

TITLE 32  
DOMESTIC RELATIONS

CHAPTER 2  
MARRIAGE -- NATURE AND VALIDITY OF MARRIAGE CONTRACT

32-201. WHAT CONSTITUTES MARRIAGE -- NO COMMON-LAW MARRIAGE AFTER JANUARY 1, 1996. (1) Marriage is a personal relation arising out of a civil contract between a man and a woman, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by the issuance of a license and a solemnization as authorized and provided by law. Marriage created by a mutual assumption of marital rights, duties or obligations shall not be recognized as a lawful marriage.

(2) The provisions of subsection (1) of this section requiring the issuance of a license and a solemnization shall not invalidate any marriage contract in effect prior to January 1, 1996, created by consenting parties through a mutual assumption of marital rights, duties or obligations.

[(32-201) 1876, p. 24, sec. 1; R.S., sec. 2420; reen. R.C. & C.L., sec. 2611; C.S., sec. 4591; I.C.A., sec. 31-201; am. 1995, ch. 104, sec. 3, p. 335.]

32-202. PERSONS WHO MAY MARRY. Any unmarried male of the age of eighteen (18) years or older, and any unmarried female of the age of eighteen (18) years or older, and not otherwise disqualified, are capable of consenting to and consummating marriage. Provided that if the male party to the contract is under the age of eighteen (18) and not less than sixteen (16) years of age, or if the female party to the contract is under the age of eighteen (18) and not less than sixteen (16) years of age, the license shall not be issued except upon the consent in writing duly acknowledged and sworn to by the father, mother or guardian of any such person if there be either, and provided further, that no such license may be issued, if the male be under eighteen (18) years of age and the female under eighteen (18) years of age, unless each party to the contract submits to the county recorder his or her original birth certificate, or certified copy thereof or other proof of age acceptable to the county recorder. Provided further, that where the female is under the age of sixteen (16), or the male is under the age of sixteen (16), the license shall not issue except upon the consent in writing duly acknowledged or sworn to by the father, mother or guardian of such person if there be any such, and upon order of the court. Such order shall be secured upon petition of any interested party which petition shall show that the female minor under the age of sixteen (16), or the male minor under the age of sixteen (16), is physically and/or mentally so far developed as to assume full marital and parental duties, and/or that it is to the best interest of society that the marriage be permitted. A hearing shall be had on such petition forthwith or at such time and upon such notice as the court may designate. The judge shall secure from a physician his opinion as an expert as to whether said person is sufficiently developed mentally and physically to assume full marital duties. If said court is satisfied from the evidence that such person is capable of assuming full marital duties and/or that it is to the best interest of society, said court shall make an order to that effect, and a certified copy of said order shall be filed with the county recorder preliminary to the issuance of a marriage license for the marriage of such person and said

order of the court shall be the authority for the county recorder to issue such license.

[(32-202) 1863, p. 613, sec. 2; R.S., sec. 2421; am. 1888-1889, p. 44; reen. R.C. & C.L., sec. 2612; C.S., sec. 4592; am. 1921, ch. 221, sec. 1, p. 492; I.C.A., sec. 31-202; am. 1943, ch. 50, sec. 1, p. 96; am. 1967, ch. 326, sec. 1, p. 955; am. 1969, ch. 90, sec. 1, p. 302; am. 1972, ch. 68, sec. 1, p. 138; am. 1981, ch. 295, sec. 1, p. 615.]

32-205. INCESTUOUS MARRIAGES. Marriages between parents and children, ancestors and descendants of every degree, and between brothers and sisters of the half (1/2) as well as the whole blood, and between uncles and nieces, or aunts and nephews, are incestuous, and void from the beginning, whether the relationship is legitimate or illegitimate.

[(32-205) 1866, p. 71, sec. 2; R.S., sec. 2424; reen. R.C. & C.L., sec. 2615; C.S., sec. 4595; I.C.A., sec. 31-205.]

32-206. MARRIAGES BETWEEN FIRST COUSINS. All marriages between first cousins are prohibited.

[(32-206) 1866, p. 71, sec. 3; R.S., sec. 2425; reen. R.C. & C.L., sec. 2616; C.S., sec. 4596; am. 1921, ch. 115, sec. 1, p. 291; I.C.A., sec. 31-206; am. 1959, ch. 44, sec. 1, p. 89.]

32-207. POLYGAMOUS MARRIAGES. A subsequent marriage contracted by any person during the life of a former husband or wife of such person, with any person other than such former husband or wife, is illegal and void from the beginning unless:

1. The former marriage of either party has been annulled or dissolved; or,

2. Such former husband or wife was absent and not known to such person to be living for the space of five (5) successive years immediately preceding, or was generally reputed, and was believed by such person, to be dead at the time such subsequent marriage was contracted. In either of which cases the subsequent marriage is valid until its nullity is adjudged by a competent tribunal.

[(32-207) 1876, p. 24, sec. 6; R.S., sec. 2426; am. 1903, p. 10, sec. 1; reen. R.C. & C.L., sec. 2617; C.S., sec. 4597; I.C.A., sec. 31-207; am. 1943, ch. 25, sec. 1, p. 53.]

32-208. RELEASE FROM CONTRACT FOR UNCHASTITY. Neither party to a contract to marry is bound by a promise made in ignorance of the other's want of personal chastity, and either is released therefrom by unchaste conduct on the part of the other, unless both parties participate therein.

[(32-208) R.S., sec. 2427; reen. R.C. & C.L., sec. 2618; C.S., sec. 4598; I.C.A., sec. 31-208.]

32-209. RECOGNITION OF FOREIGN OR OUT-OF-STATE MARRIAGES. All marriages contracted without this state, which would be valid by the laws of the state or country in which the same were contracted, are valid in this state, unless they violate the public policy of this state. Marriages that violate the public policy of this state include, but are not limited to, same-sex marriages, and marriages entered into under the laws of another state or country with the intent to evade the prohibitions of the marriage laws of this state.

[(32-209) 1866, p. 71, sec. 5; R.S., sec. 2428; reen. R.C. & C.L., sec. 2619; C.S., sec. 4599; I.C.A., sec. 31-209; am. 1996, ch. 331, sec. 1, p. 1126.]