Carolina Marriage Laws and Procedures*, 3d ed. (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, 1994).

3. N.C. Gen. Stat. §§ 51-1, -2. Hereinafter the General Statutes will be cited as G.S.

4. G.S. 51-2.

5. G.S. 51-2.

G.S. 51-16.

. *See, e.g.*, State v. Lynch, 301 N.C. 479, 272 S.E.2d 349 (1980).

8. John E. Semonche, *Common-Law Marriage in North Carolina: A Study in Legal History*, 9 AM. J. LEGAL HISTORY 320 (1965).

9. G.S. 51-6.

10. G.S. 51-7.

11. G.S. 51-7.

12. *Lynch*, 301 N.C. at 479, 272 S.E.2d at 349.

13. G.S. 51-3.

14. *See* Geitner *ex rel.* First Nat'l Bank v. Townsend, 67 N.C. App. 159, 312 S.E.2d 236, *cert. denied*, 310 N.C. 744, 315 S.E.2d 702 (1984).

15. Pridgen v. Pridgen, 203 N.C. 533, 166 S.E. 591 (1932).

16. G.S. 51-16.

17. *See* Sawyer v. Slack, 196 N.C. 697, 146 S.E. 864 (1929); Wooley v. Bruton, 184 N.C. 438, 114 S.E. 628 (1922); and Maggett v. Roberts, 112 N.C. 71, 16 S.E. 919 (1893).

18. Uniform Marriage and Divorce Act, [illegible]L.A. 157 (1987).

19. G.S. 51-9, *repealed by* 1996 N.C. [illegible]s. Laws ch. 647.

[illegible]. *Geitner*, 67 N.C. App. at 159, 312 [illegible]d at 236, *cert. denied*, 310 N.C. at 744, 315 S.E.2d at 702.

21. This description is taken from D. S. Roberts, *Islam: A Concise Introduction* (New York: Harper & Row, 1981), 135.

22. Roberts, *Islam*, 37–38.

23. G.S. 51-16.

24. U.S. Const. amend. I.

25. *See, e.g.*, Wisconsin v. Yoder, 406 U.S. 205 (1972) (children of Old Order Amish may not be required to attend high school because such attendance is contrary to their religious beliefs and practices); and Church of Lukumi Babalu Aye v. City of Hialeah, 113 S. Ct. 2217 (1993) (city could not prohibit animal sacrifices that were part of Santeria religious practices).

26. Uniform Marriage and Divorce Act, U.L.A. 157 (1987).

27. Uniform Marriage and Divorce Act § 206.

28. G.S. 51-2.

29. G.S. 7A-517(16.1).

30. Uniform Marriage and Divorce Act § 203.

31. Uniform Marriage and Divorce Act [illegible]05.

32. Uniform Marriage and Divorce Act § 205(b).

At the Institute

Jill Moore

Jim Webb

Gregory Allison

Moore and Allison Join Institute Faculty

On September 1, 1997, Jill D. Moore joined the Institute of Government faculty in public health law. She will concentrate on legal issues associated with the structure and functioning of public health agencies in a rapidly changing health care environment.

"I'm delighted to be here," Moore said. "This is the perfect opportunity to combine my public health background with my legal education and to continue my involvement in North Carolina state and local government. Also, as a former client of the Institute, I am excited about the opportunity to return some of the service I have received. I'm looking forward to my conversations with public health officials."

Moore received her J.D. in 1996 from the School of Law at The University of North Carolina at Chapel Hill. Her previous education includes both the bachelor's degree and the master of public health degree from UNC–CH's School of Public Health.

Before attending law school, Moore worked for five years in the public health field, with a focus on childhood injury prevention. She has been research associate with the UNC Injury Prevention Research Center, director of the South Carolina Childhood Injury Reduction Project, and executive director of the North Carolina Child Fatality Task Force.

"I gained not only an understanding of the public health system," Moore relates, "but also an appreciation for the concerns of public health officials, which are not always the same as the concerns of other health care professionals."

"Public health agencies often have clientele who also are served by other social services agencies, so they need to coordinate with those agencies," Moore explains. "Unlike a private clinic, a public agency may need to provide transportation for its clients, or it may get involved with the schools during a measles outbreak."

Moore broadened her perspective with a legal background. At the UNC–CH School of Law, she was a

APPENDIX D

Institute of Government
The University of North Carolina at Chapel Hill

Memorandum

To: Marriage License Laws Committee

From: William A. Campbell

Date: April 25, 2000

Subject: Summary of marriage license issues

This memorandum summarizes the marriage license issues that I discussed at the committee's meeting on March 24, 2000.

1. Persons authorized to perform a marriage ceremony. Pursuant to G.S. 51-1, a marriage ceremony must be performed by an ordained minister, a minister authorized by his church, a magistrate, or according to the practices of the Society of Friends or the Baha'is. The language regarding an ordained minister or minister authorized by his church is terminology drawn from the experience of Protestant Christian denominations. It is not an apt description of a Roman Catholic priest or a Jewish rabbi. The concept of a "minister authorized by his church" is subject to various interpretations. What sort of authority is required? Must there be something in writing? Must the person have specialized training? The most serious defect in this statute is that it does not recognize marriage ceremonies performed according to the customs of Native American tribes, Muslims, Hindus, or other religious faiths. This defect very likely makes the statute subject to a successful constitutional challenge. A fundamental question about this particular statute is what concern is it of the State of North Carolina as to who performs the ceremony? Put another way, if the bride and groom agree to be married in the presence of witnesses and a marriage license serves as the legal record of this agreement,. why does the state care how the ceremony was performed or who officiated at the ceremony?

2. Geographical scope of a license. Pursuant to G.S. 51-16, a marriage license is valid only in the county where it is issued. This means that if a marriage is performed in a county other

than the one where the license was issued, the marriage was performed with an invalid license. Nevertheless, the North Carolina Supreme Court has held that such a marriage is valid, *Sawyer v. Slack*, 196 N.C. 697 (1929). If no sound policy is served by this geographical limitation, it would seem to make sense to allow a license to be used in any county of the state, but still require that the license be returned to the register of deeds who issued it.

3. <u>Designation of race on the license.</u> According to G.S. 51-16, the race of the applicants must be designated on the license, and the only choices are "white," 'colored," or "Indian." If it is thought to be important for the compilation of public health statistics—or for other reasons—to continue to indicate the applicants' race, the choices should be expanded and the terminology should be brought up to date. If no purpose is served by asking for the race of the applicants, then the requirement should be deleted.

4. <u>Determination of mental competence.</u> G.S. 51-8 and G.S. 51-17 appear to require the register of deeds to make a determination of whether the applicants for a license are mentally competent to understand that they are entering a marriage contract. The register is subject to a $200 penalty for issuing a license to a person who does not meet all of the qualifications for a license. Not only is a register of deeds not trained to make this determination in most cases, but a court decision has held that the determination of mental competence must be made at the time of the marriage, not the time of issuance of the license, *Geitner* ex rel. *First Nat'l Bank v. Townsend,* 67 N.C. App. 159, 312 S.E.2d, cert. denied, 310 N.C. 744, 315 S.E.2d 702 (1984). One way of dealing with this is to limit the register's liability for improperly issuing a license to situations where an applicant was underage and the register did not obtain the required consent. Another way is to amend the statute to provide that the register shall not issue a license to an applicant who is unable to answer or understand the questions regarding age, marital status, and intention to marry.

5. <u>Marriage of applicants under the age of 18.</u> Pursuant to G.S. 51-2, applicants between 16 and 18 may marry with the consent of a parent, guardian, person having custody, or person standing in loco parentis. If a female applicant is pregnant or has borne a child, she may marry the putative father of the child if she is between 12 and 18 and consent is given by a parent, custodian, guardian, person standing in loco parentis,

or the director of the county department of social services. One difficulty with this statute is that it makes no provision concerning consent on behalf of a male applicant between the ages of 12 and 18 when he seeks to marry a pregnant female applicant in that age range. This statute makes it relatively easy for underage applicants to marry. It appears to have a bias in favor of legitimating children to the exclusion of other considerations, such as the maturity and economic status of the applicants. A fundamental policy issue with this statute is whether the state should continue to make it relatively easy for underage applicants to marry.

6. <u>Marriage of prisoners.</u> Under the current statutes, registers of deeds must require both applicants for a marriage license to appear in the office so that they can identify the applicants, obtain their social security numbers, and determine their eligibility for a license based on age and marital status. By a memorandum dated June 8, 1998, Robert C. Lewis, Division of Prisons, North Carolina Department of Correction, informed all prison superintendents that prison inmates are not to be transported to the office of the register of deeds to complete a marriage license application. Registers of deeds are under no legal duty to travel to a prison unit and are reluctant to do so. Yet, the United State Supreme Court, in *Turner v. Safley,* 482 U.S. 78 (1987), held that prisoners have a constitutional right to marry. The current marriage statutes make no provision for license applications by prisoners. This could be remedied by requiring a prison official to assist a prisoner-applicant in completing the application and to certify to the register of deeds that the answers were completed in his or her presence. The statutes should provide that a register who relies on the certificate of a prison official in this situation is not liable for wrongfully issuing a license.

7. <u>Correction of errors in a license.</u> Pursuant to G.S. 51-18.1, the only correction that can be made in a recorded license is in the name of the husband or wife. No provision is made for the correction of other errors such as in the location of the marriage, names of witnesses, or date of the marriage. This deficiency could be remedied by providing that an application for the correction of any error can be made by submitting affidavits to the register of deeds that furnish the correct information, and on this basis the register could forward the correction to the Vital Records Office in Raleigh and also make the correction in the local records.

APPENDIX E

Study Chapter 51
Marriage License Statute

Typically, the first question the register of deeds staff asks of applicants is if they intend to be married within that county within the next 60 days. The deputy or assistant will then proceed by asking for proper identification which will determine if age or consent requirements are met, and documentation of the applicants' Social Security numbers or an affidavit that they are not eligible for a Social Security number.

The deputy will continue by obtaining biographical information on the bride and groom as specified on the license. Many registers require written proof of death/divorce if the previous marriage ended within 30 days – 6 months of the subsequent marriage.

The following oath is printed on the marriage license form that applies to information supplied by the applicants:

- We hereby make application to the Register of Deeds for a marriage license and solemnly swear that all of the statements contained in the above application are true. We further make oath that there is no legal impediment to such marriage.

Registers usually repeat the oath or ask the couple to verify that all of the typed information is correct and explain that by signing the license, they are taking responsibility for supplying correct information. Both applicants must sign the marriage license in triplicate and their signatures are witnessed by the staff person who issued the license.

The following instructions are printed above the portion of the license which is completed by the official who performs the wedding ceremony:

- To any ordained minister of any religious denomination, minister authorized by his or her church, or Magistrate, you are hereby authorized, at any time within 60 days from the date hereof, to celebrate the proposed marriage at any place within the above named county. The minister or other person celebrating this marriage is required within 10 days to fill out and sign both copies of this Certificate of Marriage, and return them to the Register of Deeds who issued the license. Failure to do so subjects person celebrating marriage to a forfeiture of $200.00 to anyone who sues for the same.

The couple is instructed to take the license to person who will officiate at the ceremony, charged $40 for the license, and, in my office, we wish them a lot of luck before we send them on their way.

Ann Shaw, President, NCARD
March 27, 2000

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...RTANT: 1. Items 1-20, use typewriter when possible; otherwise, ball point pen must be used.
2. Remove carbons, give first and second copies to applicants.

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APPLICATION, LICENSE AND CERTIFICATE OF MARRIAGE

...E OF NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES
STATE CENTER FOR HEALTH STATISTICS, NC VITAL RECORDS

LICENSE NUMBER ____________ COUNTY ____________

GROOM

1. GROOM-NAME FIRST	MIDDLE	LAST	
2a. RESIDENCE-STATE	2b. COUNTY	2c. CITY, TOWN, OR LOCATION	2d. INSIDE CITY LIMITS (Specify Yes or No)
2e. STREET AND NUMBER	3. BIRTHPLACE (COUNTY & STATE)	4a. DATE OF BIRTH (Month, Day, Year)	4b. AGE
5a. FATHER-NAME	5b. STATE OF BIRTH	5c. ADDRESS (If Living)	
6a. MOTHER-MAIDEN NAME	6b. STATE OF BIRTH	6c. ADDRESS (If Living)	

7. RACE-GROOM	8. NUMBER OF THIS MARRIAGE FIRST, SECOND, ETC. (SPECIFY)	IF PREVIOUSLY MARRIED			10. EDUCATION-SPECIFY HIGHEST GRADE COMPLETED		
		9a. LAST MARRIAGE ENDED BY Death, Divorce, Or Annulment (Specify)	9b. DATE		ELEMENTARY	HIGH SCHOOL	COLLEGE
			MONTH	YEAR	(0, 1, 2, 3, 4... or 8)	(1, 2, 3, or 4)	(1, 2, 3, 4 or 5)

BRIDE

11a. BRIDE-NAME FIRST	MIDDLE	LAST	11b. MAIDEN SURNAME (If Different)
12a. RESIDENCE-STATE	12b. COUNTY	12c. CITY, TOWN, OR LOCATION	12d. INSIDE CITY LIMITS (Specify Yes or No)
12e. STREET AND NUMBER	13. BIRTHPLACE (COUNTY & STATE)	14a. DATE OF BIRTH (Month, Day, Year)	14b. AGE
15a. FATHER-NAME	15b. STATE OF BIRTH	15c. ADDRESS (If Living)	
16a. MOTHER-MAIDEN NAME	16b. STATE OF BIRTH	16c. ADDRESS (If Living)	

17. RACE-BRIDE	18. NUMBER OF THIS MARRIAGE FIRST, SECOND, ETC. (SPECIFY)	IF PREVIOUSLY MARRIED			20. EDUCATION-SPECIFY HIGHEST GRADE COMPLETED		
		19a. LAST MARRIAGE ENDED BY Death, Divorce, Or Annulment (Specify)	19b. DATE		ELEMENTARY	HIGH SCHOOL	COLLEGE
			MONTH	YEAR	(0, 1, 2, 3, 4... or 8)	(1, 2, 3, or 4)	(1, 2, 3, 4 or 5)

WE HEREBY MAKE APPLICATION TO THE REGISTER OF DEEDS FOR A MARRIAGE LICENSE AND SOLEMNLY SWEAR THAT ALL OF THE STATEMENTS CONTAINED IN THE ABOVE APPLICATION ARE TRUE. WE FURTHER MAKE OATH THAT THERE IS NO LEGAL IMPEDIMENT TO SUCH MARRIAGE.

SIGNATURE OF GROOM ____________

SIGNATURE OF BRIDE ____________

To any ordained minister of any religious denomination, minister authorized by his or her church, or Magistrate, you are hereby authorized, at any time within 60 days from the date hereof, to celebrate the proposed marriage at any place within the above named county. The minister or other person celebrating this marriage is required within 10 days to fill out and sign both copies of this Certificate of Marriage, and return them to the Register of Deeds who issued the license. Failure to do so subjects person celebrating marriage to a forfeiture of $200.00 to anyone who sues for the same.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS ____________ 19 ____

REGISTER OF DEEDS DEPUTY ASSISTANT

OFFICIANT

21a. I CERTIFY THAT THE ABOVE NAMED PERSONS WERE MARRIED ON MONTH DAY YEAR	21b. PLACE OF MARRIAGE - CITY, TOWN OR TOWNSHIP, COUNTY
21c. SIGNATURE OF OFFICIANT	21d. TITLE
21e. NAME OF OFFICIANT (PRINT/TYPE)	21f. ADDRESS

...ESSES

22a. SIGNATURE OF WITNESS	23a. SIGNATURE OF WITNESS
22b. NAME OF WITNESS (PRINT/TYPE)	23b. NAME OF WITNESS (PRINT/TYPE)

DATE RETURNED TO REGISTER OF DEEDS ____________ RECEIVED BY ____________

DHHS 2132
VITAL RECORDS VS-80
(Revised 04/98)

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REGISTER OF DEEDS COPY

APPENDIX F

PART II

MARRIAGE

§ 201. [Formalities].

Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage licensed, solemnized, and registered as provided in this Act is valid in this State. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by law.

As amended in 1973.

Comment

The effect of this section is to validate all marriages performed in the enacting state in accordance with its provisions. The provision does not necessarily invalidate marriages performed in the state which are not "licensed, solemnized, and registered" in accordance with this Act. For example, although an applicant for a marriage license may have given a false name to the clerk [see section 202(a)], the general policy favoring the validity of marriages would require that the marriage be held valid. This position is in accord with the case law. See Clark, Domestic Relations 41 (1968). Indeed, because Section 208 narrowly circumscribes the traditional annulment remedy, formal errors committed during the licensing, solemnization, or registration process could not be raised under that section. In accordance with established usage, marriage is required to be between a man and a woman. These terms refer to all persons authorized by the Act to marry, and are not confined to those who have attained the legal age of majority. *Cochran v. State*, 91 Ga. 763, 185 S.E. 16 (1893); *Thomas v. Novas*, 47 Hawai'i. 605, 393 P.2d 645 (1964); *State v. Burt*, 75 N.H. 64, 71 A. 30, Ann.Cas. 1912A, 232 (1908); *Kenyon v. Peo.*, 26 N.Y. 203, 84 Am.Dec. 177 (1863) (per Baltron, J.); *Blackburn v. State*, 22 Ohio St. 102 (1971); *Massa v. State*, 37 Ohio App. 532, 175 N.E. 219 (1930); *State v. Seiler*, 106 Wis. 346, 82 N.W. 167 (1908). The general course of decision holds that not every deviation from formal prescribed procedures renders a marriage subject to successful attack. Substantial compliance, in the light of attendant circumstances and statutory policy, results in a substainable marriage. *Wallace v. Screws*, 227 Ala. 183, 149 So. 226 (1923); *Russell v. Taglialavore*, 153 So. 44 (La.App.1934); *Knapp v. Knapp*, 149 Md. 263, 131 A. 329 (1925); *Johnson v. Johnson*, 214 Minn. 462, 8 N.W.2d 620 (1943); *Hartman v. Valier & Spies Milling Co.*, 356 Mo. 424, 202 S.W.2d 1 (1947); *Christensen v. Christensen*, 144 Neb. 763, 14 N.W.2d 613 (1944); *Ponina v. Leland*, 454 P.2d 16 (Nev.1969); *Portwood v. Portwood*, 109 S.W.2d 515 (Tex.Civ.App.1937) (writ of error dismissed or refused). As to attacks on marriages which, though performed in accordance with the formal requirements of the Act, are either prohibited or are not permitted by the regulatory provisions of Section 202–207, consult Section 208, and comment thereto.

This section additionally emphasizes the legal concept of marriage as a civil contractual status, in distinction from any religious significance also attached thereto. In prescribing that a "marriage may be contracted, maintained, invalidated or dissolved only as provided by law," it does not preclude giving effect to the statutes and decisions of jurisdictions other than the enacting state.

Amendments

The 1973 amendment rewrote this section, which prior thereto read:

"A marriage between a man and a woman licensed, solemnized, and registered as provided in this Act is valid in this state."

Action in Adopting Jurisdictions

Variations from Official Text:

KENTUCKY

Omits this section.

Law Review and Journal Commentaries

Burton and Burton: Extending marital property rights to premarital cohabitants. Note, 68 Or.L.Rev. 249 (1989).

Duty in divorce: Shared income as a path to equality. Jane Rutherford. 58 Fordham L.Rev. 539 (1990).

Library References

Marriage ⚖1, 3.
WESTLAW Topic No. 253.
C.J.S. Marriage §§ 1, 4, 5.

WESTLAW Electronic Research

See WESTLAW Electronic Research Guide following the Preface.

Notes of Decisions

Conflict of laws 1
Doctrine of ab initio nullity 5
Evidence of marriage 2
Power of state 4
Private marriage contract 6
Validity of marriage where contracted 3

1. Conflict of laws

Illinois was state of husband and wife's domicile at time of husband's death, for purposes of determining which state's laws would determine validity of that marriage, which occurred in Arkansas at time husband was still married to another woman; wife's petition for letters of administration asserted that husband's residence at time of his death was in Illinois, and that evidence was uncontradicted. In re Estate of Banks, Ill.App. 5 Dist.1994, 629 N.E.2d 1223, 196 Ill.Dec. 379, 258 Ill.App.3d 529.

Need to resolve conflicting claims to property situated in state of Washington and belonging to a deceased state resident provided Washington with a dominant interest in the validity of the deceased resident's marriage, despite fact that such marriage was contracted in Alaska; thus, the laws of Washington, giving retroactive effect to a nunc pro tunc California divorce decree, applied to validate marriage between husband and wife which took place before husband's divorce in a previous marriage was final, in the absence of a clearly contrary policy in Alaska. In re Estate of Shippy, Wash.App.1984, 678 P.2d 848, 37 Wash.App. 164.

Domicile of the parties is one factor tending to create a substantial relation between a state and the parties and their marriage, for choice of law purposes in determining validity of marriage. In re Estate of Shippy, Wash.App.1984, 678 P.2d 848, 37 Wash.App. 164.

Validity of marriage is tested under laws of jurisdiction where marriage took place. In re Marriage of Fetters, Colo.App.1978, 584 P.2d 104, 41 Colo.App. 281.

Validity of a marriage is determined substantively, though not procedurally, by law of place where it is contracted. Yun v. Yun, Mo.App. W.D.1995, 908 S.W.2d 787, rehearing and/or transfer denied.

2. Evidence of marriage

Evidence that marriage ceremony occurred, that impediment of previous marriage was removed some months after ceremony, and that couple continued to cohabit after prior divorce was official met statutory requirements for previously void marriage to become lawful. Estate of Whyte v. Whyte, Ill.App. 1 Dist.1993, 614

N.E.2d 372, 185 Ill.Dec. 238, 244 Ill.App.3d 746.

In all civil actions other than bigamy, adultery or criminal conversations, evidence with respect to reputation, cohabitation, and the acknowledgement of the parties is sufficient evidence of marriage. Matter of Bailey's Estate, Ill.App. 5 Dist.1981, 423 N.E.2d 488, 53 Ill.Dec. 104, 97 Ill.App.3d 781.

3. Validity of marriage where contracted

Husband's second wife was his "legal wife" at time of his death, thereby qualifying her as heir and as legal representative of his estate, even though their marriage, which was contracted in Arkansas, was invalid at time it occurred in that husband was still married to his first wife; under Illinois Marriage and Dissolution of Marriage Act, husband and second wife's marriage became valid when husband and first wife's marriage was dissolved. In re Estate of Banks, Ill.App. 5 Dist.1994, 629 N.E.2d 1223, 196 Ill. Dec. 379, 258 Ill.App.3d 529.

A marriage that is invalid where contracted should not necessarily be invalid in other states if it would be valid under the law of some other state having a substantial relation to the parties and the marriage. In re Estate of Shippy, Wash.App.1984, 678 P.2d 848, 37 Wash.App. 164.

Missouri will recognize marriage valid where contracted unless to do so would violate public policy of Missouri. Hesington v. Hesington's Estate, Mo.App. S.D.1982, 640 S.W.2d 824.

4. Power of state

Rational relationship exists between requirement that marriages of any sort be licensed and strong continuing interest in State in institution of marriage; thus State may require obtaining of State-issued license for marriage. People v. Schuppert, Ill.App. 5 Dist.1991, 577 N.E.2d 828, 160 Ill.Dec. 503, 217 Ill.App.3d 715, appeal denied 587 N.E.2d 1022, 167 Ill.Dec. 407, 143 Ill.2d 646.

Rational relationship exists between requirement that marriages be licensed and strong continuing interest of state in institution of marriage, and thus requiring marriage license is appropriate regulation of marriage. Nelson v. Marshall, Mo.App. W.D.1993, 869 S.W.2d 132, rehearing and/or transfer denied.

5. Doctrine of ab initio nullity

Under Washington law, marriage is prohibited where one has spouse still living, and second marriage under these circumstances is void ab initio. Seizer v. Sessions, Wash.App. Div. 2 1996, 915 P.2d 553, 82 Wash.App. 87, review granted 925 P.2d 989, 130 Wash.2d 1001, reversed 940 P.2d 261, 132 Wash.2d 642.

Missouri is among states whose licensing statute plainly makes unlicensed marriage invalid, although doctrine of ab initio nullity of marriages is looked upon with disfavor. Nelson v. Marshall, Mo.App. W.D.1993, 869 S.W.2d 132, rehearing and/or transfer denied.

6. Private marriage contract

Private marriage contract, entered into by putative husband and putative wife without obtaining marriage license, was not enforceable as to marriage; any terms of contract relating to establishment of marriage were unenforceable, and any rights given to putative husband arising out of purported marital relationship could not be enforced. Moran v. Moran, Ariz.App. Div. 1 1996, 933 P.2d 1207, 188 Ariz. 139, reconsideration denied, review denied, certiorari denied 118 S.Ct. 78, 139 L.Ed.2d 37.

§ 202. [Marriage License and Marriage Certificate].

(a) The [Secretary of State, Commissioner of Public Health] shall prescribe the form for an application for a marriage license, which shall include the following information:

(1) name, sex, occupation, address, social security number, date and place of birth of each party to the proposed marriage;

(2) if either party was previously married, his name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(3) name and address of the parents or guardian of each party; and

(4) whether the parties are related to each other and, if so, their relationship.

(5) the name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(b) The [Secretary of State, Commissioner of Public Health] shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

As amended in 1973.

Comment

The Act assumes that each state will adapt its existing marriage licensing statute so that it conforms to the substantive regulatory provisions of the Act. Such statutes vary substantially from state to state; *and there is no special interest in* obtaining uniformity as to the form utilized for marriage licenses and registrations. This section permits the state to forego legislative regulation by leaving the elaboration of forms to an appropriate state official. States unwilling to break completely with past legislative patterns nonetheless may want to review, modernize, and simplify legislation delineating license and registration forms. The inclusion of social security numbers will facilitate the enforcement of duties of support, if this later becomes necessary. The information regarding prior marriages and their termination similarly will *prove helpful in a variety of situations* making investigation appropriate. Information as to occupation may be useful to a determination of whether an underage marriage should be approved (Section 205), or in passing on issues as to maintenance, support, property division, or child custody. The name of a party who has been married previously of course should be that which he or she bore during that marriage.

Amendments

The 1973 amendment added subsec. (a)(5).

Action in Adopting Jurisdictions

Variations from Official Text:

KENTUCKY

Omits this section.

Library References

Marriage ⚖25, 31.
WESTLAW Topic No. 253.
C.J.S. Marriage §§ 24, 33.

Notes of Decisions

Certificate without ceremony 1
Death 2

1. Certificate without ceremony

Persons were not married under Illinois law, even though they had marriage certificate from state, where they had never undergone ceremony. Farrell v. Peters, C.A.7 (Ill.) 1992, 951 F.2d 862, rehearing denied.

2. Death

No valid marriage existed, where ceremonial marriage occurred without application for or issuance of marriage license, and "groom" died before license was obtained. Nelson v. Mar-

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§ 203. [License to Marry].

When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the [marriage license] clerk and paid the marriage license fee of [$_____], the [marriage license] clerk shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective, or will have attained the age of 16 years and has either the consent to the marriage of both parents or his guardian, or judicial approval; [or, if under the age of 16 years, has both the consent of both parents or his guardian and judicial approval;] and

(2) satisfactory proof that the marriage is not prohibited; [and]

[(3) a certificate of the results of any medical examination required by the laws of this State].

Comment

To avoid inconvenience when one of the parties to the prospective marriage is residing, temporarily or permanently, outside the state, the Act requires that only one of the parties appear personally before the clerk to provide the information required by this section. Both parties must have signed the application. It is not intended that the state should create a new office to handle marriage license applications; the title of the official presently charged with the responsibility should be substituted for the bracketed phrase "[marriage license]" clerk wherever it appears in this Part. Each state should insert in the brackets its marriage license fee.

If both parties to the marriage have reached the age of 18, neither parental nor judicial consent is required to obtain a license. A number of states have already adopted this position; and it is consistent with the trend in federal as well as state law to lower to 18 the age at which persons are permitted to vote and to make autonomous decisions about important matters affecting their lives. A party under 18 must have consent of both of his parents to the marriage, if both are living and have capacity to consent. If one of his parents is unavailable, or if either or both of his parents refuses for any reason to consent, judicial approval must be obtained pursuant to the provisions of Section 205. The Act requires judicial as well as parental consent to the marriage if one of the parties is below the age of 16. The provision respecting the issuance of a license for marriage to persons under the age of 16 is bracketed, to signify that states having a policy against marriage by persons so young may omit that provision, without doing violence to the concept of uniformity. The standard governing judicial approval is provided in Section 205.

"Satisfactory proof" of age and of required consent includes such methods as may be prescribed under Section 202(b) in the license form, or any other proof that should satisfy a reasonable official exercising unarbitrary judgment. See United States v. Lee Huen, 118 Fed. 442, 457 (N.D.N.Y.1902).

Subsection (3) is bracketed because the Conference concluded that the traditional forms of premarital medical examination, now required by the marriage laws of most of the states, need not be preserved. The premarital medical examination requirement serves either to inform the pro-

spective spouses of health hazards that may have an impact on their marriage, or to warn public health officials of the presence of venereal disease. For the latter purpose, the statutes have been proved to be both avoidable and highly inefficient. See Monahan, State Legislation and Control of Marriage, 2 Journal of Family Law 30, 34–35 (1962). Moreover, the cursory blood test which satisfies the requirements of most states provides very little service to the prospective spouses themselves. If a state decides to preserve its traditional premarital examination, a reference to its statute should be included in the cross-references to this section.

Action in Adopting Jurisdictions

Variations from Official Text:

KENTUCKY

Omits this section.

Law Review and Journal Commentaries

Uniform marriage and divorce act—marital age provisions. 57 Minn.L.Rev. 179 (1972).

Library References

Marriage ⇐25(3), (4).
WESTLAW Topic No. 253.
C.J.S. Marriage § 25.

§ 204. [License, Effective Date].

A license to marry becomes effective throughout this state 3 days after the date of issuance, unless the [__________] court orders that the license is effective when issued, and expires 180 days after it becomes effective.

Comment

A relatively short premarital waiting period has been chosen. The information available suggests that longer waiting periods do not discourage potentially unstable marriages; and, at any event, are often waived by judges. The other major function served by a waiting period, to discourage or eliminate the "dare" and "gin" marriages, can be accomplished by the three day delay required by this section. See Ellsey, Marriage or Divorce?, 22 U.Kan.City L.Rev. 9, 17 (1953). Each state should insert in the brackets the name of the appropriate court. The 180 day limit on the effectiveness of the license is for the convenience of engaged couples who need to plan for wedding dates long in advance. Obviously, this limit applies to all licenses.

Action in Adopting Jurisdictions

Variations from Official Text:

KENTUCKY

Omits this section.

Library References

Marriage ⇐25.
WESTLAW Topic No. 253.
C.J.S. Marriage § 24.

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§ 205. [Judicial Approval].

(a) The [______] court, after a reasonable effort has been made to notify the parents or guardian of each underaged party, may order the [marriage license] clerk to issue a marriage license and a marriage certificate form:

[(1)] to a party aged 16 or 17 years who has no parent capable of consenting to his marriage, or whose parent or guardian has not consented to his marriage; [or

(2) to a party under the age of 16 years who has the consent of both parents to his marriage, if capable of giving consent, or his guardian].

(b) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served.

(c) The [____________] court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

Comment

The court given responsibility for approving youthful marriages should be identified in the statute. Many states, continuing existing practice, will assign this to the juvenile court; in other states, the probate court is used and in still others the designated court is a family court or the trial court of general jurisdiction. In accordance with the decision taken in Section 203, in respect to marriages of persons under 16 years of age, the provision concerning issuance to such persons has been bracketed.

The Act deliberately avoids detailing procedural rules to govern the judicial proceedings it establishes unless some special procedural device is essential to accomplish a substantive result sought by the Act. Thus, subsection (a) requires only that the court make a "reasonable effort" to notify the parents that an underaged party has sought judicial approval of a marriage license. (As to what constitutes reasonable effort to notify a person, see Merrill on Notice, Chapters 13, 14 and 19.) Since a party under the age of 16 years needs the consent of both his parents, if they are alive and have capacity to consent, as well as judicial approval, the court clerk will have to notify both parents when the judicial proceeding is commenced. But when a person aged 16 or 17 seeks judicial approval because one of his parents refuses to consent, the court can approve the application if the parent cannot be located or even if a recalcitrant parent avoids receiving formal notification.

The legal standard for judicial approval requires the judge to estimate the capacity of the underaged party to assume the responsibility of marriage and to determine whether the marriage would serve the best interest of that party. The judge obviously will want to obtain personal information about the other party to the prospective marriage as well; but the statute does not permit the judge to refuse his approval because he believes the marriage would not serve the best interest of the party over 18. The substantive standard necessarily is somewhat vague. Nonetheless, a number of considerations are implicit in the language and structure of the subsection: since judicial approval is a substitute for parental consent for 16 and 17 year old applicants, such applicants cannot be denied judicial approval solely because a parent or parents have refused to consent to the marriage; although the prospective wife's pregnancy is not alone a sufficient ground for judicial approval, neither does the subsection mean that the judge may withhold approval solely because the pro-

spective wife (whether she or her prospective spouse is the applicant) is pregnant. Pregnancy is one, but only one, of the relevant considerations the judge will weigh in determining the applicant's best interest. Although the standard is the same whether the applicant is between the ages of 16 and 18 or is under the age of 16, the judge no doubt will investigate younger applicants more thoroughly. The provision indicates that the judge would be abusing his discretion if he were to decide that no 16 or 17 year old is mature enough to marry.

Action in Adopting Jurisdictions

Variations from Official Text:

KENTUCKY

Omits this section.

Library References

Marriage ⇔25(4).
WESTLAW Topic No. 253.
C.J.S. Marriage § 25.

§ 206. [Solemnization and Registration].

(a) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, or in accordance with any mode of solemnization recognized by any religious denomination, Indian Nation or Tribe, or Native Group. Either the person solemnizing the marriage, or, if no individual acting alone solemnized the marriage, a party to the marriage, shall complete the marriage certificate form and forward it to the [marriage license] clerk.

(b) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the [______________] court for an order permitting the marriage to be solemnized by proxy.

(c) Upon receipt of the marriage certificate, the [marriage license] clerk shall register the marriage.

(d) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if neither party to the marriage believed him to be so qualified.

Comment

Subsection (a) lists the officials permitted to solemnize marriage. The clause, "no individual acting alone", was designed to take account of the increasing tendency of marrying couples to want a personalized ceremony, without traditional church, religious or civil trappings. This provision authorizes one of the parties to such a marriage ceremony to complete the marriage certificate form and forward it to the appropriate official for registration. The phrase "Native Group", was added to take account of indigenous or other aboriginal cultural groups who do not consider themselves to be Nations or Tribes, such as

some of the native groups found in Alaska and Hawaii.

Subsection (b) authorizes the solemnization of marriage by proxy. During World War II, special proxy marriage statutes were enacted to facilitate marriages when one of the prospective spouses could not be present because of military responsibilities. Although it is not expected that proxy marriages will be common, there are many reasons why, in individual cases, couples may prefer such a ceremony. So long as the marriage license procedure has been followed and the official performing the ceremony has no reason to doubt the intentions of the absent prospective spouse, there is no reason why a proxy marriage should be prohibited. As to the form of proxy, any written document in the well-known form of a proxy such as is used in other serious transactions suffices. Compare State v. Anderson, 239 Ore. 200, 396 P.2d 558 (1964). The proceeding for an order authorizing proxy marriage is special, and may be informal, so long as the two conditions precedent to solemnization by proxy are demonstrated to the court's judicial satisfaction. If the official solemnizing the marriage is not satisfied that the absent party has consented to the marriage, he may refuse to perform the ceremony until the parties obtain a court order authorizing the marriage by proxy. [Section 205(b).]

Subsection (c) does not deal with the subject of procuring a copy of the registration of the marriage. This will be governed by the law of each state as to the procurement of certified copies of public records. A state that does not provide for the registration of marriages should make provision therefor upon adoption of this Act, either through a special statute or by administrative rule.

Subsection (d) states definitely what probably would be the meaning of the section without it. However, it probably is wise to remove any possibility of misconception.

Action in Adopting Jurisdictions

Variations from Official Text:

KENTUCKY

Omits this section.

Library References

Marriage ⚷23, 27, 31, 32.
WESTLAW Topic No. 253.
C.J.S. Marriage §§ 28, 29, 33.

§ 207. [Prohibited Marriages].

(a) The following marriages are prohibited:

(1) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(2) a marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood, or by adoption;

(3) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood, except as to marriages permitted by the established customs of aboriginal cultures.

(b) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

(c) Children born of a prohibited marriage are legitimate.

Comment

The Act eliminates most of the traditional marriage prohibitions and, consistent with the national trend, eliminates all affinity prohibitions. Only bigamous and incestuous marriages are prohibited. The Act follows the recent legislative trend toward permitting first cousin marriages, but uncle-niece and aunt-nephew marriages are prohibited unless such marriages are permitted by the established custom of aboriginal cultures. The phrase, "aboriginal cultures", is based on language employed in government documents. It is used to denote a cultural practice recognized by the original or earliest known inhabitants of a region (see Random House Dictionary's illustration: "aboriginal customs"). The intent is to save those special customs of Indian tribes, of Alaskan natives of various ethnic origins, and of Polynesians, which may not accord with the incest taboos of Western culture. Rhode Island, in considering this section, must take into account the effect of R.I.Gen.Laws (1956) § 15–1–4, in order to determine whether the Uniform Act, in this respect, should be conformed to local policy. See In re May's Estate, 305 N.Y. 486, 114 N.E.2d 4 (1957). Marriages of brothers and sisters by adoption are prohibited because of the social interest in discouraging romantic attachments between such persons even if there is no genetic risk. The adoption provision is addressed directly to avoiding questions as to the impact of adoption on marriage law, since the adoption statutes in many states have not expressly resolved the issue. Cf. 6 & 7 Eliz., 2 c. 5 § 13(3) (1958). The Act does not prohibit uncle-niece and aunt-nephew marriages where an adoption has created the relationship.

Subsection (b) is intended to cure a defect arising under the laws of many states. For one reason or another, many persons, whose marriages are invalid because of prohibitions, neglect to contract formal marriages after the impediment is removed. If they reside in a state where common law marriage is recognized, there is no problem. But, in other jurisdictions, serious harm can result to legitimate interests of the surviving partner, of a sort which the legislators very likely would not have sanctioned had the possibility occurred to them. This subsection is intended to protect those interests.

Subsection (c) enacts the general modern trend to treat the offspring of prohibited marriages as legitimate.

Action in Adopting Jurisdictions

Variations from Official Text:

KENTUCKY

Omits this section.

Law Review and Journal Commentaries

Same-Sex marriage and choice-of-law: If we marry in Hawaii, are we still married when we return home? Barbara J. Cox. 1994 Wis. L.Rev. 1033.

Library References

Marriage ⚬=4 to 11.
WESTLAW Topic No. 253.
C.J.S. Marriage §§ 3, 10 et seq.

Notes of Decisions

[Co]habitation 6
[Co]nstruction and application 2
Cousins 4

Judgment or decree 7
Purpose 3
Removal of impediment 5
Validity 1

1. Validity

Section of Marriage and D... riage Act providing for remo... to prohibited marriages is con... Matter of Schisler's Estate, Ill... 401 N.E.2d 301, 36 Ill.Dec ... 280.

Section of Marriage and D... riage Act, as it confers ma... putative spouse to an inval... currence of certain conditio... inite, explicit, and consisten... Matter of Schisler's Estate ... 401 N.E.2d 301, 36 Ill.Dec ... 280.

Unconstitutional provisio... riage between a brother and ... adoption is severable and ma... preceding provision ... tween a brother and ... whole blood. Israel ... P.2d 762, 195 Colo. 263.

2. Construction and applicatio

No equitable basis existed to ... tion of rule against validity ... spouse seeking to sustain val... knew that problem existed with... ity of marriages between first ... equal means to discover facts ... law, and where marriage ... such short duration that cour... ceive any real prejudice. In ... Adams, Mont.1979, 604 P.2d 3...

3. Purpose

Even though statute, whic... and under what circumstance... idate marriage, refers mere... which are "prohibited", legisla... encompass marriages which a... void. Ferguson v. Ferguson, ... S.W.2d 925.

4. Cousins

Marriage between first ... initio. In re Marriage of ... 604 P.2d 332, 185 Mont. ...

5. Removal of impediment

First husband's ... wife's marriage to ... wife continued to ... death, and, thus, marriage ...

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Judgment or decree 7
Purpose 3
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Validity 1

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1. Validity

Section of Marriage and Dissolution of Marriage Act providing for removal of impediment to prohibited marriages is constitutionally valid. Matter of Schisler's Estate, Ill.App. 3 Dist.1980, 401 N.E.2d 301, 36 Ill.Dec. 620, 81 Ill.App.3d 280.

Section of Marriage and Dissolution of Marriage Act, as it confers marital rights upon a putative spouse to an invalid marriage on occurrence of certain condition, is sufficiently definite, explicit, and consistent with public policy. Matter of Schisler's Estate, Ill.App. 3 Dist.1980, 401 N.E.2d 301, 36 Ill.Dec. 620, 81 Ill.App.3d 280.

Unconstitutional provision prohibiting marriage between a brother and sister related by adoption is severable and may be stricken from preceding provision prohibiting marriage between a brother and sister related by half or whole blood. Israel v. Allen, Colo.1978, 577 P.2d 762, 195 Colo. 263.

2. Construction and application

No equitable basis existed to forestall application of rule against validity of marriage, where spouse seeking to sustain validity of marriage knew that problem existed with respect to validity of marriages between first cousins and had equal means to discover facts concerning the law, and where marriage of 15 months was of such short duration that court could not perceive any real prejudice. In re Marriage of Adams, Mont.1979, 604 P.2d 332, 185 Mont. 63.

3. Purpose

Even though statute, which delineates when and under what circumstances court may invalidate marriage, refers merely to marriages which are "prohibited", legislative intent was to encompass marriages which are prohibited and void. Ferguson v. Ferguson, Ky.App.1980, 610 S.W.2d 925.

4. Cousins

Marriage between first cousins was void ab initio. In re Marriage of Adams, Mont.1979, 604 P.2d 332, 185 Mont. 63.

5. Removal of impediment

First husband's death removed impediment to wife's marriage to third husband with whom wife continued to cohabit after first husband's death, and, thus, marriage to third husband became valid under Illinois law. McEvers v. Sullivan, C.D.Ill.1992, 785 F.Supp. 1321.

Where decedent was divorced from second wife on December 21, 1977, and third wife, whom he married on December 18, 1974, lived with decedent as his wife for a time after that date, prohibited third marriage to third wife became lawful as of date of divorce. Matter of Schisler's Estate, Ill.App. 3 Dist.1980, 401 N.E.2d 301, 36 Ill.Dec. 620, 81 Ill.App.3d 280.

Wife's verified complaint that she was married to second husband on August 3, 1979, and that there was one minor child of that union and one child from previous marriage, for whom it was alleged insufficient property existed to support, supported decision in equity that judgment of dissolution of wife's first marriage, entered on August 10, 1979, should be vacated and new judgment dated August 3, 1979, substituted nunc pro tunc, where evidence supported finding second husband's interest in escaping accountability for spousal maintenance or community property through annulment was outweighed by removing any taint of bigamy and bastardy from mother and child. Malott v. Malott, Ariz.App.1985, 703 P.2d 531, 145 Ariz. 587.

Divorced wife's marriage to former husband impeded her contracting common-law marriage with another man until date of dissolution and, thus, former husband had to establish concurrence of elements of common-law marriage after that date to prove common-law marriage existed under law of Texas which released former husband from maintenance obligations. Whitley v. Whitley, Mo.App. W.D.1989, 778 S.W.2d 233.

6. Cohabitation

Cohabitation required under statute providing that parties to prohibited marriage who cohabit after removal of impediment are lawfully married as of date of removal of impediment need not occur with knowledge that prior impediment to marriage has been removed. In re Marriage of May, Ill.App. 3 Dist.1997, 678 N.E.2d 71, 222 Ill.Dec. 664, 286 Ill.App.3d 1060.

Statute providing that parties to a prohibited marriage who cohabit after removal of impediment are lawfully married as of date of removal of impediment operates to ratify bigamous marriage regardless of whether parties have knowledge that impediment is removed. In re Marriage of May, Ill.App. 3 Dist.1997, 678 N.E.2d 71, 222 Ill.Dec. 664, 286 Ill.App.3d 1060.

7. Judgment or decree

In action brought to invalidate marriage between first cousins, exception to statute which provides that court may find after consideration of all relevant circumstances that interests of

justice require not making decree retroactive was not applicable, the district court having made no such finding. In re Marriage of Adams, Mont.1979, 604 P.2d 332, 185 Mont. 63.

Provision of statute which permits court to find after consideration of all relevant circumstances that interests of justice require not making decree invalidating a marriage retroactive grants power to district judge to make such determination without regard to any distinction as to whether marriage is void or merely voidable. In re Marriage of Adams, Mont.1979, 604 P.2d 332, 185 Mont. 63.

§ 208. [Declaration of Invalidity].

(a) The [______] court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(1) a party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage;

(2) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time the marriage was solemnized the other party did not know of the incapacity;

(3) a party [was under the age of 16 years and did not have the consent of his parents or guardian and judicial approval or] was aged 16 or 17 years and did not have the consent of his parents or guardian or judicial approval; or

(4) the marriage is prohibited.

(b) A declaration of invalidity under subsection (a)(1) through (3) may be sought by any of the following persons and must be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage:

(1) for a reason set forth in subsection (a)(1), by either party or by the legal representative of the party who lacked capacity to consent, no later than 90 days after the petitioner obtained knowledge of the described condition;

(2) for the reason set forth in subsection (a)(2), by either party, no later than one year after the petitioner obtained knowledge of the described condition;

(3) for the reason set forth in subsection (a)(3), by the underaged party, his parent or guardian, prior to the time the underaged party reaches the age at which he could have married without satisfying the omitted requirement.

Alternative A

[(c) A declaration of invalidity for the reason set forth in subsection (a)(4) may be sought by either party, the legal spouse in case of a bigamous marriage, the [appropriate state official], or a child of either party, at any time prior to the death of one of the parties.]

Alternative B

[(c) A declaration of invalidity for the reason set forth in subsection (a)(4) may be sought by either party, the legal spouse in case of a bigamous marriage,

the [appropriate state
exceed 5 years followin

(d) Children born of

(e) Unless the court
including the effect of a
justice would be served
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relating to property righ
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This section is design
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Some of the common gr
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the [appropriate state official] or a child of either party, at any time, not to exceed 5 years following the death of either party.]

(d) Children born of a marriage declared invalid are legitimate.

(e) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of this Act relating to property rights of the spouses, maintenance, support, and custody of children on dissolution of marriage are applicable to non-retroactive decrees of invalidity.

Comment

This section is designed to replace the traditional law of annulment of marriage. Some of the common grounds for annulment, such as fraud, have been abolished completely. Others have been restated to avoid unnecessary overlap with the dissolution sections.

This section states the circumstances under which the marriage may be terminated by a "declaration of invalidity," and establishes the "defenses" to each of the bases for a declaration. Subsection (b) states a general policy against declarations of invalidity after the death of either party to the marriage, and subsection (e) states a policy in favor of applying the dissolution provisions of Part III to the spouses' financial affairs following a declaration of invalidity.

Subsection (a)(1) states that declaration of invalidity may be obtained where there is proof that one of the parties to the marriage lacked capacity to consent to the marriage because of emotional illness or other mental disturbance or because of the incapacitating effect of alcohol or drugs. In the case of drugs and alcohol, the court is entitled to be somewhat skeptical about a claim of incapacity because of the protective features of the three day waiting period required by Section 204. Courts construing the "lacks capacity to consent" language of Subsection (a)(1) will undoubtedly continue to apply existing stringent standards by holding that a declaration of invalidity is appropriate only if the petitioner offers clear and definite evidence that one of the spouses lacked "sufficient mental capacity to understand intelligently the marriage contract . . . and the obligations it imposed upon him." Ertel v. Ertel, 40 N.E.2d 85, 313 Ill.App. 326 (1942). The proceeding must be commenced within ninety days after petitioner discovered the existence of the condition. [Subsection (b)(1).] If a party was incapacitated by drugs or alcohol, the "statute of limitations" would of necessity begin to run shortly after the ceremony; thus, most claims of invalidity on such grounds will be stale a few months after the marriage. A declaration of invalidity may come later if one of the spouses is mentally retarded, has other mental infirmity, or is emotionally unstable; but the court would properly be skeptical if the petitioner asserted, after a substantial period of cohabitation, that he had discovered, only within the preceding three months, his spouse's lack of capacity, on their wedding day, to consent.

Subsection (a)(2) authorizes a declaration of invalidity if one of the spouses was unable to consummate the marriage by sexual intercourse, so long as the other spouse did not know of the condition at the time of the ceremony and if the proceeding is instituted within a year after the petitioner obtains knowledge of the condition. The one year period is provided to permit couples some time to try to adjust to a marriage under these circumstances without running that risk that a declaration of invalidity would be precluded. Since the marriage cannot be invalidated after the death of either spouse, and since the spouses' finances can be adjusted as if a divorce had been granted under subsection (e), there is no reason to compel the spouses to make a more rapid decision about continuing the marriage. In the

absence of proof of extraordinary circumstances, such as a marriage by proxy or some enforced separation of the spouses prior to cohabitation, the court would be warranted in assuming that the one year period begins shortly after the ceremony rather than at some later date.

The phrase, "obtained knowledge of the described condition," in subsection (b)(1) and (2), is intended to mean awareness of the event, including information from a reliable source. In light of the public interest favoring promptness in bringing the petition, "knowledge" should be construed to include the possession of information sufficient to arouse inquiry concerning the existence of the condition. See Merrill, Notice § 4 (1952).

Subsection (a)(3) provides that, if one of the spouses was under the age of 18 at the time of the ceremony and married without satisfying the consent requirements of Section 203 or Section 205, that party or his parent or guardian may obtain a declaration of invalidity. There are, however, two important limitations to this ground for a declaration of invalidity: (1) a party to the marriage who was over 18, or a party under the age of 18 who had fulfilled the requirements of Section 203 or Section 205, is not entitled to a declaration of invalidity because there is no reason to permit that party to invalidate a marriage he was authorized to contract; (2) the underaged party or his representative is not entitled to a declaration of invalidity when he reaches the age of 18 (or 17, if he had parental consent and lacked only approval from the appropriate judicial officers). The brackets about the provision concerning persons aged under 16 carry out the option extended under Section 203.

The provisions of subsection (b), stating that no declaration of invalidity may be "sought" after the death of either party is intended to prohibit such a collateral attack upon the marriage, in lieu of a declaration, in all proceedings, including probate proceedings. Moreover, the use of the word "sought" rather than "commenced" implies that the death of a party to the marriage at any time before the entry of final judgment would terminate a proceeding attacking the marriage. The underlying policy reasons for this principle are clear: the traditional "void marriage" doctrine often imposed unwise and unfair penalties on innocent "spouses" in stable family situations long after the questioned marriage had occurred. The penalties serve no effective deterrent purpose, but cause severe economic dislocations; a spouse may be denied workmen's compensation and social security benefits, or even a share in a spouse's estate, after the marriage has been terminated by the death of the other spouse, despite the fact that the surviving spouse had no reason to suspect the invalidity of the marriage.

Alternative A of subsection (c) applies this principle to marriages prohibited by Section 207. A declaration of invalidity of a prohibited marriage may be obtained by either party to the marriage, by the legal spouse in bigamous marriages, by the appropriate state official, or by a child of one of the parties—but only prior to the death of one of the parties to the marriage. Alternative B would permit a declaration of invalidity by the *same parties* at any time up to five years after the death of either party to the marriage. A state considering the adoption of Alternative B should consider whether authorizing post-death collateral attacks on prohibited marriages is worth whatever deterrent effect the provision may have, when the only consequence of a successful attack will be to disturb settled financial relationships.

Subsection (e) authorizes the court to treat declarations of invalidity as what they have in fact become—substitutes for divorce. After considering all relevant circumstances, especially the impact of a retroactive decree upon the spouses, their children and other third parties, the court may make the decree not retroactive and may then apply the provisions of Part III in distributing the parties' property and in determining maintenance and child support. Even if the decree is made retroactive, the court may have to distribute property acquired by the spouses during the marriage. In the past this has been accomplished by analogy to partnership law. Cf. N.H.Rev.Stat.Ann. § 458:19 (1955); Clark, Domestic Relations 136 (1968).

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Ann. § 458:19 (1955);
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Action in Adopting Jurisdictions

Variations from Official Text:

KENTUCKY

In subsec. (a)(1), substitutes "deformity" for "infirmity".

Omits subsec. (a)(3).

Subsec. (b) provides:

"A declaration of invalidity under paragraph (a), (b) or (c) of subsection (1) [paragraph (1), (2) or (4) of subsec. (a) of Official Text] may be sought by any of the following persons and must be commenced within the times specified, but only for the causes set out in paragraph (a) may a declaration of invalidity be sought after the death of either party to the marriage:

"(a) For a reason set forth in paragraphs (a) and (b) of subsection (1) [paragraphs (1) and (2) of subsection (a) of Official Text], by party or by the legal representative of the party who lacked capacity to consent, was the offended party or did not know of the incapacity, no later than 90 days after the petitioner obtained knowledge of the described condition;

"(b) For the reason set forth in paragraph (c) of subsection (1) [paragraph (4) of subsection (a) of Official Text], by either party, no later than one (1) year after the petitioner obtained knowledge of the described condition."

Omits subsecs. (c), (d) and (e).

Library References

Marriage ⇐56 et seq.
WESTLAW Topic No. 253.
C.J.S. Marriage § 48 et seq.

Notes of Decisions

Bigamy 4
Construction and application 1
False representations 5
Incapacity, generally 2
Incarceration 8
Mental incapacity 3
Operation and effect of judgment or decree 14
Parties 10
Pleadings 12
Premarital sexual activity 9
Prior marriage 6
Review 16
Sexual incapacity 7
Standing to appeal 15
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Weight and sufficiency of evidence 13

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1. Construction and application

Wife's psychological inability to consummate marriage was not sufficient to warrant invalidation of the marriage, in the absence of a showing that the psychological impediment was incurable or permanent. In re Marriage of Naguit, Ill.App. 5 Dist.1982, 433 N.E.2d 296, 60 Ill.Dec. 499, 104 Ill.App.3d 709.

Courts, under general equity powers, have inherent jurisdiction to entertain and adjudicate actions for annulment of marriage, irrespective of statute. Means v. Industrial Commission, Ariz.1973, 515 P.2d 29, 110 Ariz. 72.

Annulment of marriage voids the marriage ab initio, and in the eyes of the law it is as if the marriage never existed. Eyerman v. Thias, Mo. App. E.D.1988, 760 S.W.2d 187.

2. Incapacity, generally

Where party lacks capacity to enter into marriage at time of being solemnized, court is to enter judgment declaring such marriage invalid. In re Marriage of Davis, Ill.App. 5 Dist.1991, 576 N.E.2d 972, 160 Ill.Dec. 18, 217 Ill.App.3d 273.

3. Mental incapacity

A person lacks capacity to consent to marriage where he is unable to understand nature, effect, duties and obligations of marriage. Pape v. Byrd, Ill.1991, 582 N.E.2d 164, 163 Ill.Dec. 898, 145 Ill.2d 13.

As ward under guardianship of both his estate and person, man who was mentally incompetent did not have capacity to enter into marriage. In re Marriage of Davis, Ill.App. 5 Dist. 1991, 576 N.E.2d 972, 160 Ill.Dec. 18, 217 Ill.App.3d 273.

4. Bigamy

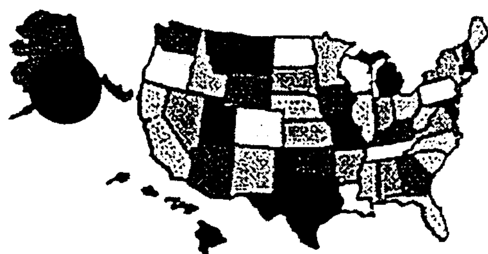
Bigamous marriage is void ab initio. State v. Bogan, Ariz.App. Div. 1 1995, 905 P.2d 515, 183 Ariz. 506, corrected, review granted, review denied as improvidently granted 920 P.2d 320, 186 Ariz. 198.

5. False representations

Where one party fraudulently misrepresents a willingness to consummate the marriage, it will

ATTACHMENT 5

APPENDIX G



law by source State

LII
legal information institute

Marriage Laws of the Fifty States, District of Columbia and Puerto Rico

This table links to the marriage laws of the states and attempts to summarize some of their salient points. Those interested in the marriage law of a particular jurisdiction should review its law directly rather than rely on this summary which may not be fully accurate or complete.

Related LII materials include:

- the LII "Law about ..." marriage page
- the LII pages summarizing the divorce laws of the states and the adoption laws of the states
- the State Statutes by Topic page
- the LII State Law pages

	Common Law Marriage	Age of consent to marry		Physical exam and blood test for male and female			
						Waiting period	
		Age with parental consent	Age without parental consent	Max. period between exam and license	Scope of medical exam	Before license	After license issuance (expiration)
Alabama- Title 30, Chapter 1	Yes	14 a, b	18	-----	-----	-----	30 days
Alaska	No	16 c	18	-----	-----	3 days, d	-----
Arizona	No	16 c (2)	18	-----	-----	-----	1 year
Arkansas- Title 9, Subtitle 2, § 11	No	Male-17 c, e Female- 16 c, e	18	-----	-----	f	-----
California- Family Code, §§ 300-500	No	b, g	18	30 days, d, h	-----	-----	90 days
Colorado- §§ 14-2-105 thru 14-2-110	Yes	16 c	18	-----	-----	-----	30 days
Connecticut	No	16 c (2)	18	-----	i	4 days, d	65 days
D[illegible]are- Title 13, C[illegible]pter 1	No	Male-18 e Female-16 e	18	-----	-----	24 hours, j	30 days
[illegible]a	No	16 a, e	18	-----	-----	-----	-----
Georgia- §§ 19-3-1 thru 19-3-68	No gg	16 e, k	18	-----	i	3 days, l	30 days
Hawaii- § 572	No	15 k	18	-----	-----	----	-----

Idaho- § 32-301 thru 32-501	No gg	16 c	18	-----	m, n	-----	-----
I[illegible]- Part II	No	16 o	18	-----	p	1 day	60 days
In[illegible]	No gg	17 e	18	-----	q	-----	60 days
Iowa	Yes	16 k	18	-----	-----	3 days	20 days
Kansas- Chapter 23, Article 1	Yes	Male-14 k Female-12 k	18	-----	-----	3 days, d	-----
Kentucky	No	18 k	18	-----	-----	-----	-----
Louisiana	No	18 c	18	10 days	-----	-----	-----
Maine	No	16 c	18	-----	-----	3 days, d, f	90 days
Maryland- §§ 2-201 thru 2-503	No	16 e, r	18	-----	-----	48 hours, d	6 months
Massachusetts	No	Male-14 k Female-12 k	18	3-60 days, s	-----	3 days, f	-----
Michigan	No	16	18	-----	-----	3 days, d	-----
Minnesota	No	16 k	18	-----	-----	5 days, d	-----
Mississippi- Title 93, Chapter 1	No	g, k	Male-17 Female-15	30 days	t	3 days, d	-----
Missouri	No	15 u	18	-----	-----	-----	-----
Montana- Title 40, Chapter 1	Yes	16 k	18	-----	t	-----	180 days
N[illegible]ska	No	17	19	-----	i	-----	1 year
N[illegible]	No	16 c	18	-----	-----	-----	1 year
New Hampshire- Title 43, Chapter 457	No	Male- 14 v Female- 13 v	18	-----	-----	3 days, d, f	90 days
New Jersey	No	16 c, e	18	-----	-----	72 hours, d	30 days
New Mexico	No	16 e, u	18	30 days	t	-----	-----
New York- Chapter 14, Articles 1 and 2	No	16 v	18	-----	w	24 hours	60 days
North Carolina- Chapter 51	No	16 e	18	-----	-----	-----	-----
North Dakota- Chapter 14-03	No	16	18	-----	-----	-----	60 days
Ohio- Title 31, Chapter 3101	No	Male-18 k Female-16 c, e	18	-----	-----	5 days, d, x	60 days
Oklahoma- 43-3	Yes	16 c, e	18	30 days, d	t	y	30 days
Oregon- Title 11-106	No	17 z	18	-----	-----	3 days, d	-----
P[illegible]ylvania- Title 2[illegible]art 1	Yes	16 u	18	30 days	t	3 days, d	60 days
R[illegible] Island	Yes	Male-18 u Female-16 u	18	-----	aa	-----	-----
South Carolina	Yes	Male- 16 e Female-14 e	18	-----	-----	1 day	-----

South Dakota- Title 25, Chapters 1 and 2	No	16 e	18	-----	-----	-----	20 days
[illegible]ssee- Title 36, C[illegible]3	No	16 u	18	-----	-----	3 days, d, bb	30 days
Texas- Title 1, Subtitles A and B	Yes	14 k, v	18	-----	-----	cc	30 days
Utah- Title 30, Chapter 1	Yes	14 a	18 dd	-----	-----	-----	30 days
Vermont	No	16 k	18	30 days, d	t	1 day, d	-----
Virginia- Title 20, Chapter 2	No	16 a, e	18	-----	ee	-----	60 days
Washington- Title 26, Chapter 4	No	17 u	18	-----	ff	3 days	60 days.
West Virginia- Chapter 48, Article 1	No	18 e	18	-----	t	3 days, d	-----
Wisconsin- Chapter 765 thru 767	No	16	18	-----	n	5 days, d	30 days
Wyoming- Title 20, Chapter 1	No	16 u	18	-----	i	-----	-----
District of Columbia- Title 30, Chapter 1	Yes	16 a	18	30 days	t	3 days, d	-----
P[illegible] Rico	No	Male-18 c, e, u Female-16 c, e, u	Male- 21 Female- 21 e	-----	t	-----	-----

- (a) Parental consent not required if minor was previously married.
- (b) Other statutory requirements apply.
- (c) Younger parties may marry with parental consent.
- (c) (2) Younger parties may marry with parental and judicial consent.
- (d) Waiting period may be avoided
- (e) Younger parties may obtain license in case of pregnancy or birth of child.
- (f) Parties must file notice of intention to marry with local clerk.
- (g) No age limits
- (h) When unmarried man and unmarried woman, not minors, have been living together as man and wife, they may, without health certificate, be married upon issuance of appropriate authorization.
- (i) Veneral disease and rubella (for female)
- (j) Residents, before expiration of 24 hour waiting period; non-residents, before expiration of 96 hour waiting period.
- (k) Parental consent and/or permission of judge required.
- (l) Unless parties are 18 years of age or more, or female is pregnant, or applicants are the parents of a living child born out of wedlock.
- (m) Rubella for female; there are certain exceptions, and district judge may waive medical examination on proof that emergency exists.
- (n) Applicants must recieve information on AIDS and certify having read it.
- (o) Judicial consent may be given when parents refuse to consent.
- [illegible]p) Venereal diseases; test for sickle cell anemia given at request of examining physician.
- (q) Any unsterilized female under 50 must submit with application for license a medical report stating whether she had immunological response to rubella, or a written record that the rubella vaccine was administered on or after her first birthday. Judge may by order [illegible]lispense with these requirements.
- (r) If parties are at least 16 years of age, proof of age and consent of parties in person are required. If a parent is ill an affadavit by the incapacitated parent and a pysician's affadavit required.
- (s) Doctor's certificate must be filed 30 days prior to notice of intention.
- (t) Veneral diseases. In WV and OK, Circuit court judge may waive requirement

- (v) Below age of consent parties need parental consent and permission of judge, no younger than 14 for males and 13 for females.
- (w) Tests for sickle cell may be required.
- x) Applicants under age 18 must state that they have had marriage counseling.
-) If one or both parties are below the age for marriage wihout parental consent, three day waiting period.
- .) If a party has no parent residing within state, and one party has residence in state for six months, no permission required.
- (aa) Physical examination and blood test required; offer of HIV counseling required.
- (bb) Unless parties are over 18 years of age.
- (cc) 72 hour waiting period following issuance of license.
- (dd) Authorizes counties to provide for premarital counseling as a requisite to issuance of license to persons under 18 and persons previously divorced.
- (ee) Required offer of HIV test, and/or must be provided with information on AIDS and tests available.
- (ff) No exam required, but parties must file affadavit of non-affiliction with contagious venereal disease.
- (gg) No common-law marriage can be entered into, but these states recgonize common law marriages that were entered into before these dates: Georgia- entered into prior to January 1, 1997 are recognized, Idaho- entered into prior to January 1, 1997 are recognized, and Indiana- entered into prior to January 1, 1958 are recognized.

Source: Based in part on a chart in the World Almanac and Book of Facts, World Almanac Books, 1999. Entries have been updated through a review of the statutes and links added to permit direct consultation of the state statutes.

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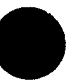

APPENDIX H

NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

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State Laws Regarding Persons Authorized to Perform Marriages

Alabama	Ala. Code § 30-1-7
Alaska	Alaska Stat. § 25.05.261
Arizona	Ariz. Rev. Stat. § 25-124
Arkansas	Ark. Stat. Ann. § 9-11-213
California	Cal. Family Code §§ 400, 401, 402
Colorado	Colo. Rev. Stat. § 14-2-109
Connecticut	Conn. Gene Stat. § 46b-22
Delaware	Del. Code tit. 13, § 106
Georgia	Ga. Code § 15-9-16
Hawaii	Hawaii Re. Stat. § 572-11
Idaho	Idaho Code § 32-303
Indiana	Ind. Code § 31-7-5-1
Iowa	Iowa Code § 595-10
Kansas	Kan. Stat. Ann. § 23-104a
Kentucky	Ky. Rev. Stat. § 402.050
Louisiana	La. Rev. Stat. Ann. §§ 9:202, 13:1877
Massachusetts	Mass. Gen. Laws Ch. 207, §§ 38, 39
Michigan	Mich. Comp. Laws Ann. § 551.7
Minnesota	Minn. Stat. § 517.04
Mississippi	Miss. Code Ann. § 93-1-17
Missouri	Mo. Rev. Stat. § 451.100
Nebraska	Neb. Rev. Stat. § 42-108
Nevada	Nev. Rev. Stat. § 122.062
New Jersey	N.J. Rev. Stat. §§ 37:1-13, 37:1-13.1
New Mexico	N.M. Stat. Ann. § 40-1-2
New York	N.Y. Dom. Rel. Law § 11
North Carolina	N.C. Gen. Stat. § 51-1, 51-1.1
North Dakota	N.D. Cent. Code § 14-03-09
Ohio	Ohio Rev. Code § 2101.27
Oklahoma	Okl. Stat. Ann. tit.43, § 7
Oregon	Or. Rev. Stat. § 106.120
Pennsylvania	Pa. Cons. Stat. Ann. tit. 23, § 1503
Rhode Island	R.I. Gen. Laws § 15-3-5
South Carolina	S.C. Code Ann. § 20-1-20
South Dakota	S.D. Codified Laws Ann. § 25-1-30
Tennessee	Tenn. Code Ann. § 36-3-301
Texas	Tex. Family Code Ann. § 1.83
Utah	Utah Code Ann. § 30-1-6
Vermont	Vt. Stat. Ann. tit. 18, § 5144
Virginia	Va. Code § 20-23
Washington	Wash. Rev. Code § 26.04.050
Wyoming	Wyo. Stat. § 20-1-106

CODE OF ALABAMA 1975
TITLE 30. MARITAL AND DOMESTIC RELATIONS.
CHAPTER 1. MARRIAGE.
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Current through Act 93-928, approved 9-2-93

s 30-1-7 Persons authorized to solemnize marriages.

(a) Generally. -- Marriages may be solemnized by any licensed minister of the gospel in regular communion with the Christian church or society of which he is a member, by a judge of the supreme court, court of criminal appeals, court of civil appeals, any circuit court or any district court within this state or by a judge of probate within his county or any retired judge of the supreme court, retired judge of the court of criminal appeals, retired judge of the court of civil appeals, retired judge of the circuit court, retired judge of the district court within this state or a retired judge of probate within his county.

(b) Pastor of religious society; clerk of society to maintain register of marriages; register, etc., deemed presumptive evidence of fact. -- Marriage may also be solemnized by the pastor of any religious society according to the rules ordained or custom established by such society. The clerk or keeper of the minutes of each society must keep a register and enter therein a particular account of all marriages solemnized by the society, which register, or a sworn copy thereof, is presumptive evidence of the fact.

(c) Quakers, Mennonites or other religious societies. -- The people called Mennonites, Quakers, or any other Christian society having similar rules or regulations, may solemnize marriage according to their forms by consent of the parties, published and declared before the congregation assembled for public worship.

(Code 1852, s 1946-1948; Code 1867, s 2335-2337; Code 1876, s 2674-2676; Code 1886, s 2311-2313; Code 1896, s 2841-2843; Code 1907, s 4881-4883; Code 1923, s 8995-8997; Code 1940, T. 34, s 6-8; Acts 1988, No. 88-551, p. 867.)

Code 1975 s 30-1-7
AL ST s 30-1-7
END OF DOCUMENT

ARKANSAS CODE OF 1987 ANNOTATED
TITLE 9. FAMILY LAW
SUBTITLE 2. DOMESTIC RELATIONS
CHAPTER 11. MARRIAGE
SUBCHAPTER 2. LICENSE AND CEREMONY

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Current through Act 1319 of the 1993 Regular Session

9-11-213 Persons who may solemnize marriages.

(a) For the purpose of being registered and perpetuating the evidence thereof, marriage shall be solemnized only by the following persons:
(1) The Governor;
(2) Any judges of the courts of record within this state, including any former judge of a court of record who served at least four (4) or more years;
(3) Any justice of the peace of the county where the marriage is solemnized, including any former justice of the peace who served at least three (3) or more terms since the passage of Arkansas Constitution, Amendment 55;
(4) Any regularly ordained minister or priest of any religious sect or denomination;
(5) The mayor of any city or town;
(6) Any official appointed for that purpose by the quorum court of the county where the marriage is to be solemnized; or
(7) Elected municipal court judges.
(b)(1) Marriages solemnized through the traditional rite of the Religious Society of Friends, more commonly known as Quakers, are recognized as valid to all intents and purposes the same as marriages otherwise contracted and solemnized in accordance with law.
(2) The functions, duties, and liabilities of a party solemnizing marriage, as set forth in the marriage laws of this state, shall, in the case of marriages solemnized through the traditional marriage rite of the Religious Society of Friends, be incumbent upon the clerk of the congregation or, in his absence, his duly designated alternate.

History. Rev. Stat., ch. 94, s 10; Acts 1873, No. 2, s 1, p. 2; C. & M. Dig., s 7046; Pope's Dig., s 9026; Acts 1947, No. 231, s 1; 1977, No. 95, s 2; 1979, No. 693, s 1; 1983, No. 850, s 1; A.S.A. 1947, s 55-216; Acts 1987, No. 394, s 1.

HISTORICAL NOTES

A.C.R.C. Notes. With respect to the duties of persons solemnizing marriages, see also s 20-18-501.

A.C.A. s 9-11-213
AR ST s 9-11-213
END OF DOCUMENT

WEST'S ANNOTATED CALIFORNIA CODES
FAMILY CODE
DIVISION 3. MARRIAGE
PART 3. SOLEMNIZATION OF MARRIAGE
CHAPTER 1. PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGE
COPR. (c) WEST 1994 No Claim to Orig. U.S. Govt. Works
Current through the 1993 portion of the 1993-94 legislative sessions.

s 400. Authorized persons

Marriage may be solemnized by any of the following who is of the age of 18 years or older:
(a) A priest, minister, or rabbi of any religious denomination.
(b) A judge or retired judge, commissioner of civil marriages or retired commissioner of civil marriages, commissioner or retired commissioner, or assistant commissioner of a court of record or justice court in this state.
(c) A judge or magistrate who has resigned from office.
(d) Any of the following judges or magistrates of the United States:
(1) A justice or retired justice of the United States Supreme Court.
(2) A judge or retired judge of a court of appeals, a district court, or a court created by an act of Congress the judges of which are entitled to hold office during good behavior.
(3) A judge or retired judge of a bankruptcy court or a tax court.
(4) A United States magistrate or retired magistrate.

1994 Supplemental Credit(s)

(Stats.1992, c. 162 (A.B.2650), s 10, operative Jan. 1, 1994.)

HISTORICAL NOTES

LAW REVISION COMMISSION COMMENT

1994 Supplemental Law Revision Commission Comment

Section 400 restates former Civil Code Section 4205 without substantive change. See also Section 402 (official of nonprofit religious institution licensed by county to solemnize marriages). [23 Cal.L.Rev.Comm. Reports 1 (1993)]

HISTORICAL AND STATUTORY NOTES

1994 Supplemental Historical and Statutory Notes

Derivation: Civ.C. former s 70, enacted 1872, amended by Code Am.1880, c. 41, s 2; Stats.1903, c. 217, s 1; Stats.1907, c. 60, s 1; Stats.1925, c. 437, s 1; Stats.1949, c. 706, s 1; Stats.1951, c. 1676, s 1; Stats.1967, c. 17, s 2; Stats.1967, c. 1114, s 1.

Civ.C. former s 4205, added by Stats.1969, c. 1608, s 8, amended by Stats.1971, c. 642, s 1; Stats.1971, c. 671, s 1; Stats.1971, c. 1748, s 28; Stats.1973, c. 927, s 1; Stats.1973, c. 979, s 5; Stats.1977, c. 10, s 1; Stats.1984, c. 250, s 1; Stats.1985, c. 5, s 1; Stats.1985, c. 586, s 1.

West's Ann. Cal. Fam. Code s 400
CA FAM s 400
END OF DOCUMENT

COPR. (c) WEST 1994 No Claim to Orig. U.S. Govt. Works
Current through the 1993 portion of the 1993-94 legislative sessions.

s 401. Commissioner of civil marriages; designation of county clerk; deputies

(a) For each county, the county clerk is designated as a commissioner of civil marriages.
(b) The commissioner of civil marriages may appoint deputy commissioners of civil marriages who may solemnize marriages under the direction of the commissioner of civil marriages and shall perform other duties directed by the commissioner.

1994 Supplemental Credit(s)

(Stats.1992, c. 162 (A.B.2650), s 10, operative Jan. 1, 1994.)

HISTORICAL NOTES

LAW REVISION COMMISSION COMMENT

1994 Supplemental Law Revision Commission Comment

Enactment (Revised Comment)

Section 401 continues former Civil Code Section 4205.1 without substantive change. [23 Cal.L.Rev.Comm. Reports 1 (1993)]

HISTORICAL AND STATUTORY NOTES

1994 Supplemental Historical and Statutory Notes

Derivation: Civ.C. former s 4205.1, added by Stats.1973, c. 979, s 2, amended by Stats.1976, c. 383, s 1; Stats.1982, c. 1543, s 1; Stats.1984, c. 250, s 2.

West's Ann. Cal. Fam. Code s 401
CA FAM s 401
END OF DOCUMENT

COPR. (c) WEST 1994 No Claim to Orig. U.S. Govt. Works
Current through the 1993 portion of the 1993-94 legislative sessions.

s 402. Officials of nonprofit religious institutions

In addition to the persons permitted to solemnize marriages under Section 400, a county may license officials of a nonprofit religious institution, whose articles of incorporation are registered with the Secretary of State, to solemnize the marriages of persons who are affiliated with or are members of the religious institution. The licensee shall possess the degree of doctor of philosophy and must perform religious services or rites for the institution on a regular basis. The marriages shall be performed without fee to the parties.

1994 Supplemental Credit(s)

(Stats.1992, c. 162 (A.B.2650), s 10, operative Jan. 1, 1994.)

HISTORICAL NOTES

LAW REVISION COMMISSION COMMENT

1994 Supplemental Law Revision Commission Comment

Enactment (Revised Comment)

Section 402 continues former Civil Code Section 4205.5 without substantive change. [23 Cal.L.Rev.Comm. Reports 1 (1993)]

HISTORICAL AND STATUTORY NOTES

1994 Supplemental Historical and Statutory Notes

Derivation: Civ.C. former s 4205.5, added by Stats.1973, c. 804, s 1.

West's Ann. Cal. Fam. Code s 402
CA FAM s 402
END OF DOCUMENT

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES
TITLE 9. CIVIL CODE ANCILLARIES
CODE BOOK I--OF PERSONS
CODE TITLE IV--HUSBAND AND WIFE
CHAPTER 1. MARRIAGE: GENERAL PRINCIPLES
PART I. OFFICIANTS

COPR. (c) WEST 1994 No Claim to Orig. U.S. Govt. Works
Current through all 1993 First Extraordinary and 1993 Regular Session Acts

s 202. Authority to perform marriage ceremony

A marriage ceremony may be performed by:
(1) A priest, minister, rabbi, clerk of the Religious Society of Friends, or any clergyman of any religious sect, who is authorized by the authorities of his religion to perform marriages, and who is registered to perform marriages;
(2) A judge or justice of the peace.

1991 Main Volume Credit(s)

Acts 1987, No. 886, s 3, eff. Jan. 1, 1988.

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1991 Main Volume Historical and Statutory Notes

Source:
C.C.Art. 102, 103 (1870); R.S. 9:202, 9:202.1 (1986).

For history and text of former C.C. arts. 102, 103 of the 1870 Civil Code prior to the 1987 amendment and reenactment, and for similar provisions in earlier Codes, see Vol. 16, LSA-C.C. (Compiled Edition).

Former R.S. 9:202 was derived from Rev.St.1870, ss 1937, 2207; Acts 1920, No. 128, s 1, and was amended by Acts 1970, No. 5, s 1; Acts 1980, No. 662, s 1; Acts 1981, No. 179, s 1; Acts 1985, No. 635, s 1.

Former R.S. 9:202.1 was added by Acts 1962, No. 66, s 1.

Chapter 1 of Code Title IV of Code Book I of Title 9 was amended and reenacted by Acts 1987, No. 886, s 3. For disposition of the subject matter of the former sections of Chapter 1 following the 1987 amendment and reenactment and for derivation of the sections set forth in Act 886, see Tables I and II preceding R.S. 9:201.

LSA-R.S. 9:202
LA R.S. 9:202
END OF DOCUMENT

WEST'S LOUISIANA STATUTES ANNOTATED
LOUISIANA REVISED STATUTES
TITLE 13. COURTS AND JUDICIAL PROCEDURE
CHAPTER 7. CITY COURTS
PART I. CITY AND MUNICIPAL COURTS, NEW ORLEANS EXCEPTED
SUBPART A. GENERAL PROVISIONS

COPR. (c) WEST 1994 No Claim to Orig. U.S. Govt. Works
Current through all 1993 First Extraordinary and 1993 Regular Session Acts

s 1877. Marriage ceremony; judges' authority to perform

Judges of city courts, at any place within the parish in which the court is situated, may perform any marriage for which a lawful Louisiana marriage license has been issued, regardless of the parish of issuance of the license.

1983 Main Volume Credit(s)

Acts 1960, No. 32, s 3, eff. Jan. 1, 1961. Amended by Acts 1980, No. 662, s 2.

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1983 Main Volume Historical and Statutory Notes

Former R.S. 13:1877, derived from Acts 1934, No. 132, s 1, relating to pleadings in city courts, was repealed by Acts 1960, No. 32, s 3. See, now, R.S. 13:1891.

The 1980 amendment rewrote the section, which had read:

"Judges of city courts may perform the marriage ceremony within the respective territorial jurisdiction of their courts."

LSA-R.S. 13:1877
LA R.S. 13:1877
END OF DOCUMENT

COPR. (c) WEST 1994 No Claim to Orig. U.S. Govt. Works
Current through 1993 Regular Session of the General Court

s 38. Situs; persons authorized

A marriage may be solemnized in any place within the commonwealth by the following persons who are residents of the commonwealth: a duly ordained minister of the gospel in good and regular standing with his church or denomination, including an ordained deacon in The United Methodist Church or in the Roman Catholic Church; a duly ordained rabbi of the Jewish faith; by a justice of the peace if he is also clerk or assistant clerk of a city or town, or a registrar or assistant registrar, or a clerk or assistant clerk of a court or a clerk or assistant clerk of the senate or house of representatives, by a justice of the peace if he has been designated as provided in the following section and has received a certificate of designation and has qualified thereunder; an authorized representative of a Spiritual Assembly of the Baha'is in accordance with the usage of their community; a priest or minister of the Buddhist religion; a minister in fellowship with the Unitarian Universalist Association and ordained by a local church; a leader of an Ethical Culture Society which is duly established in the commonwealth and recognized by the American Ethical Union and who is duly appointed and in good and regular standing with the American Ethical Union; the Imam of the Orthodox Islamic religion; and, it may be solemnized in a regular or special meeting for worship conducted by or under the oversight of a Friends or Quaker Monthly Meeting in accordance with the usage of their Society; and, it may be solemnized by a duly ordained nonresident minister of the gospel if he is a pastor of a church or denomination duly established in the commonwealth and who is in good and regular standing as a minister of such church or denomination, including an ordained deacon in The United Methodist Church or in the Roman Catholic Church; and, it may be solemnized according to the usage of any other church or religious organization which shall have complied with the provisions of the second paragraph of this section.

Churches and other religious organizations shall file in the office of the state secretary information relating to persons recognized or licensed as aforesaid, and relating to usages of such organizations, in such form and at such times as the secretary may require.

1987 Main Volume Credit(s)

Amended by St.1932, c. 162; St.1946, c. 197, s 2; St.1949, c. 249; St.1965, c. 11, s 1; St.1968, c. 81, s 2; St.1970, c. 668; St.1972, c. 186, s 5; St.1973, c. 1201; St.1975, c. 464, s 1; St.1976, c. 51; St.1981, c. 521, s 1; St.1982, c. 379; St.1982, c. 486; St.1986, c. 702, s 1.

1994 Pocket Part Credit(s)

Amended by St.1991, c. 419.

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

VERNON'S ANNOTATED MISSOURI STATUTES
TITLE XXX. DOMESTIC RELATIONS
CHAPTER 451. MARRIAGE, MARRIAGE CONTRACTS, AND RIGHTS OF MARRIED WOMEN

MARRIAGE

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Current through 1993 1st Ex. Sess.

451.100. Marriages solemnized by whom

Marriages may be solemnized by any clergyman, either active or retired, who is in good standing with any church or synagogue in this state or by any judge of a court of record, other than a municipal judge. Marriages may also be solemnized by a religious society, religious institution, or religious organization of this state, according to the regulations and customs of the society, institution or organization, when either party to the marriage to be solemnized is a member of such society, institution or organization.

1986 Main Volume Credit(s)

(R.S.1939, s 3363. Amended by L.1945, p. 1145; L.1969, p. 545, s 1; L.1978, p. 828, H.B. No. 1634, s A (s 1), eff. Jan. 2, 1979.)

1994 Pocket Part Credit(s)

(Amended by L. 1989, H.B. No. 898, s A.)

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1994 Pocket Part Historical and Statutory Notes

1989 Legislation

The 1989 amendment substituted "in good standing with any church or synagogue in this state" for "a citizen of the United States, and who is in good standing with any church or synagogue in this state" in the first sentence.

1986 Main Volume Historical and Statutory Notes

The 1945 Act rearranged the section, and dropped justices of the peace and excluded probate judges as officers authorized to solemnize marriages.

The 1969 amendment rewrote this section, which prior thereto read as follows:

"Marriage may be solemnized by any licensed or ordained preacher of the gospel, who is a citizen of the United States, or who is a resident of this state and a pastor of any church in this state, or be, any judge of a court of record, except judges of the probate court."

The 1978 amendment inserted ", other than a municipal judge" following "court of record" at the end of the first sentence.

Acts 1949, ch. 251, s 4; C. Supp. 1950, s 8412; Acts 1970, ch. 440, s 1; 1973, ch. 66, s 3; impl. am. Acts 1978, ch. 934, s 7; Acts 1979, ch. 87, s 1; 1981, ch. 211, ss 1, 2; 1983, ch. 331, ss 1, 2; T.C.A. (orig. ed.), s 36-415; Acts 1984, ch. 516, s 1; 1987, ch. 146, s 1; 1987, ch. 336, ss 4, 5; 1988, ch. 471, ss 1, 2; 1991, ch. 86, s 1; 1992, ch. 911, s 1; 1993, ch. 50, s 1.]

HISTORICAL NOTES

Amendments. The 1992 amendment added (h).
The 1993 amendment added (i).

Effective Dates. Acts 1992, ch. 911, s 2. May 8, 1992.
Acts 1993, ch. 50, s 2. March 22, 1993.

T. C. A. s 36-3-301
TN ST s 36-3-301
END OF DOCUMENT

TENNESSEE ADVANCE LEGISLATIVE SERVICE
STATENET
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TENNESSEE 100TH GENERAL ASSEMBLY

PUBLIC CHAPTER NO. 745

HOUSE BILL NO. 2079

1998 Tn. ALS 745; 1998 Tenn. Pub. Acts 735; 1998 Tn. Pub. Ch. 745; 1997 Tn. HB 2079

SYNOPSIS: AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 3, relative to persons who may solemnize marriages.

To view the next section, type .np* TRANSMIT.
To view a specific section, transmit p* and the section number. e.g. p*1

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

[*1] SECTION 1. Tennessee Code Annotated, Section 36-3-301(a), is amended by deleting from the first sentence the language "All regular ministers of the gospel of every denomination, and Jewish rabbis," and substituting instead the language "All regular ministers, preachers, pastors, priests, rabbis and other spiritual leaders of every religious belief,".

[*2] SECTION 2. Tennessee Code Annotated, Section 36-3-301(a), is further amended by designating the existing language, as amended, as subdivision "(1)" and by adding the following new subdivisions:

(2) Provided, however, in order to solemnize the rite of matrimony, any such minister, preacher, pastor, priest, rabbi or other spiritual leader must be ordained or otherwise designated in conformity with the customs of a church, temple or other religious group or organization; and such customs must provide for such ordination or designation by a considered, deliberate, and responsible act.

(3) If any marriage has been entered into by license issued pursuant to this chapter at which any minister officiated before the effective date of this act, such marriage shall not be invalid because the requirements of the preceding subdivision (2) have not been met.

[*3] SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

HISTORY:
Approved by the Governor on April 15, 1998.

SPONSOR: By Halteman Harwel

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s 7. Solemnization of marriages

A. All marriages must be contracted by a formal ceremony performed or solemnized in the presence of at least two adult, competent persons as witnesses, by a judge or retired judge of any court of record in this state, or an ordained or authorized preacher or minister of the Gospel, priest or other ecclesiastical dignitary of any denomination who has been duly ordained or authorized by the church to which he belongs to preach the Gospel, or a rabbi and who is at least eighteen (18) years of age. The preacher, minister, priest, rabbi or ecclesiastical dignitary who is a resident of this state shall have filed, in the office of the court clerk of the county in which he resides, a copy of his credentials or authority from his church or synagogue authorizing him to solemnize marriages. The preacher, minister, priest, rabbi or ecclesiastical dignitary who is not a resident of this state, but has complied with the laws of the state of which he is a resident, shall have filed once, in the office of the court clerk of the county in which he intends to perform or solemnize a marriage, a copy of his credentials or authority from his church or synagogue authorizing him to solemnize marriages. Such filing by resident or nonresident preachers, ministers, priests, rabbis or ecclesiastical dignitaries shall be effective in and for all counties of this state; provided, that no fee shall be charged for such recording; but no person herein authorized to perform or solemnize the marriage ceremony shall do so unless the license issued therefor be first delivered into his possession nor unless he has good reason to believe the persons presenting themselves before him for marriage are the identical persons named in the license, and for whose marriage the same was issued, and that there is no legal objection or impediment to such marriage.
B. Marriages between persons belonging to the society called Friends, or Quakers, the spiritual assembly of the Baha'Is, [FN1] or the Church of Jesus Christ of Latter Day Saints, which have no ordained minister, may be solemnized by the persons and in the manner prescribed by and practiced in any such society, church or assembly.

1990 Main Volume Credit(s)

R.L.1910, s 3889. Laws 1951, p. 113, s 1; Laws 1961, p. 285, s 1, eff. Mar. 28, 1961; Laws 1971, c. 298, s 1, eff. June 24, 1971; Laws 1986, c. 24, s 1, eff. Nov. 1, 1986; Laws 1989, c. 333, s 3, eff. Nov. 1, 1989.

[FN1] Probably should read "Baha'is".

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1990 Main Volume Historical and Statutory Notes

As originally enacted this section read:

"All marriages must be contracted by a formal ceremony, performed or solemnized in the presence of at least two adult, competent persons as witnesses, by either a justice of the supreme court, a judge of the district, superior or county court, a justice of the peace or a preacher or minister of

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Current through 1993 Regular Session, Chapter 535

36-3-301 Persons who may solemnize marriages.

(a) All regular ministers of the gospel of every denomination, and Jewish rabbis, more than eighteen (18) years of age, having the care of souls, and all members of the county legislative bodies, county executives, judges, chancellors, former chancellors and former judges of this state, the governor, the county clerk of each county, speaker of the senate, and speaker of the house of representatives, and the mayor of any municipality in the state, may solemnize the rite of matrimony. For the purposes of this section, the several judges of the United States courts, including United States magistrates and United States bankruptcy judges, who are citizens of Tennessee are deemed to be judges of this state. The amendments to this section by Acts 1987, ch. 336 which applied provisions of this section to certain former judges do not apply to any judge who has been convicted of a felony or who has been removed from office.

(b) The traditional marriage rite of the Religious Society of Friends (Quakers), whereby the parties simply pledge their vows one to another in the presence of the congregation, constitutes an equally effective solemnization.

(c) Any gratuity received by a county executive, county clerk or municipal mayor for the solemnization of a marriage, whether performed during or after such person's regular working hours, shall be retained by such person as personal renumeration for such services, in addition to any other sources of compensation such person might receive, and such gratuity shall not be paid into the county general fund or the treasury of such municipality.

(d) If any marriage has been entered into by license regularly issued at which a county executive officiated prior to April 24, 1981, such marriage shall be valid and is hereby declared to be in full compliance with the laws of this state.

(e) For the purposes of this section, "retired judges of this state" is construed to include persons who served as judges of any municipal or county court in any county which has adopted a metropolitan form of government and persons who served as county judges (judges of the quarterly county court) prior to the 1978 constitutional amendments.

(f) If any marriage has been entered into by license regularly issued at which a retired judge of this state officiated prior to April 13, 1984, such marriage shall be valid and is hereby declared to be in full compliance with the laws of this state.

(g) If any marriage has been entered into by license issued pursuant to this chapter at which a judicial commissioner officiated prior to March 28, 1991, such marriage shall be valid and is declared to be in full compliance with the laws of this state.

(h) The judge of the court of general sessions of any county having a population of not less than fifteen thousand six hundred (15,600) nor more than fifteen thousand eight hundred fifty (15,850) according to the 1990 federal census may solemnize the rite of matrimony in any county of this state.

(i) Members of county legislative bodies may solemnize the rite of matrimony in any county of this state.

[Code 1858, s 2439 (deriv. Acts 1778, ch. 7, s 2; 1845-1846, ch. 145, s 7); Acts 1879, ch. 98, s 1; 1889, ch. 134, s 1; Shan., s 4189; Code 1932, s 8412;

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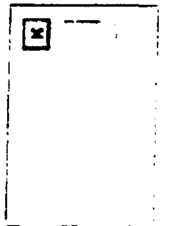
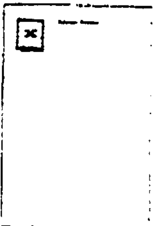
Nashville Bureau



Tom Humphrey
Bureau Chief



Rebecca Ferrar
Reporter

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Links

House passes bill to OK marriages by ministers with shaky credentials

Measure will apply only to past weddings, not future ones

By Tom Humphrey, News-Sentinel Nashville bureau

NASHVILLE -- Couples wedded by mail-order ministers will be assured of having a legally valid marriage under legislation approved unanimously Monday night by the House.

State Attorney General Knox Walkup had cast doubt on the legality of some marriages in an opinion last year.

The opinion was prompted by reports that ceremonies were performed in some Gatlinburg "wedding chapels" by men whose only claim to status as a minister is a mail-order certificate. Walkup said that is not enough to qualify a person to perform marriages as a minister under state law.

The bill, approved 94-0 and sent to the Senate, declares all past marriages performed by such persons legally valid. In the future, though, a person wishing to be recognized as a minister for marriage purposes must have participated in an ordination ceremony or other "considered, deliberate and responsible act."

The bill was sponsored by Reps. Beth Halteman Harwell, R-

MAINE REVISED STATUTES ANNOTATED
TITLE 19. DOMESTIC RELATIONS
CHAPTER 1. MARRIAGE
SUBCHAPTER V. PERSONS OFFICIATING

COPR. (c) WEST 1993 No Claim to Orig. Govt. Works
Current through Laws 1991, c.887, approved 10-16-92

s 121. Authorization; license

Every justice, judge, lawyer admitted to the Maine Bar, justice of the peace or notary public under Title 4, chapter 19, [FN1PP] residing in this State may solemnize marriages in this State. Every ordained minister of the gospel, cleric engaged in the service of the religious body to which the cleric belongs or person licensed to preach by an association of ministers, religious seminary or ecclesiastical body, whether a resident or nonresident of this State and whether or not a citizen of the United States, and of either sex, may solemnize marriages. A copy of the record of any marriage solemnized under the provisions of this section, duly made and kept, and attested or sworn to by the clerk of the town in which the marriage intention was recorded or in which the marriage was solemnized, shall be received in all courts as evidence of the fact of marriage. Notwithstanding Title 17-A, section 4-A, any person who violates this section, shall be punished by a fine of not more than $100 for each offense, for the use of the town in which the offense occurred, and the State Registrar of Vital Statistics shall enforce this section as far as it comes within the state registrar's power and shall notify the district attorney of the county in which the penalty should be enforced of the facts that have come to the state registrar's knowledge, and, upon receipt of the notice, the district attorney shall prosecute the defaulting person or persons.

1981 Main Volume Credit(s)

R.S.1954, c. 166, s 11; 1969, c. 225, s 15; 1973, c. 567, s 20; 1977, c. 694, ss 292, 293, eff. July 1, 1978; 1979, c. 229.

1993 Supplemental Credit(s)

1981, c. 456, s A, 61, eff. July 1, 1981; 1987, c. 736, s 38, eff. July 1, 1988; 1989, c. 225, s 4.

[FN1PP] Section 951 et seq. of title 4.

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1993 Supplemental Historical and Statutory Notes

Amendments

1981 Amendment. Repealed and replaced by c. 456.

1987 Amendment. Laws 1987, c. 736, in the first sentence, inserted "justice, judge, justice of the peace or".

APPENDIX I

TESTIMONY OF THE AMERICAN CIVIL LIBERTIES UNION
OF NORTH CAROLINA
BEFORE THE MARRIAGE LICENSE STUDY COMMISSION
APRIL 28, 2000

CONTACT: DEBORAH K. ROSS, EXECUTIVE/LEGAL DIRECTOR - 919-834-3466

CONSTITUTIONALITY OF N.C. GEN. STAT. § 51-1
REQUISITES OF MARRIAGE; SOLEMNIZATION

The marriage statute implicates two important constitutional rights:

1) **The fundamental right to marry.** *Loving v. Virginia, 388 U.S. 1, 12 (1967)* ("The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men. Marriage is one of the 'basic rights of man,' fundamental to our very existence and survival.")

2) **The right to freedom of religion.** Marriage "may be an exercise of religious faith." *Turner v. Safley, 482 U.S. 78, 96 (1987).* Moreover, the terms of the marriage statute recognize the right of some religions to solemnize marriages.

On its face N.C. Gen. Stat. § 51-1 violates the constitution by allowing some faiths to solemnize marriages but not others. The Establishment Clause of the First Amendment of the U.S. Constitution and the Religious Liberty Clause of Article I, § 13 of the North Carolina Constitution forbid the State from recognizing or promoting one religion over another religion absent a compelling governmental interest. *Employment Div. v. Smith, 494 U.S. 872 (1990)* (setting forth Establishment Clause jurisprudence); *In re Browning, 124 N.C. App. 190, 476 S.E.2d 465 (1996)* (setting forth Religious Liberty Clause jurisprudence).

The ACLU has been contacted by Native Americans who were denied the right to receive a marriage license under N.C. Gen. Stat. § 51-1 because they wished to have their marriage performed in a Native ceremony. Native American ceremonies are not recognized by the State as "valid and sufficient" for solemnization. As North Carolina becomes a more religiously diverse state, more and more religious couples will find themselves in the situation in which our Native American client found herself. Without an amendment to the law, it likely will be necessary for a future couple to bring suit in order to have both their right to marry and their religious beliefs recognized.

To solve this problem, the legislature should amend the statute to authorize solemnization in accordance with any mode of solemnization recognized by any religious belief, Indian Nation or Tribe, or Native Group. This language is similar to that of the Uniform Marriage and Divorce Act.

Other constitutional concerns include: the right of prisoners to marry in a correctional facility and the geographical scope of marriage licenses (county v. state).

night of sever[illegible]sion.

They are n[illegible]ed to work or go to school. For the most part they must remain at home, indoors, as in a prison, their windows covered or painted black. If they do go out, it must be in the company of a close male relative, and within the claustrophobic confines of the all-encompassing *burqa*.

They must remain quiet. Their footsteps are not to be heard. Their breathing is only grudgingly tolerated. These are women who barely register on the most fundamental gauges of [illegible]liban "will become accepted."

[illegible]e said, "If this can be accepted, just passed off as culture or religion, then there are no human rights for women that could ever be guaranteed. The United Nations has declared that women's rights are human rights. If you can take away the right to employment, the right to education of any kind, the wouldn't admit her.

Rasekh spoke of her [illegible]ness and sense of helplessness [illegible]continues to try to do what she can to help.

"Every day you hear these sad things," she said. "You see them and you feel helpless. I am not the same person that I was."

THE NEW YORK TIMES

Bob Herbert is a columnist for The New York Times.

N+O, 11/3/99, 17A

All we wanted was a traditional ceremony...

BY SHANNON O'LEAR

ATLANTA

As I write this, I'm feeling my short time as a North Carolina resident was time well spent. I feel I made a big accomplishment where governmental agencies fell short.

And it all has to do with marriage.

My husband and I are both American Indians and we lived briefly in a state that has the largest Indian population this side of the Mississippi River.

POINT OF VIEW

Our marriage ceremony, held in the backyard of our North Carolina home among spring flowers and blossoming trees, was to be a traditional native ceremony.

Or it was until the North Carolina marriage statute came into play.

For anyone obtaining a marriage license in North Carolina, an authorized religious official or magistrate must verify the union's validity. That's fine and good if you adhere to a certain organized religion or don't mind running around like crazy the day before your planned ceremony to get hitched in a dark courtroom by a stranger.

With two weeks to go before The Big Day, I called the Office of Vital Records to ask about these requirements and was told our marriage absolutely must be performed by an authorized religious official or a magistrate. But, I protested, we are American Indians. We are having a traditional ceremony with our elders.

The phone was quiet for a moment while the woman on the other end, I assume, was contemplating how to get off the line as quickly as possible with someone who certainly didn't profess to be Christian and was probably planning to bite the heads off chickens during a ritual wedding sacrifice.

In the end, the Office of Vital Records would not budge on the waiver I requested for a notary to sign our license.

The marriage day came and went and soon I received a response from Laura M. Riddick, Wake County's register of deeds. Her letter said North Carolina made exception for marriage ceremonies of Baha'is or members of the Society of Friends, but not Indians.

However, she assured me a study commission was being appointed to review the marriage statute, which has remained unchanged for more than 100 years.

Whoopee. My husband and I felt we had gotten married under a law that imposed on our religious beliefs and I was angry about that.

> *...Marriage rules in N.C. spell trouble for an American Indian observance.*

You would think the N.C. Commission on Indian Affairs would have agreed with us, since it represents more than 90,000 Indians in the state. Certainly someone else along the way was going to want to have a traditional wedding ceremony.

I told the commission's executive director, Greg Richardson, a member of the Haliwa-Saponi people, that the state required Indians to have a minister or magistrate perform their marriage ceremonies.

That's right, he said.

But, Greg, I said, knowing that he himself was planning a wedding, don't you think the commission would want to pursue amendments to this statute, since it appears to be a violation of the Native American Free Exercise of Religion Act of 1993? He then announced that the commission's chairperson of religious affairs had been working on it but failed to get it through in the past legislative session.

Oh.

Thus it was time to turn to the American Civil Liberties Union, which voted in September to pursue this matter through the General Assembly. Hopefully, Rep. Ronnie Sutton, the assembly's only American Indian legislator, will sponsor changes to the marriage statute. Such changes would not apply just to American Indians in North Carolina. They apply to people of all faiths and ethnicities who wish to practice in accordance with their Christian, Jewish, Hindu or whatever kind of spiritual traditions.

I hope the General Assembly will do the right thing to encompass the needs of all citizens. There are generations of people, both native and non-native, to whom this statute applies.

Thank you, North Carolina, for the lessons you taught me about equality and that, in some places, there's still a lot of work to do. It was time well spent in your state.

Shannon O'Lear is a free-lance writer and columnist specializing in American Indian issues. She is Overhill Cherokee and now lives in Atlanta.

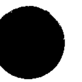
DOONESBURY

WHOA... NOT BAD

WE HAVE NOT ONE

WELL, YOU HAVE

Have a Point of View?



APPENDIX J

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2001

U **D**

BILL DRAFT 2001-SUz-1 [v.3] (12/21)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
1/5/2001 12:03:23 PM

Short Title: Amend Marriage Statutes. (Public)

Sponsors: .

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE MARRIAGE STATUTES TO BROADEN THE LIST OF
3 PERSONS AUTHORIZED TO SOLEMNIZE MARRIAGES AND TO REQUIRE
4 THAT THOSE PERSONS BE REGISTERED WITH THE SECRETARY OF
5 STATE; TO REQUIRE JUDICIAL APPROVAL BEFORE A 12 OR 13 YEAR
6 OLD APPLICANT MAY BE MARRIED; TO LIMIT THE REGISTER OF
7 DEED'S RESPONSIBILITY IN ISSUING MARRIAGE LICENSES TO
8 VERIFYING OBJECTIVE REQUIREMENTS; TO PROVIDE A PROCEDURE
9 BY WHICH A PERSON MAY APPLY FOR A MARRIAGE LICENSE
10 WITHOUT APPEARING IN PERSON; TO EXPAND THE GEOGRAPHICAL
11 SCOPE OF A MARRIAGE LICENSE; TO MAKE INCLUSION OF RACE ON
12 THE LICENSE OPTIONAL; AND TO ALLOW FOR CORRECTIONS OF
13 ERRORS IN THE APPLICATION OR LICENSE, AS RECOMMENDED BY
14 THE LEGISLATIVE RESEARCH COMMISSION.
15 The General Assembly of North Carolina enacts:
16 Section 1. G.S. 51-1 reads as rewritten:
17 **"§ 51-1. Requisites of marriage; solemnization.**
18 The consent of a male and female person who may lawfully marry, presently to
19 take each other as husband and wife, freely, seriously and plainly expressed by each
20 in the presence of the other, and in the presence of an ordained minister of any
21 religious denomination, minister authorized by ~~his~~ a church, or of a magistrate, and
22 the consequent declaration by such minister or officer that such persons are husband
23 and wife, or in accordance with any mode of solemnization recognized by any
24 religious denomination, Indian Nation or Tribe, shall be a valid and sufficient
25 ~~marriage:~~marriage. ~~Provided, that the rite of marriage among the Society of Friends,~~
26 ~~according to a form and custom peculiar to themselves, shall not be interfered with~~
27 ~~by the provisions of this Chapter: Provided further, that marriages solemnized and~~
28 ~~witnessed by a local spiritual assembly of the Baha'is, according to the usage of their~~

~~religious community, shall be valid; provided further, marriages~~ Marriages solemnized before March 9, 1909, by ministers of the gospel licensed, but not ordained, are validated from their consummation."

Section 2. G.S. 51-2 reads as rewritten:

"§ 51-2. Capacity to marry.

(a) All unmarried persons of 18 years, or older, may lawfully marry, except as hereinafter forbidden. In addition, persons over 16 years of age and under 18 years of age may marry, and the register of deeds may issue a license for such marriage, only after there shall have been filed with the register of deeds a written consent to such marriage, said consent having been signed by the appropriate person as follows:

~~(1) By the father if the male or female child applying to marry resides with his or her father, but not with his or her mother;~~

~~(2) By the mother if the male or female child applying to marry resides with his or her mother, but not with his or her father;~~

~~(3)~~ (1) By either the mother or ~~father, without preference, if the male or female child applying to marry resides with his or her mother and father;~~ father of the male or female child applying to marry; or

~~(4)~~ (2) By a person, agency, or institution having legal ~~custody, standing in loco parentis,~~ custody or serving as a guardian of such male or female child applying to marry.

Such written consent shall not be required for an emancipated minor if a certificate of emancipation issued pursuant to Article 35 of Chapter 7B of the General Statutes or a certified copy of a final decree or certificate of emancipation from this or any other jurisdiction is filed with the register of deeds.

(b) When an unmarried female who is 14 or 15 years of age is pregnant or has given birth to a child and the unmarried female and the putative father of the child, either born or unborn, agree to marry, or an unmarried male who is 14 or 15 years of age is the putative father of a child, either born or unborn, and the unmarried male and the mother of the child agree to marry, and consent in writing to the marriage, as set out in subsection (a), subdivisions (1) and (2) above, is given on the part of the underage male or female applying to marry, the register of deeds is authorized to issue to said parties a license to marry, and it shall be lawful for them to marry in accordance with the provisions of this Chapter.

(c) When an unmarried female who is ~~more than 12 years old, but~~ less than ~~18~~ 14 years old, is pregnant or has given birth to a child and ~~such~~ the unmarried female and the putative father of the child, either born or unborn, ~~shall~~ agree to marry, or an unmarried male who is less than 14 years old, is the putative father of a child, either born or unborn, and the unmarried male and the mother of the child agree to marry, ~~and consent in writing to such marriage, as set out in subsection (a), subdivisions (1), (2), (3) or (4) above, or by the director of social services of the~~

~~county of residence of either party, is given on the part of the female,~~ the register of deeds is authorized to issue to said parties a license to marry, and it shall be lawful for them to marry in accordance with the provisions of this ~~Chapter.~~ Chapter, only if a district or family court finds that the underage party is capable of assuming the responsibilities of marriage and the marriage will serve his or her best interest. Pregnancy alone does not establish that the best interest of the party will be served.

~~(c)~~(d) When a license to marry is procured by ~~or on behalf of~~ any person under 18 years of age by fraud or misrepresentation, a parent or ~~person standing in loco parentis to such person under 18 years of age shall be a proper party plaintiff in~~ a person, agency, or institution having legal custody or serving as a guardian of the underage applicant is a proper party to bring an action to annul ~~said~~ the marriage."

Section 3. G.S. 51-6 reads as rewritten:

"§ 51-6. Solemnization without license unlawful.

No ~~minister or officer~~ minister, officer, or any other person authorized to solemnize a marriage under the laws of this State, shall perform a ceremony of marriage between a man and woman, or shall declare them to be husband and wife, until there is delivered to ~~him~~ that person a license for the marriage of the said persons, signed by the register of deeds of the county in which the marriage ~~is intended to take place~~license was issued or by ~~his~~ a lawful deputy. There must be at least two witnesses to the marriage ceremony.

Whenever a man and woman have been lawfully married in accordance with the laws of the state in which the marriage ceremony took place, and said marriage was performed by a ~~justice of the peace~~ magistrate or some other civil official duly authorized to perform such ceremony, and the parties thereafter wish to confirm their marriage vows before an ordained minister or minister authorized by ~~his~~ a church, or in a ceremony recognized by any religious denomination, Indian Nation or Tribe, nothing herein shall be deemed to prohibit such confirmation ceremony; provided, however, that such confirmation ceremony shall not be deemed in law to be a marriage ceremony, such confirmation ceremony shall in no way affect the validity or invalidity of the prior marriage ceremony performed by a civil official, no license for such confirmation ceremony shall be issued by a register of deeds, and no record of such confirmation ceremony may be kept by a register of deeds."

Section 4. G.S. 51-7 reads as rewritten

"§ 51-7. Penalty for solemnizing without license.

Every ~~minister or officer~~ minister, officer, or any other person authorized to solemnize a marriage under the laws of this State, who marries any couple without a license being first delivered to ~~him,~~ that person, as required by law, or after the expiration of such license, or who fails to return such license to the register of deeds within 10 days after any marriage celebrated by virtue thereof, with the certificate appended thereto duly filled up and signed, shall forfeit and pay two hundred dollars

($200.00) to any person who sues therefor, and ~~he~~ shall also be guilty of a Class 1 misdemeanor."

Section 5. G.S. 51-8 reads as rewritten:

"§ 51-8. License issued by register of deeds.

Every register of deeds shall, upon proper application, issue a license for the marriage of any two persons ~~if it appears that such persons~~ who are able to answer the questions regarding age, marital status, and intention to marry, and, based on the answers, the register of deeds determines the persons are authorized to be married in accordance with the laws of this State. In making a determination as to whether or not the parties are authorized to be married under the laws of this State, the register of deeds may require the applicants for the license to marry to present certified copies of birth certificates or birth registration cards provided for in G.S. 130-73, or such other evidence as the register of deeds deems necessary to such determination. The register of deeds may administer an oath to any person presenting evidence relating to whether or not parties applying for a marriage license are eligible to be married pursuant to the laws of this State. Each applicant for a marriage license shall provide on the application the applicant's social security number. If an applicant does not have a social security number and is ineligible to obtain one, the applicant shall present a statement to that effect, sworn to or affirmed before an officer authorized to administer oaths. Upon presentation of a sworn or affirmed statement, the register of deeds shall issue the license, provided all other requirements are met, and retain the statement with the register's copy of the license. The register of deeds shall not issue a marriage license unless all of the requirements of this section have been met."

Section 6. Chapter 51 of the General Statutes is amended by adding the following new section:

"§ 51-8.2. Issuance of marriage license when applicant is unable to appear.

If an applicant for a marriage license is over 18 years of age and is unable to appear in person at the register of deeds office, the applicant may submit a sworn and notarized affidavit in lieu of personal appearance.

The affidavit shall be in the following or some equivalent form:

______________________, (Applicant) appearing before the undersigned notary and being duly sworn, says that:

1. I, ______________________, [applicant's name] am applying for a license in ______________ County, NC to marry ______________________ [name of other applicant] in North Carolina within the next 60 days and I am authorized under G.S. 51-8.2 to complete this Affidavit in Lieu of Personal Appearance for Marriage License Application.

1 I attach: (1) documentation that I am over 18 years of age as required in county
2 of marriage; and (2) documentation of divorce as required by county of marriage.
3
4 2. I submit the following information in applying for a marriage license:
5
6 Name: ______________________________
7 First Middle Last
8 Residence: ______________________________
9 State County City or Town
10 ______________________________
11 Street and Number Inside City Limits (Yes or No)
12 Birthplace: ______________ Birth Date ________ Age: ____
13 County & State or Country
14 Father: ______________________________
15 Name State of Birth Address (if living) or Deceased
16 Mother: ______________________________
17 Name State of Birth Address (if living) or Deceased
18 Race (Optional): __________ Number of this marriage: ________
19 1st, 2nd, etc.
20 Last Marriage Ended by: __________ Date Marriage Ended: ____
21 Death, Divorce, Annulment
22 Specify Highest Grade Completed in School (Optional):
23 Social Security # ______________ (If applicant does not have Social Security
24 number, attach affidavit of ineligibility)
25
26 I hereby make application to the Register of Deeds for a Marriage License and
27 solemnly swear that all of the statements contained in the above application are true
28 and I further make oath that there is no legal impediment to such marriage.
29 ______________________________
30 ______________________________ Signature of Applicant
31
32 Sworn to (or affirmed) and subscribed before me
33 this ______ day of ______________, ________.
34
35 ______________________________
36 [Seal] Notary Public
37 ______________________________ My commission expires: ________
38 [Notary's typed or printed name]"
39 Section 7. G.S. 51-15 reads as rewritten:
40 **"§ 51-15. Obtaining license by false representation misdemeanor.**
41 If any person shall ~~obtain~~ obtain, or aid and abet in obtaining, a marriage license
42 by misrepresentation or false pretenses, ~~he~~ that person shall be guilty of a Class ~~3~~1
43 misdemeanor."
44 Section 8. G.S. 51-16 reads as rewritten:

"§ 51-16. Form of license.

License shall be in the following or some equivalent form:

To any ordained minister of any religious denomination, minister authorized by ~~his~~ a church, ~~or to~~ any ~~magistrate for ________________ County:~~ magistrate, or any other person authorized to solemnize a marriage under the laws of this State: A.B. having applied to me for a license for the marriage of C.D. (the name of the man to be written in full) of (here state his residence), aged ________ years (race, as the case may be), the son of (here state the father and mother, if known; state whether they are living or dead, and their residence, if known; if any of these facts are not known, so state), and E.F. (write the name of the woman in full) of (here state her residence), aged _________ years (race, as the case may be), the daughter of (here state names and residences of the parents, if known, as is required above with respect to the man). (If either of the parties is under 18 years of age, the license shall here contain the following:) And the written consent of G.H., father (or mother, etc., as the case may be) to the proposed marriage having been filed with me, and there being no legal impediment to such marriage known to me, you are hereby authorized, at any time within 60 days from the date hereof, to celebrate the proposed marriage at any place within the ~~said county.~~ State. You are required within 10 days after you shall have celebrated such marriage, to return this license to me at my office with your signature subscribed to the certificate under this license, and with the blanks therein filled according to the facts, under penalty of forfeiting two hundred dollars ($200.00) to the use of any person who shall sue for the same.

Issued this _______ dayof______________, ___________

_____________________ L.M.

Register of Deeds of ___________ County

Every register of deeds ~~shall~~ shall, at the request of an applicant, designate in ~~every~~ a marriage license issued the race of the persons proposing to marry by inserting in the blank after the word "race" the words "white," ~~"colored," or "Indian,"~~ "black," "African American," "American Indian," "Alaska Native," "Asian Indian," "Chinese," "Filipino," "Japanese," "Korean," "Vietnamese," "Other Asian," "Native Hawaiian," "Guamarian," "Chamorro," "Samoan," "Other Pacific Islander," "Mexican," "Mexican American," "Chicano," "Puerto Rican," "Cuban," "Other Spanish/Hispanic/Latino," or "other," as the case may be. The certificate shall be filled up and signed by the ~~minister or officer~~ minister, officer, or other authorized individual celebrating the marriage, and also be signed by two witnesses present at the marriage, who shall add to their names their place of residence, as follows:

I, N.O., an ordained or authorized minister or other authorized individual of (here state to what religious denomination, or magistrate, as the case may be), united in matrimony (here name the parties), the parties licensed above, on the _______ day

1 of ______________, _______, at the house of P.R., in (here name the town, if
2 any, the township and county), according to law.
3 ______________________N.O.
4 Witness present at the marriage:
5 S.T., of (here give residence)."
6 Section 9. G.S. 51-18.1 reads as rewritten:
7 **"§ 51-18.1. Correction of errors ~~in names~~ in application or license; amendment**
8 **of names in application or license.**
9 (a) When it shall appear to the register of deeds of any county in this State
10 that ~~the names of either or both parties to a marriage~~ <u>information</u> is incorrectly stated
11 on an application for a marriage license, or upon a marriage license issued
12 thereunder, or upon a return or certificate of an officiating officer, the register of
13 deeds is authorized to correct such record or records ~~to show the true name and~~
14 ~~names of the parties to the marriage~~ upon being furnished with an affidavit signed by
15 one or both of the applicants for the marriage license, accompanied by affidavits of
16 at least two other persons who know the ~~true name or names of the person or persons~~
17 ~~seeking such correction.~~ <u>correct information.</u>
18 (b) When the name of a party to a marriage has been changed by court order
19 as a result of a legitimation action or other cause of action, and the party whose
20 name is changed ~~present~~ <u>presents</u> a signed affidavit to the register of deeds
21 indicating the name change and requesting that the application for a marriage
22 license, the marriage license, and the marriage certificate of the officiating officer be
23 amended by substituting the changed name for the original name, the register of
24 deeds may amend the records as requested by the party, provided the other party
25 named in the records consents to the amendment."
26 Section 10. This act is effective when it becomes law.
27
28