CHAPTER 1

Marriage

ARTICLE 1

General Provisions

**SECTION 20‑1‑10.** Persons who may contract matrimony.

 (A) All persons, except mentally incompetent persons and persons whose marriage is prohibited by this section, may lawfully contract matrimony.

 (B) No man shall marry his mother, grandmother, daughter, granddaughter, stepmother, sister, grandfather’s wife, son’s wife, grandson’s wife, wife’s mother, wife’s grandmother, wife’s daughter, wife’s granddaughter, brother’s daughter, sister’s daughter, father’s sister, mother’s sister, or another man.

 (C) No woman shall marry her father, grandfather, son, grandson, stepfather, brother, grandmother’s husband, daughter’s husband, granddaughter’s husband, husband’s father, husband’s grandfather, husband’s son, husband’s grandson, brother’s son, sister’s son, father’s brother, mother’s brother, or another woman.

HISTORY: 1962 Code Section 20‑1; 1952 Code Section 20‑1; 1942 Code Section 8556; 1932 Code Section 8556; Civ. C. ‘22 Section 5522; Civ. C. ‘12 Section 3743; Civ. C. ‘02 Section 2658; G. S. 2026; R. S. 2157; 1712 (2) 476; 1961 (52) 47; 1996 Act No. 327, Section 2, eff May 20, 1996.

Validity

For validity of this section, see Obergefell v. Hodges, 135 S.Ct. 2584 (U.S. 2015); Condon v. Haley, 21 F.Supp.3d 572 (D. S.C. 2014).

CROSS REFERENCES

Bigamous marriages being void, see Section 20‑1‑80.

Criminal offense of bigamy, see Section 16‑15‑10.

Criminal offense of incest, see Section 16‑15‑20.

Library References

Marriage 4, 17.5.

Westlaw Topic No. 253.

C.J.S. Marriage Sections 3, 7, 9, 13 to 18, 21.

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Encyclopedias

115 Am. Jur. Proof of Facts 3d 419, Effect of Divorce on Immigration Status of Spouse Who Immigrated to U.S. Because of Marriage With U.S. Citizen.

S.C. Jur. Bigamy Section 8, Validity of First and Second Marriages.

S.C. Jur. Divorce Section 5, Annulment Distinguished.

Forms

Am. Jur. Pl. & Pr. Forms Marriage Section 2 , Introductory Comments.

LAW REVIEW AND JOURNAL COMMENTARIES

“Common‑Law Marriage: What It Is and How To Prove It,” 12 SCLQ 355 (1960).

“Statutory Conflicts Relating to Incest and Consanguineous Marriages,” 2 SCLQ 280 (1950).

United States Supreme Court Annotations

Federal constitutional right to marry—Supreme Court cases. 96 L Ed 2d 716.

Marriage, same‑sex couples may exercise the fundamental right to marry, see Obergefell v. Hodges, 2015, 135 S.Ct. 2584, 192 L.Ed.2d 609. Constitutional Law 3438, 4385; Marriage 17.5(1)

Attorney General’s Opinions

Section 20‑1‑10 prohibits a marriage between an adoptive brother and his sister, and the State may constitutionally prohibit such marriages where the adoptive brother and his sister have lived in the same house for a significant period of time as brother and sister. 1980 Op Atty Gen, No. 80‑43, p. 84 (April 25, 1980) 1980 WL 81926.

NOTES OF DECISIONS

In general 1

Constitutional issues 1.5

Federal court 3

Injunction 4

Justiciability 2

Validity 1⁄2

1⁄2. Validity

South Carolina statutory and constitutional provisions, to the extent they sought to prohibit the marriage of same‑sex couples who otherwise met all other legal requirements for marriage in South Carolina, unconstitutionally infringed on the rights of same‑sex couples under the Due Process Clause and Equal Protection Clause. Condon v. Haley, 2014, 21 F.Supp.3d 572, stay pending appeal denied, appeal dismissed. Constitutional Law 3438; Constitutional Law 4385; Marriage And Cohabitation 227(1)

1. In general

Cited in Dillon County v Maryland Casualty Co. (1950) 217 SC 66, 59 SE2d 640. Baker v Allen (1951) 220 SC 141, 66 SE2d 618, dis op of Baker, C. J.

Applied in State v Smith (1915) 101 SC 293, 85 SE 958. Davis v Whitlock (1911) 90 SC 233, 73 SE 171.

Without any particular formality. Stringfellow v Scott (1833) 9 SC Eq 109. Bowers v Bowers (1858) 31 SC Eq 551. James v Mickey (1887) 26 SC 270, 2 SE 130.

But proof that two persons live together as man and wife is conclusive of their marriage, if not rebutted. Allen v Hall (1819) 11 SCL 114. State v Hilton (1827) 37 SCL 434.

As to power of court in regard to separation, see Rhame v Rhame (1826) 6 SC Eq 197. Converse v Converse (1856) 30 SCL Eq 535.

A person non compos mentis cannot contract marriage. Foster v. Means (S.C. 1844) 42 Am.Dec. 332.

In an action brought by a divorced husband to recover alimony he paid to his former spouse, in which the husband alleged that he had been adjudicated incompetent two years prior to his marriage and that, therefore, his marriage was a nullity and the alimony awarded pursuant to the subsequent divorce constituted unjust enrichment, it was the duty of the court first to make specific findings of fact with regard to the husband’s competency at the time of the marriage and during the pendency of the divorce action. Church v. Trotter (S.C. 1983) 278 S.C. 504, 299 S.E.2d 332.

Since marriage which followed Mexican divorce was valid in New York where it was contracted, its validity was recognized in South Carolina, there being no South Carolina public policy prohibiting a recognition of the marriage under the circumstances. Zwerling v. Zwerling (S.C. 1978) 270 S.C. 685, 244 S.E.2d 311. Marriage And Cohabitation 251

The validity of a marriage is determined by the law of the place where it is contracted, and will be recognized in another state unless such recognition is contrary to a strong public policy of that state. Zwerling v. Zwerling (S.C. 1978) 270 S.C. 685, 244 S.E.2d 311. Marriage And Cohabitation 251

It is essential to a common‑law marriage that there shall be a mutual agreement between the parties to assume toward each other the relation of husband and wife, and cohabitation without such an agreement does not constitute marriage. Johnson v. Johnson (S.C. 1960) 235 S.C. 542, 112 S.E.2d 647. Marriage And Cohabitation 217

So where there was a marriage between a widow and the son of her deceased husband by a former marriage, it was voidable but not void. The parties to the marriage contract having died without avoidance or annulment of it, it must be taken as valid. Tyson v. Weatherly (S.C. 1949) 214 S.C. 336, 52 S.E.2d 410. Marriage And Cohabitation 269; Marriage And Cohabitation 354

A consanguineous marriage is not void but is voidable during the lives of the parties, and if it is not avoided during their lives, it must be deemed valid to all intents and for all civil purposes. Bennett v. Bennett (S.C. 1940) 195 S.C. 1, 10 S.E.2d 23.

Insanity from delirium tremens will avoid a contract of marriage. Clement v. Mattison (S.C. 1846) 3 Rich. 93.

Where a party has contracted a valid marriage and then married a second time, his cohabitation and acknowledgment of the marriage relation between him and the second wife is not evidence of the validity of the second marriage. State v. Whaley (S.C. 1879) 10 S.C. 500. Marriage And Cohabitation 1181

The promise of future marriage between parties living in concubinage does not make marriage, although that relationship continue. North v. Valk (S.C. 1838).

Nor will any engagements to marry in the future. Fryer v. Fryer (S.C. 1832).

Marriage is a civil contract, whereby the parties take each other in praesenti for man and wife. Fryer v. Fryer (S.C. 1832).

1.5. Constitutional issues

The right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same‑sex may not be deprived of that right and that liberty; overruling Baker v. Nelson, 409 U.S. 810, 93 S.Ct. 37, 34 L.Ed.2d 65, and abrogating Citizens for Equal Protection v. Bruning, 455 F.3d 859,Adams v. Howerton, 673 F.2d 1036, and other cases. Obergefell v. Hodges, 2015, 135 S.Ct. 2584, 192 L.Ed.2d 609. Constitutional Law 3438; Constitutional Law 4385; Marriage And Cohabitation 227(1)

2. Justiciability

South Carolina same‑sex couple established an injury in fact that was concrete and actual, as required for standing to bring action challenging the constitutionality of South Carolina’s statutory and constitutional provisions prohibiting same‑sex marriages; couple’s application for a marriage license had been denied under South Carolina’s laws prohibiting same‑sex marriages. Condon v. Haley, 2014, 21 F.Supp.3d 572, stay pending appeal denied, appeal dismissed. Constitutional Law 704

3. Federal court

Eleventh Amendment immunity did not bar same‑sex couple’s action for declaratory and injunctive relief against South Carolina county probate judge, challenging the constitutionality of South Carolina’s statutory and constitutional provisions prohibiting same‑sex marriages; judge was vested with statutory authority under South Carolina law to take applications for and to issue marriage licenses to eligible couples, same‑sex couple had applied to judge for marriage license, and challenged state statutory and constitutional provisions barred issuance of marriage license to same‑sex couple. Condon v. Haley, 2014, 21 F.Supp.3d 572, stay pending appeal denied, appeal dismissed. Federal Courts 2377; Federal Courts 2385(2)

Eleventh Amendment immunity did not bar same‑sex couple’s action for declaratory and injunctive relief against South Carolina’s Attorney General, challenging the constitutionality of South Carolina’s statutory and constitutional provisions prohibiting same‑sex marriages; Attorney General had duty as state’s chief prosecutor and attorney to enforce state’s laws, he had recently initiated litigation within original jurisdiction of South Carolina Supreme Court in regard to the challenged same‑sex marriage laws, and in court filings he had indicated an intention to vigorously enforce these laws and to challenge efforts by the same‑sex couple to vindicate their claimed fundamental right to marry under United States Constitution. Condon v. Haley, 2014, 21 F.Supp.3d 572, stay pending appeal denied, appeal dismissed. Federal Courts 2377; Federal Courts 2386(3)

South Carolina’s Governor had Eleventh Amendment immunity as to same‑sex couple’s action for declaratory and injunctive relief, challenging the constitutionality of South Carolina’s statutory and constitutional provisions prohibiting same‑sex marriages, in absence of evidence that Governor had taken enforcement action or engaged in other affirmative acts to obstruct same‑sex couple’s asserted fundamental right to marry. Condon v. Haley, 2014, 21 F.Supp.3d 572, stay pending appeal denied, appeal dismissed. Federal Courts 2377; Federal Courts 2384

In action challenging South Carolina’s statutory and constitutional ban on same‑sex marriage, requirement of final decision of state court, for invoking Rooker‑Feldman doctrine as bar to action in federal district court, was not satisfied as to South Carolina Supreme Court’s grant of stay, in action under that court’s original jurisdiction seeking to prevent a South Carolina county probate judge from issuing a marriage license to a same‑sex couple, to maintain the status quo pending another federal district court’s resolution of a challenge to South Carolina’s refusal to recognize an out‑of‑state same‑sex marriage; South Carolina Supreme Court intended for federal court to rule on constitutionality of state’s same‑sex marriage ban and for state courts to abstain from doing so. Condon v. Haley, 2014, 21 F.Supp.3d 572, stay pending appeal denied, appeal dismissed. Courts 509.3(2)

District court would decline to invoke first‑to‑file rule as basis for postponing consideration of same‑sex couple’s challenge to constitutionality of South Carolina’s statutory and constitutional provisions prohibiting same‑sex marriages, during pendency of earlier‑filed action in another district court challenging South Carolina’s refusal to recognize out‑of‑state same‑sex marriage; cases had different factual scenarios, case at bar involved a fundamental right, and in earlier‑filed case the district court had ruled that plaintiffs’ right to marry as same‑ sex couple was not before the court because the couple had already married. Condon v. Haley, 2014, 21 F.Supp.3d 572, stay pending appeal denied, appeal dismissed. Federal Courts 3936

4. Injunction

District court would temporarily stay, for one week, its order declaring that South Carolina statutory and constitutional provisions barring same‑sex marriages violated due process and equal protection, which order also granted permanent injunctive relief; brief stay of enforcement of the injunction was appropriate to allow court of appeals to receive a petition for an appeal stay and to consider that request in an orderly fashion. Condon v. Haley, 2014, 21 F.Supp.3d 572, stay pending appeal denied, appeal dismissed. Federal Courts 3462

District court would not stay, pending appeal, its order declaring that South Carolina statutory and constitutional provisions barring same‑sex marriages violated due process and equal protection, which order also granted permanent injunctive relief; in light of controlling authority from circuit court of appeals, South Carolina Attorney General could not show strong likelihood of success as defender of challenged laws, Attorney General did not set forth any meaningful evidence of irreparable injury, same‑sex couples put forward evidence of irreparable injury, and public interest was best served by denying a stay that would allow continued enforcement of state laws found to be unconstitutional. Condon v. Haley, 2014, 21 F.Supp.3d 572, stay pending appeal denied, appeal dismissed. Federal Courts 3462

**SECTION 20‑1‑15.** Prohibition of same sex marriage.

 A marriage between persons of the same sex is void ab initio and against the public policy of this State.

HISTORY: 1996 Act No. 327, Section 1, eff May 20, 1996.

Validity

For validity of this section, see Obergefell v. Hodges, 135 S.Ct. 2584 (U.S. 2015); Condon v. Haley, 21 F.Supp.3d 572 (D. S.C. 2014); Bradacs v. Haley, 58 F.Supp.3d 514 (D. S.C. 2014).

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Marriage 17.5.

Westlaw Topic No. 253.

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36 Am. Jur. Proof of Facts 2d 441, Validity of Marriage.

Am. Jur. 2d Marriage Section 51, Status of Parties as of Same Sex.

Treatises and Practice Aids

30 Causes of Action 2d 285, Cause of Action for Interstate Dissolution of Civil Union or Domestic Partnership.

United States Supreme Court Annotations

Marriage, same‑sex couples may exercise the fundamental right to marry, see Obergefell v. Hodges, 2015, 135 S.Ct. 2584, 192 L.Ed.2d 609. Constitutional Law 3438, 4385; Marriage 17.5(1)

Notes of Decisions

Constitutional issues 1

Federal court 3

Injunction 4

Justiciability 2

Validity 1⁄2

1⁄2. Validity

South Carolina had no compelling state interest in its laws that denied recognition of valid same‑sex marriage from other states, and thus laws violated Equal Protection Clause; South Carolina’s asserted interests were federalism‑based interest in maintaining control over definition of marriage within its borders, history and tradition of opposite‑sex marriage, protecting institution of marriage, encouraging responsible procreation, and promoting optimal childrearing environment. Bradacs v. Haley, 2014, 58 F.Supp.3d 514, appeal dismissed. Constitutional Law 3438; Marriage And Cohabitation 258

South Carolina statutory and constitutional provisions, to the extent they sought to prohibit the marriage of same‑sex couples who otherwise met all other legal requirements for marriage in South Carolina, unconstitutionally infringed on the rights of same‑sex couples under the Due Process Clause and Equal Protection Clause. Condon v. Haley, 2014, 21 F.Supp.3d 572, stay pending appeal denied, appeal dismissed. Constitutional Law 3438; Constitutional Law 4385; Marriage And Cohabitation 227(1)

1. Constitutional issues

The right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same‑sex may not be deprived of that right and that liberty; overruling Baker v. Nelson, 409 U.S. 810, 93 S.Ct. 37, 34 L.Ed.2d 65, and abrogating Citizens for Equal Protection v. Bruning, 455 F.3d 859,Adams v. Howerton, 673 F.2d 1036, and other cases. Obergefell v. Hodges, 2015, 135 S.Ct. 2584, 192 L.Ed.2d 609. Constitutional Law 3438; Constitutional Law 4385; Marriage And Cohabitation 227(1)

South Carolina’s laws denying recognition of valid same‑sex marriages from other states were not narrowly tailored to serve compelling state interest, and impermissibly infringed on same‑sex couple’s fundamental right to marry, in violation of due process. Bradacs v. Haley, 2014, 58 F.Supp.3d 514, appeal dismissed. Constitutional Law 4385; Marriage And Cohabitation 258

Same‑sex couple was deprived of benefits of their fundamental right to marry by South Carolina’s laws denying recognition of their valid marriage from District of Columbia, as required for their substantive due process challenge to South Carolina’s laws; among other things, couple was unable to attain tax and health insurance benefits of marriage. Bradacs v. Haley, 2014, 58 F.Supp.3d 514, appeal dismissed. Constitutional Law 4385; Marriage And Cohabitation 258

Same‑sex couple had fundamental liberty interest in right to marry, as required for its substantive due process challenge to South Carolina’s laws denying recognition of their valid marriage from District of Columbia. Bradacs v. Haley, 2014, 58 F.Supp.3d 514, appeal dismissed. Constitutional Law 4385

Defense of Marriage Act (DOMA), which permitted states to refuse to give full faith and credit to same‑sex marriages performed in other state, was appropriate exercise of Congressional power under Full Faith and Credit Clause to regulate conflicts between the laws of two different states, and thus same‑sex couple could not challenge South Carolina’s laws denying recognition of their valid marriage from District of Columbia under Full Faith and Credit Clause. Bradacs v. Haley, 2014, 58 F.Supp.3d 514, appeal dismissed. Marriage And Cohabitation 258; States 5(2)

Allegations that South Carolina’s failure to recognize same‑sex couple’s marriage denied them equal protection under the laws were sufficient to state equal protection claims against South Carolina officials under Section 1983. Bradacs v. Haley, 2014, 58 F.Supp.3d 499, appeal dismissed. Constitutional Law 3438; Marriage And Cohabitation 306

Allegations that South Carolina’s failure to recognize same‑sex couple’s marriage deprived them of a fundamental liberty interest without due process of law were sufficient to state due process claims against South Carolina officials under Section 1983. Bradacs v. Haley, 2014, 58 F.Supp.3d 499, appeal dismissed. Constitutional Law 4385; Marriage And Cohabitation 306

2. Justiciability

Injunction that required South Carolina to recognize same‑sex couple’s marriage from District of Columbia would redress couple’s alleged injuries from South Carolina’s laws denying recognition of their marriage, as required for Article III standing to challenge constitutionality of South Carolina’s laws; injunction would allow couple to gain access to marriage benefits that they were being denied. Bradacs v. Haley, 2014, 58 F.Supp.3d 514, appeal dismissed. Civil Rights 1331(6)

Same‑sex couple’s alleged injuries from South Carolina’s laws denying recognition of their marriage, including inability to reap tax and health insurances benefits associated with marriage, were fairly traceable to South Carolina attorney general, as required for couple to have Article III standing to bring action against attorney general challenging South Carolina’s laws; attorney general specifically acted to stop issuance of marriage licenses to same‑sex couples in wake of court decision invalidating similar laws in Virginia, and attorney general immediately appealed other district court decision invalidating South Carolina’s laws. Bradacs v. Haley, 2014, 58 F.Supp.3d 514, appeal dismissed. Constitutional Law 704

Same‑sex couple allegedly suffered injury‑in‑fact, as required for Article III standing to bring constitutional challenge, as result of South Carolina’s laws that denied legal recognition of couple’s marriage in District of Columbia; as result of South Carolina laws, couple was not entitled to several legal benefits of marriage, including tax and health insurance benefits. Bradacs v. Haley, 2014, 58 F.Supp.3d 514, appeal dismissed. Constitutional Law 704

Same‑sex couple had Article III standing to challenge allegedly unconstitutional South Carolina laws and constitutional provisions denying legal recognition to same‑sex marriages, where couple alleged that they received less disability income, could not make certain benefits claims, and could not claim a marriage exemption on their tax returns as a result of the challenged laws and provisions, and that their alleged injury could be traced to the actions of South Carolina’s Attorney General in stopping the issuance of marriage licenses to same‑sex couples. Bradacs v. Haley, 2014, 58 F.Supp.3d 499, appeal dismissed. Constitutional Law 704

South Carolina same‑sex couple established an injury in fact that was concrete and actual, as required for standing to bring action challenging the constitutionality of South Carolina’s statutory and constitutional provisions prohibiting same‑sex marriages; couple’s application for a marriage license had been denied under South Carolina’s laws prohibiting same‑sex marriages. Condon v. Haley, 2014, 21 F.Supp.3d 572, stay pending appeal denied, appeal dismissed. Constitutional Law 704

3. Federal court

Principles of federalism did not bar federal district court from hearing same‑sex couple’s Equal Protection challenge to South Carolina’s laws denying recognition of couple’s valid marriage from District of Columbia; although laws concerning marriage were traditionally the purview of states, such powers to regulate marriage were not unlimited. Bradacs v. Haley, 2014, 58 F.Supp.3d 514, appeal dismissed. Federal Courts 2034

Under Ex parte Young exception, attorney general of South Carolina engaged in alleged ongoing violation of federal law, and thus was not shielded by Eleventh Amendment immunity in same‑sex couple’s action challenging laws that denied recognition of their valid marriage from District of Columbia; governor and attorney general vigorously enforced the state law provisions at issue and continued to challenge efforts by couple to vindicate their claimed fundamental right to marry. Bradacs v. Haley, 2014, 58 F.Supp.3d 514, appeal dismissed. Federal Courts 2377; Federal Courts 2386(3)

South Carolina’s Attorney General had special relation to allegedly unconstitutional state laws and constitutional provisions denying legal recognition to same‑sex marriages in South Carolina, and thus Ex parte Young exception to Eleventh Amendment immunity applied to allow same‑sex couple’s Section 1983 claims against Attorney General; Attorney General had undertaken specific enforcement of the challenged laws and provisions by moving for a temporary injunction to stop the issuance of same‑sex marriage licenses in South Carolina. Bradacs v. Haley, 2014, 58 F.Supp.3d 499, appeal dismissed. Federal Courts 2384

Governor of South Carolina did not have special relation to allegedly unconstitutional state laws and constitutional provisions denying legal recognition to same‑sex marriages in South Carolina, and thus Eleventh Amendment immunity barred same‑sex couple’s Section 1983 claims against Governor; public statements that Governor would support South Carolina’s laws and constitution did not establish more than a general enforcement authority. Bradacs v. Haley, 2014, 58 F.Supp.3d 499, appeal dismissed. Federal Courts 2384

Eleventh Amendment immunity did not bar same‑sex couple’s action for declaratory and injunctive relief against South Carolina county probate judge, challenging the constitutionality of South Carolina’s statutory and constitutional provisions prohibiting same‑sex marriages; judge was vested with statutory authority under South Carolina law to take applications for and to issue marriage licenses to eligible couples, same‑sex couple had applied to judge for marriage license, and challenged state statutory and constitutional provisions barred issuance of marriage license to same‑sex couple. Condon v. Haley, 2014, 21 F.Supp.3d 572, stay pending appeal denied, appeal dismissed. Federal Courts 2377; Federal Courts 2385(2)

Eleventh Amendment immunity did not bar same‑sex couple’s action for declaratory and injunctive relief against South Carolina’s Attorney General, challenging the constitutionality of South Carolina’s statutory and constitutional provisions prohibiting same‑sex marriages; Attorney General had duty as state’s chief prosecutor and attorney to enforce state’s laws, he had recently initiated litigation within original jurisdiction of South Carolina Supreme Court in regard to the challenged same‑sex marriage laws, and in court filings he had indicated an intention to vigorously enforce these laws and to challenge efforts by the same‑sex couple to vindicate their claimed fundamental right to marry under United States Constitution. Condon v. Haley, 2014, 21 F.Supp.3d 572, stay pending appeal denied, appeal dismissed. Federal Courts 2377; Federal Courts 2386(3)

South Carolina’s Governor had Eleventh Amendment immunity as to same‑sex couple’s action for declaratory and injunctive relief, challenging the constitutionality of South Carolina’s statutory and constitutional provisions prohibiting same‑sex marriages, in absence of evidence that Governor had taken enforcement action or engaged in other affirmative acts to obstruct same‑sex couple’s asserted fundamental right to marry. Condon v. Haley, 2014, 21 F.Supp.3d 572, stay pending appeal denied, appeal dismissed. Federal Courts 2377; Federal Courts 2384

In action challenging South Carolina’s statutory and constitutional ban on same‑sex marriage, requirement of final decision of state court, for invoking Rooker‑Feldman doctrine as bar to action in federal district court, was not satisfied as to South Carolina Supreme Court’s grant of stay, in action under that court’s original jurisdiction seeking to prevent a South Carolina county probate judge from issuing a marriage license to a same‑sex couple, to maintain the status quo pending another federal district court’s resolution of a challenge to South Carolina’s refusal to recognize an out‑of‑state same‑sex marriage; South Carolina Supreme Court intended for federal court to rule on constitutionality of state’s same‑sex marriage ban and for state courts to abstain from doing so. Condon v. Haley, 2014, 21 F.Supp.3d 572, stay pending appeal denied, appeal dismissed. Courts 509.3(2)

District court would decline to invoke first‑to‑file rule as basis for postponing consideration of same‑sex couple’s challenge to constitutionality of South Carolina’s statutory and constitutional provisions prohibiting same‑sex marriages, during pendency of earlier‑filed action in another district court challenging South Carolina’s refusal to recognize out‑of‑state same‑sex marriage; cases had different factual scenarios, case at bar involved a fundamental right, and in earlier‑filed case the district court had ruled that plaintiffs’ right to marry as same‑ sex couple was not before the court because the couple had already married. Condon v. Haley, 2014, 21 F.Supp.3d 572, stay pending appeal denied, appeal dismissed. Federal Courts 3936

4. Injunction

District court would not stay, pending appeal, its order declaring that South Carolina statutory and constitutional provisions barring same‑sex marriages violated due process and equal protection, which order also granted permanent injunctive relief; in light of controlling authority from circuit court of appeals, South Carolina Attorney General could not show strong likelihood of success as defender of challenged laws, Attorney General did not set forth any meaningful evidence of irreparable injury, same‑sex couples put forward evidence of irreparable injury, and public interest was best served by denying a stay that would allow continued enforcement of state laws found to be unconstitutional. Condon v. Haley, 2014, 21 F.Supp.3d 572, stay pending appeal denied, appeal dismissed. Federal Courts 3462

District court would temporarily stay, for one week, its order declaring that South Carolina statutory and constitutional provisions barring same‑sex marriages violated due process and equal protection, which order also granted permanent injunctive relief; brief stay of enforcement of the injunction was appropriate to allow court of appeals to receive a petition for an appeal stay and to consider that request in an orderly fashion. Condon v. Haley, 2014, 21 F.Supp.3d 572, stay pending appeal denied, appeal dismissed. Federal Courts 3462

**SECTION 20‑1‑20.** Persons who may perform marriage ceremony.

 Only ministers of the Gospel, Jewish rabbis, officers authorized to administer oaths in this State, and the chief or spiritual leader of a Native American Indian entity recognized by the South Carolina Commission for Minority Affairs pursuant to Section 1‑31‑40 are authorized to administer a marriage ceremony in this State.

HISTORY: 1962 Code Section 20‑2; 1952 Code Section 20‑2; 1942 Code Section 8565; 1932 Code Section 8565; Civ. C. ‘22 Section 5530; Civ. C. ‘12 Section 3751; 1911 (27) 131; 2008 Act No. 322, Section 1, eff June 16, 2008.

Library References

Marriage 27.

Westlaw Topic No. 253.

C.J.S. Marriage Sections 30 to 31, 33.

Attorney General’s Opinions

Discussion of the authority for a Georgia judge to perform a marriage in South Carolina. S.C. Op.Atty.Gen. (July 1, 2004) 2004 WL 1557089.

A United States District Judge would be authorized to conduct a marriage ceremony in South Carolina. S.C. Op.Atty.Gen. (May 12, 2004) 2004 WL 1182074.

Ministerial recorder who is not Notary Public, minister of gospel, or accepted Jewish Rabbi, is not authorized to perform marriage ceremony in this State. 1984 Op Atty Gen, No. 84‑60, p. 149 (May 24, 1984) 1984 WL 159867.

A notary public is an officer authorized to administer an oath and is therefore authorized to perform a marriage ceremony. 1968‑69 Op Atty Gen, No. 2741, p. 208 (September 30, 1969) 1969 WL 10738.

Quaker marriages are valid in South Carolina. 1967‑68 Op Atty Gen, No. 2549, p. 244 (November 21, 1968) 1968 WL 8943.

**SECTION 20‑1‑30.** Cohabitation prior to emancipation as marriage.

 All persons in this State who, previous to their actual emancipation, had undertaken and agreed to occupy the relation to each other of husband and wife and were cohabiting as such or in any way recognizing the relation as still existing on March 12, 1872, whether the rites of marriage have been celebrated or not, shall be deemed husband and wife, and be entitled to all the rights and privileges and be subject to all the duties and obligations of that relation, in like manner as if they had been duly married according to law.

 But the provisions of this section shall not be deemed to extend to persons who have agreed to live in concubinage after their emancipation.

HISTORY: 1962 Code Section 20‑3; 1952 Code Section 20‑3; 1942 Code Sections 8569, 8570; 1932 Code Sections 8569, 8570; Civ. C. ‘22 Sections 5534, 5535; Civ. C. ‘12 Sections 3755, 3756; Civ. C. ‘02 Sections 2662, 2663; G. S. 2030, 2031; R. S. 2161, 2162; 1872 (15) 183.

Library References

Marriage 9, 13, 22.

Westlaw Topic No. 253.

C.J.S. Marriage Sections 7, 9 to 10, 13, 19 to 20, 25 to 26.

NOTES OF DECISIONS

In general 1

1. In general

As to sufficiency of evidence of formal or moral marriage, see McDowell v Cunningham (1927) 140 SC 101, 138 SE 625. Frederick v Culler (1921) 118 SC 102, 109 SE 889. Pressley v Pressley (1915) 102 SC 174, 86 SE 377.

As to proof of marriage, see James v Mickey (1887) 26 SC 270, 2 SE 130. Myers v Ham (1884) 20 SC 522. State v Whaley (1879) 10 SC 500. Davenport v Caldwell (1878) 10 SC 317.

Cited in Evans v. Ravenel (S.C. 1944) 205 S.C. 224, 31 S.E.2d 347.

Marriage of colored persons in 1868 was governed by the general law applicable to white persons. Ex parte Romans, 58 S.E. 614, 78 S.C. 210. (S.C. 1907) 78 S.C. 210, 58 S.E. 614.

Applied in Roberson v. McCauley (S.C. 1901) 61 S.C. 411, 39 S.E. 570.

This section [Code 1962 Section 20‑3] did not legalize a marriage of a free negro man with a slave where he afterwards, before emancipation, married a free woman of color. Callahan v. Callahan (S.C. 1892) 36 S.C. 454, 15 S.E. 727.

This section [Code 1962 Section 20‑3] was intended to legalize only such marriages as are morally good. Clement v. Riley (S.C. 1890) 33 S.C. 66, 11 S.E. 699.

This section [Code 1962 Section 20‑3] applies to the marriage of a free person of color with a slave. Dingle v. Mitchell (S.C. 1883) 20 S.C. 202.

**SECTION 20‑1‑40.** Cohabitation prior to emancipation as marriage; children.

 The children of such marriages shall be deemed legitimate and when the parties shall have ceased to cohabit, in consequence of the death of the woman or from any other cause, all the children of the woman, recognized by the man to be his, shall be deemed legitimate.

HISTORY: 1962 Code Section 20‑4; 1952 Code Section 20‑4; 1942 Code Section 8570; 1932 Code Section 8570; Civ. C. ‘22 Section 5535; Civ. C. ‘12 Section 3756; Civ. C. ‘02 Section 2663; G. S. 2031; R. S. 2162; 1872 (15) 183.

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Children Out‑of‑Wedlock 1, 11, 12.

Westlaw Topic No. 76H.

C.J.S. Children Out‑of‑Wedlock Sections 1 to 8, 20 to 24.

Attorney General’s Opinions

Security officers appointed by authority of Section 4‑9‑145 are eligible to exclude $5.00 per duty day from their South Carolina personal income tax return for subsistence allowance pursuant to Sections 23‑1‑30 and 23‑1‑400. 1991 Op Atty Gen, No. 91‑22 p. 71 (April 01, 1991) 1991 WL 373752.

NOTES OF DECISIONS

In general 1

1. In general

As to rights of children of marriage between slaves, see Watson v Ellerbe (1907) 77 SC 232, 57 SE 855. Davis v Milford (1910) 85 SC 504, 67 SE 744. Roberson v McCauley (1901) 61 SC 411, 39 SE 570. Knox v Moore (1894) 41 SC 355, 19 SE 683. Myers v Ham (1884) 20 SC 522. Dingle v Mitchell (1883) 20 SC 202. Davenport v Caldwell (1878) 10 SC 317.

Cited in Lloyd v Rawl (1902) 63 SC 219, 41 SE 312. Evans v. Ravenel (S.C. 1944) 205 S.C. 224, 31 S.E.2d 347.

Where the evidence showed that the deceased ex‑slave at the time of the passage of the enabling act of 1865 (which preceded this section [Code 1962 Section 20‑4]) lived in a marriage relation with plaintiff, and that three children were born to them, the wife and children took an interest in the estate of such ex‑slave, and were entitled to partition. Mims v. Jones (S.C. 1917) 107 S.C. 81, 91 S.E. 987. Slaves 25

Upon passage of the enabling act of 1865 (which preceded this section [Code 1962 Section 20‑4]), a slave living in the marriage relation with a slave woman could not thereafter contract a valid marriage with another woman while the first wife lived. Mims v. Jones (S.C. 1917) 107 S.C. 81, 91 S.E. 987. Slaves 25

A child of former slaves between whom there was no actual or moral marriage but merely a relation of concubinage, the father having previously been married to another woman whom he recognized as his wife and lived with as such subsequent to their emancipation, was not, although acknowledged by his father prior to the act regulating the domestic relations of former slaves, legitimized by that act. Childs v. Childs (S.C. 1913) 93 S.C. 427, 77 S.E. 50.

When a free man of color married a slave, and then before emancipation, married a free woman of color, at his death both wives surviving, the children of both wives were his legal heirs. Callahan v. Callahan (S.C. 1892) 36 S.C. 454, 15 S.E. 727.

This section [Code 1962 Section 20‑4] was only intended to legitimatize the issue of marriages morally good. Clement v. Riley (S.C. 1890) 33 S.C. 66, 11 S.E. 699.

And to make the issue upon separation the legitimate heirs of the mother. Clement v. Riley (S.C. 1890) 33 S.C. 66, 11 S.E. 699.

**SECTION 20‑1‑50.** Legitimacy of children of marriages contracted after absence of previous spouse.

 The issue of all marriages contracted after the absence of a husband or wife for a period of five years, such husband or wife not being heard from or known to be living during that period of time, are legitimate and declared to be legal heirs of their parents.

HISTORY: 1962 Code Section 20‑5; 1952 Code Section 20‑5; 1942 Code Section 8913‑1; 1934 (38) 1587; 1987 Act No. 171, Section 80, eff July 1, 1987.

Library References

Children Out‑of‑Wedlock 1, 85.

Westlaw Topic No. 76H.

C.J.S. Children Out‑of‑Wedlock Sections 1 to 8, 64 to 66.

**SECTION 20‑1‑60.** Marriage of parents legitimates illegitimate children.

 If the parents of an illegitimate child subsequently marry, the child shall become legitimate as if born in lawful wedlock and, as to the child so legitimated, all limitations imposed by law upon the amount of property that may be given illegitimate children by deed, will, inheritance or otherwise shall be removed. The provisions of this section shall be retroactive to the extent that they shall apply in all cases in which prior to May 2, 1951, the parents of an illegitimate child shall have married and the father and such child shall have been living on said date.

HISTORY: 1962 Code Section 20‑5.1; 1952 Code Section 20‑5.1; 1951 (47) 265.

CROSS REFERENCES

Constitutional provision against legitimation of children by special law, see SC Const, Art III, Section 34.

Library References

Children Out‑of‑Wedlock 11.

Westlaw Topic No. 76H.

C.J.S. Children Out‑of‑Wedlock Sections 22 to 24.

NOTES OF DECISIONS

In general 1

1. In general

In a divorce action, the trial court strained the meaning of the term “parent” within the context of Section 20‑1‑60 by concluding that a non‑biological step‑father could legitimize an illegitimate child simply by marrying the child’s mother. Walton v. Walton (S.C. 1984) 282 S.C. 165, 318 S.E.2d 14.

Where common‑law marriage was established by court, illegitimate children born prior to the contracting of such common‑law marriage and living on May 2, 1951 were rendered legitimate on that date by operation of this section [Code 1962 Section 20‑5.1]. Campbell v. Christian (S.C. 1959) 235 S.C. 102, 110 S.E.2d 1.

**SECTION 20‑1‑70.** Name of children legitimized after marriage of parents.

 Any child legitimized under the provisions of Section 20‑1‑60 shall take the name of his father unless the child has been previously adopted as otherwise provided by law and unless his name has been changed in the decree of adoption, in which case he shall retain the name given him in the decree.

HISTORY: 1962 Code Section 20‑5.2; 1952 Code Section 20‑5.2; 1951 (47) 265.

Library References

Children Out‑of‑Wedlock 1, 11.

Westlaw Topic No. 76H.

C.J.S. Children Out‑of‑Wedlock Sections 1 to 8, 22 to 24.

**SECTION 20‑1‑80.** Bigamous marriage shall be void; exceptions.

 All marriages contracted while either of the parties has a former wife or husband living shall be void. But this section shall not extend to a person whose husband or wife shall be absent for the space of five years, the one not knowing the other to be living during that time, not to any person who shall be divorced or whose first marriage shall be declared void by the sentence of a competent court.

HISTORY: 1962 Code Section 20‑6; 1952 Code Section 20‑6; 1942 Code Section 8568; 1932 Code Section 8568; Civ. C. ‘22 Section 5533; Civ. C. ‘12 Section 3754; Civ. C. ‘02 Section 2661; G. S. 2029; R. S. 2160; 1712 (2) 203; 1990 Act No. 521, Section 98, eff June 5, 1990.

CROSS REFERENCES

Bigamy, see Section 16‑15‑10.

Procedure for adjudication of presumed death, see Section 20‑1‑540.

Library References

Marriage 11.

Westlaw Topic No. 253.

C.J.S. Marriage Sections 7, 13, 18.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bigamy Section 8, Validity of First and Second Marriages.

S.C. Jur. Bigamy Section 10, Problems Inherent in Successive Marriages.

S.C. Jur. Bigamy Section 27, Bigamous Marriages Considered Void.

S.C. Jur. Divorce Section 5, Annulment Distinguished.

NOTES OF DECISIONS

In general 1

Absence 2

Annulment 4

Estoppel 5

Presumptions 3

1. In general

Cited in Dawson v Della Torre (1921) 116 SC 338, 108 SE 101. Foster v Nordman (1964) 244 SC 485, 137 SE2d 600.

Applied in Irick v. Irick, 1945, 150 F.2d 514.

South Carolina does not recognize the “putative spouse” or “putative marriage” doctrine, as it is contrary to South Carolina’s statutory law and marital jurisprudence; statute provides that all marriages contracted while either of the parties has a former wife or husband living shall be void. Hill v. Bert Bell/Pete Rozelle NFL Player Retirement Plan (S.C. 2013) 405 S.C. 423, 747 S.E.2d 791. Marriage And Cohabitation 270; Marriage And Cohabitation 275

The statute voiding bigamous marriages codifies the overriding public policy against bigamy. Lukich v. Lukich (S.C.App. 2006) 368 S.C. 47, 627 S.E.2d 754, rehearing denied, certiorari granted, affirmed 379 S.C. 589, 666 S.E.2d 906. Marriage And Cohabitation 270

The Family Court had subject‑matter jurisdiction to equitably distribute the property of a bigamous marriage pursuant to “divorce” proceedings, even if the bigamist willfully committed bigamy, since under Sections 20‑7‑472(2) and (15), the Family Court has the discretion to consider misconduct, fault, and “other relevant factors” as it deems appropriate. Splawn v. Splawn (S.C. 1993) 311 S.C. 423, 429 S.E.2d 805. Marriage And Cohabitation 270

A common‑law marriage was void as against public policy, and could not be ratified or made valid, where the common‑law husband was legally married to another woman throughout the cohabitation with the common‑law wife. Johns v. Johns (S.C.App. 1992) 309 S.C. 199, 420 S.E.2d 856.

In an action for divorce brought by a common‑law wife, res judicata would not be applied to bar the issue of the existence of the common‑law marriage where the common‑law wife knew that the common‑law husband was married to another woman during the entire time she cohabitated with him, and thus the common‑law marriage was void; the public policy against bigamy overrode the public policy behind the application of res judicata. Johns v. Johns (S.C.App. 1992) 309 S.C. 199, 420 S.E.2d 856.

Common‑law marriage found to exist, even though union between parties was originally illicit by reason of wife’s marriage to third party, and even though removal of impediment did not ipso facto convert illicit relationship into common‑law marriage, where after wife’s divorce, parties agreed to marry and then lived together without separation for 16 years, all the while treating each other in every respect as husband and wife. Kirby v. Kirby (S.C. 1978) 270 S.C. 137, 241 S.E.2d 415.

Where a man did not renew his commitment of marriage with the woman with whom he was cohabiting following his divorce from his first wife, he was free to marry a third woman who became his legal widow, despite the second woman’s claim of a common law marriage based on the fact that the cohabitation continued after the divorce. Byers v. Mount Vernon Mills, Inc. (S.C. 1977) 268 S.C. 68, 231 S.E.2d 699.

While husband was still married, he could not enter into a common law marriage by cohabitating with another woman. Byers v. Mount Vernon Mills, Inc. (S.C. 1977) 268 S.C. 68, 231 S.E.2d 699.

When one, while married, cohabits with one not his wife, a divorce from his wife does not automatically convert the cohabitation or bigamous marriage to a common‑law marriage, unless the parties enter into a new agreement for a common‑law marriage. Byers v. Mount Vernon Mills, Inc. (S.C. 1977) 268 S.C. 68, 231 S.E.2d 699.

The proviso of this section [Code 1962 Section 20‑6] to the effect that it shall not apply to one who has been divorced relates to a valid divorce. Hughey v. Ray (S.C. 1945) 207 S.C. 374, 36 S.E.2d 33. Marriage And Cohabitation 270

As to the effect of husband being civiliter mortuus on property rights, see Wright v. Wright (S.C. 1804).

2. Absence

Where woman married second time eight years after seeing former husband, the second marriage was void when, under the facts, there was no real attempt to ascertain the whereabouts of her former husband. Woodmen of the World Life Ins. Soc. v. Irick, 1944, 58 F.Supp. 202, affirmed 150 F.2d 514.

Where a spouse has been abandoned for seven years or more, he or she may marry again, and, while the wife or husband remains absent the parties under the second marriage are entitled to full legal recognition as man and wife with regard to the enforcement of rights and the assumption of obligations as such; but all this must be at the risk that, if it turns out that the first spouse was alive at the time the second marriage was undertaken, then the second marriage will be void, and all supposed rights acquired under it will fall to the ground. Day v. Day (S.C. 1950) 216 S.C. 334, 58 S.E.2d 83.

Where a woman whose first husband had been absent for more than seven years married a second time without knowing that the first husband was still alive, and she and her second husband lived together after the first husband’s death, the marriage was valid under this section [Code 1962 Section 20‑6], even though it was invalid until the death of the first husband. Davis v. Whitlock (S.C. 1911) 90 S.C. 233, 73 S.E. 171, Am.Ann.Cas. 1913D,538. Marriage And Cohabitation 275

The presumption arising from seven years’ absence under this section [Code 1962 Section 20‑6] is of the fact of death only and not as to the time thereof. But where the presumption is based upon the common‑law period of twenty years, it is that the death occurred at the commencement of that period. Chapman v. Cooper (S.C. 1852) 5 Rich. 452. Death 2(2)

Husband married the second time, about six years after his absent wife was last known to be alive. When he had received information by letter that she was dead, however, his marriage was held valid, she not having been heard of for forty years. Canady v. George (S.C. 1853).

If the absent consort return or be proved otherwise to be living at the time of the second marriage, the second marriage is void and the issue spurious. Duke v. Fulmer (S.C. 1852).

A husband being more than seven years absent and reported to be dead or not heard from, the wife may marry again. Woods v Administrators of Woods (1802) 2 SCL 476. Boyce v. Owens (S.C. 1833).

3. Presumptions

The first wife will be presumed to be alive until seven years after the time she was last heard of, unless shown to have died in the meantime. Proctor v. McCall (S.C. 1831) 23 Am.Dec. 135. Death 2(2)

The trial court erred in rejecting a wife’s petition for divorce, alimony, and an equitable distribution of property, on the asserted basis that no valid marriage between the parties existed, where the preponderance of evidence established a valid marriage, where the husband failed to overcome the presumption that his first marriage had been terminated by death or divorce, or to refute testimony that his first wife had divorced him, and where the husband did not rebut the presumption that his illicit relationship with a second woman continued and that no common law marriage existed between them, so that the husband’s marriage to petitioner was not void under Section 20‑1‑80. Yarbrough v. Yarbrough (S.C.App. 1984) 280 S.C. 546, 314 S.E.2d 16.

Where relationship was originally illicit due to female partner’s marriage to third party, and where there was no new mutual agreement, either by way of civil ceremony or by way of recognition of illicit relationship and new agreement to enter into common‑law marriage, it is presumed that illicit relationship rather than valid common‑law marriage continued after impediment to marriage was removed. Kirby v. Kirby (S.C. 1978) 270 S.C. 137, 241 S.E.2d 415.

Husband and wife mutually agreed to separate. The wife left the husband’s abode and after ten years remarried, but during the entire period the husband continued to reside in the same place. These facts did not entitle wife to a presumption of death of her first husband, and therefore she could not recover under the Workmen’s Compensation Act for death of her second husband. Day v. Day (S.C. 1950) 216 S.C. 334, 58 S.E.2d 83.

The presumption of death will not be indulged for the benefit of one who deserts her former spouse, removes from the jurisdiction, and again marries; but, where it appears that the living conditions created by the husband are such as amount to constructive desertion, then the wife may leave him and subsequently come within the seven years’ exception herein provided for. In re Duncan’s Estate (S.C. 1939) 190 S.C. 211, 2 S.E.2d 388. Marriage And Cohabitation 359

Second marriage is presumed valid until existence of former spouse is established. Davis v. Whitlock (S.C. 1911) 90 S.C. 233, 73 S.E. 171, Am.Ann.Cas. 1913D,538.

Where a wife marries within the seven years, the presumption of her innocence, with all the circumstances, may outweigh the presumption of the husband’s being alive. Chapman v. Cooper (S.C. 1852) 5 Rich. 452.

4. Annulment

Annulment order declaring wife’s first marriage void did not relate back so as to validate wife’s purported second marriage, and thus second marriage was void from inception; while order related back in most senses, it did not have the ability to validate the bigamous purported second marriage. Lukich v. Lukich (S.C. 2008) 379 S.C. 589, 666 S.E.2d 906, rehearing denied. Marriage And Cohabitation 270; Marriage And Cohabitation 338

Annulment of wife’s prior marriage, declaring prior marriage void ab initio, did not relate back so as to validate wife’s second marriage to husband, and thus wife was not entitled to use decree of annulment of prior marriage as a defense to husband’s action to void second marriage, even though wife asserted she had a good‑faith belief she was not married to first husband, where annulment of first marriage was not granted until after she contracted for marriage with second husband. Lukich v. Lukich (S.C.App. 2006) 368 S.C. 47, 627 S.E.2d 754, rehearing denied, certiorari granted, affirmed 379 S.C. 589, 666 S.E.2d 906. Marriage And Cohabitation 338

There is no legal distinction between a marriage which is annulled and one terminated by reason of bigamy, since legally they are both void from their inception. Splawn v. Splawn (S.C. 1993) 311 S.C. 423, 429 S.E.2d 805. Marriage And Cohabitation 270; Marriage And Cohabitation 338

5. Estoppel

A common‑law husband was not estopped from asserting a prior marriage as a defense to an action for divorce brought by his common‑law wife, even though he had consented to an earlier order of the Family Court finding that they had been married at common‑law, where the wife knew when she entered into the relationship that the husband had failed to terminate his prior marriage, and yet she had made no further inquiries about the status of his existing marriage. Johns v. Johns (S.C.App. 1992) 309 S.C. 199, 420 S.E.2d 856.

**SECTION 20‑1‑90.** Legitimacy of children when either party to bigamous marriage marries in good faith.

 When either of the contracting parties to a marriage that is void under the provisions of Section 20‑1‑80 entered into the marriage contract in good faith on or after April 13, 1951 and in ignorance of the incapacity of the other party, any children born of the marriage shall be deemed legitimate and have the same legal rights as a child born in lawful wedlock.

HISTORY: 1962 Code Section 20‑6.1; 1952 Code Section 20‑6.1; 1951 (47) 150; 1954 (48) 1770.

Library References

Children Out‑of‑Wedlock 1, 11.

Westlaw Topic No. 76H.

C.J.S. Children Out‑of‑Wedlock Sections 1 to 8, 22 to 24.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bigamy Section 29, Legitimacy of Children.

NOTES OF DECISIONS

In general 1

1. In general

Adjudication of legitimacy vel non would have been both improper and unnecessary in proceedings to annul a marriage and determine custody of children; improper, because the pleadings raised no issue thereabout; unnecessary, because it is the child’s welfare, not its legitimacy or illegitimacy, that is the concern of the court. Sanders v. Sanders (S.C. 1958) 232 S.C. 625, 103 S.E.2d 281.

This section [Code 1962 Section 20‑6.1] has no retrospective effect. Schumacher v Chapin (1955) 228 SC 77, 88 SE2d 874, decided without considering the effect of the 1954 amendment adding the phrase “on or after April 13, 1951” to this section [Code 1962 Section 20‑6.1]. Schumacher v. Chapin (S.C. 1955) 228 S.C. 77, 88 S.E.2d 874.

**SECTION 20‑1‑100.** Minimum age for valid marriage.

 Any person under the age of sixteen is not capable of entering into a valid marriage, and all marriages hereinafter entered into by such persons are void ab initio. A common‑law marriage hereinafter entered into by a person under the age of sixteen is void ab initio.

HISTORY: 1997 Act No. 95, Section 1, eff June 11, 1997; 2000 Act No. 397, Section 1, eff August 17, 2000.

Library References

Marriage 5.

Westlaw Topic No. 253.

C.J.S. Marriage Sections 7, 13 to 14, 21.

Attorney General’s Opinions

Section 20‑1‑300, relating to the issuance of a marriage license, now has no impact with respect to males under sixteen and females under fourteen. No marriage license should thus issue with respect to these persons. S.C. Op.Atty.Gen. (Sept. 2, 1997) 1997 WL 665423.

ARTICLE 3

Marriage License

**SECTION 20‑1‑210.** License required for marriage.

 It shall be unlawful for any persons to contract matrimony within this State without first procuring a license as is herein provided and it shall likewise be unlawful for anyone whomsoever to perform the marriage ceremony for any such persons unless such persons shall first have delivered to the party performing such marriage ceremony a license as is herein provided duly authorizing such persons to contract matrimony. Any officer or person performing the marriage ceremony without the production of such license shall, on conviction thereof, be punished by a fine of not more than one hundred dollars nor less than twenty‑five dollars or by imprisonment for not more than thirty days nor less than ten days.

HISTORY: 1962 Code Section 20‑21; 1952 Code Section 20‑21; 1942 Code Section 8557; 1932 Code Section 8557; Civ. C. ‘22 Section 5523; Cr. C. ‘22 Section 379; Civ. C. ‘12 Section 3744; 1911 (27) 131; 1945 (44) 62.

Library References

Marriage 25(1).

Westlaw Topic No. 253.

LAW REVIEW AND JOURNAL COMMENTARIES

Untying the Knot: The Propriety of South Carolina’s Recognition of Common Law Marriage. 58 SC Law Review 555 (Spring 2007).

United States Supreme Court Annotations

Federal constitutional right to marry—Supreme Court cases. 96 L Ed 2d 716.

Attorney General’s Opinions

Due to advancing electronic technology which was not in existence when statutes governing marriages were adopted, legislative clarification is recommended clarifying marriage statutes, particularly as to proxy or telephonic marriages or use of “faxed” applications for licenses. 1991 Op Atty Gen, No. 91‑58, p. 146 (November 12, 1991) 1991 WL 474788.

NOTES OF DECISIONS

In general 1

1. In general

Evidence was insufficient to establish common law marriage where deceased, allegedly common‑law wife, used surname of person seeking status as common‑law husband out of convenience and to ease stigma that some people attach to living together, husband was already married when he began living with her, and there was insufficient evidence of new marriage agreement after impediment to marriage was removed; there was also testimony from niece of deceased that subsequent to removal of impediment to marry, decedent still did not consider herself married. Weathers v. Bolt (S.C.App. 1987) 293 S.C. 486, 361 S.E.2d 773.

It was no error for trial court to find that parties did not enter into marriage relationship in good faith believing they each had capacity to marry, where only evidence on this point came from person seeking status as common‑law husband who testified that former wife had told him she had obtained divorce; he made no effort to verify divorce and in fact testified he did not know whether or not he was ever divorced prior to death of former wife, and further acknowledged he was aware that subsequent to commencement of his relationship with decedent, his marriage to another woman was annulled because of his prior marriage to woman whom he alleged had divorced him. Weathers v. Bolt (S.C.App. 1987) 293 S.C. 486, 361 S.E.2d 773.

Cited in Baker v. Allen (S.C. 1951) 220 S.C. 141, 66 S.E.2d 618.

**SECTION 20‑1‑220.** Written application required twenty‑four hours prior to issuance of license.

 No marriage license may be issued unless a written application has been filed with the probate judge, or in Darlington and Georgetown counties the clerk of court who issues the license, at least twenty‑four hours before the issuance of the license. The application must be signed by both of the contracting parties and shall contain the same information as required for the issuing of the license including the social security numbers, or the alien identification numbers assigned to resident aliens who do not have social security numbers, of the contracting parties. The license issued, in addition to other things required, must show the hour and date of the filing of the application and the hour and date of the issuance of the license. The application must be kept by the probate judge or clerk of court as a permanent record in his office. A probate judge or clerk of court issuing a license contrary to the provisions, upon conviction, must be fined not more than one hundred dollars or not less than twenty‑five dollars, or imprisoned for not more than thirty days or not less than ten days.

HISTORY: 1962 Code Section 20‑22; 1952 Code Section 20‑22; 1942 Code Sections 8557, 8558; 1932 Code Sections 8557, 8558; Civ. C. ‘22 Sections 5523, 5524; Cr. C. ‘22 Section 379; Civ. C. ‘12 Sections 3744, 3745; 1911 (27) 131; 1912 (27) 613; 1913 (28) 76; 1915 (29) 216, 220; 1916 (29) 751; 1917 (30) 113, 127, 129; 1918 (30) 698; 1919 (31) 67, 112, 211, 245; 1920 (31) 736, 738, 1065; 1921 (32) 107, 152; 1922 (32) 781, 790; 1928 (35) 1205; 1931 (37) 12, 29, 122; 1933 (38) 148; 1934 (38) 1425; 1939 (41) 173, 179; 1945 (44) 62; 1946 (44) 1444; 1947 (45) 109, 234; 1948 (45) 1612; 1972 (57) 3072; 1997 Act No. 71, Section 4, eff June 10, 1997; 1999 Act No. 100, Part II, Section 105, eff June 30, 1999.

Library References

Marriage 25(2).

Westlaw Topic No. 253.

Attorney General’s Opinions

Discussion of whether or not a person’s Social Security number or alien identification number is a prerequisite to the issuance of a marriage license. S.C. Op.Atty.Gen. (June 15, 2004) 2004 WL 1404670.

An individual’s Social Security number is not required to be placed on the face of the marriage license; instead, the Social Security number is required by the Welfare Reform Act of 1996 to be submitted as part of the marriage license application. S.C. Op.Atty.Gen. (May 18, 1999) 1999 WL 387064.

The Clerk of Court of Darlington County does not have the authority to issue marriage licenses. 1975‑76 Op Atty Gen, No 4506, p. 366 (October 28, 1976) 1976 WL 23123.

**SECTION 20‑1‑230.** Issuance of license; premarital preparation course.

 (A) The judge of probate or clerk of court with whom a marriage license application was filed shall issue a license upon:

 (1) the filing of the application required under the provisions of Section 20‑1‑220;

 (2) the lapse of at least twenty‑four hours thereafter;

 (3) the payment of the fee provided by law; and

 (4) the filing of a statement, under oath or affirmation, to the effect that the persons seeking the contract of matrimony are legally entitled to marry, together with the full names of the persons, their ages, and places of residence.

 (B) A man and a woman who successfully complete a qualifying premarital preparation course and who have a South Carolina marriage license which attests the completion of the course shall be entitled to receive a one‑time fifty‑dollar nonrefundable state income tax credit, as permitted in Section 12‑6‑3381. In order for the course to qualify pursuant to this section, the couple must:

 (1) attend a course taught by a professional counselor who is licensed pursuant to Chapter 75 of Title 40 or by an active member of the clergy in the course of his or her service as clergy or his or her designee, including retired clergy, provided that the designee is trained and skilled in premarital preparation;

 (2) attend a minimum of six hours of instruction;

 (3) complete the course within twelve months prior to the application for a marriage license; and

 (4) complete the course together rather than individually.

A couple who completes a premarital preparation course pursuant to this section must be issued a certification of completion at the conclusion of the course by their course provider. The certification must include the number of hours that the couple completed together and the credentials of the course provider. A couple must produce this certification when applying for the marriage license in order to receive the non‑refundable state income tax credit. The judge of probate or clerk of court must certify on the marriage license that the couple met the statutory requirements to qualify for this income tax credit. The judge of probate court or clerk of court is not responsible to authenticate the information contained in the certification of completion unless the certification of completion is wholly fraudulent on its face.

 (C) The discount authorized by this section must not be applied to the fee credited to the Domestic Violence Fund provided for in Section 20‑1‑375.

HISTORY: 1962 Code Section 20‑23; 1952 Code Section 20‑23; 1942 Code Section 8558; 1932 Code Section 8558; Civ. C. ‘22 Section 5524; Civ. C. ‘12 Section 3745; 1911 (27) 131; 1912 (27) 613; 1913 (28) 76; 1915 (29) 216, 220; 1916 (29) 751; 1917 (30) 113, 127, 129; 1918 (30) 698; 1919 (31) 67, 112, 211, 245; 1920 (31) 736, 738, 1065; 1921 (32) 107, 152; 1922 (32) 781, 790; 1928 (35) 1205; 1931 (37) 12, 29, 122; 1933 (38) 148; 1934 (38) 1425; 1939 (41) 173, 179; 1946 (44) 1444; 1947 (45) 109, 234; 1948 (45) 1612; 1994 Act No. 470, Section 5, eff 30 days after July 14, 1994; 2006 Act No. 291, Section 1, eff May 31, 2006.

Library References

Marriage 25(2).

Westlaw Topic No. 253.

Attorney General’s Opinions

A Probate Court is not required to record a marriage unless a license and certificate have been issued. S.C. Op.Atty.Gen. (February 15, 2013) 2013 WL 770263.

Discussion of the possible penalty that could be imposed against an individual if that individual provides incorrect information, such as a name, in association with an application for a marriage license. S.C. Op.Atty.Gen. (Aug. 27, 2007) 2007 WL 3244892.

NOTES OF DECISIONS

In general 1

1. In general

Cited in State v Rogers (1919) 112 SC 466, 100 SE 143. Dillon County v Maryland Casualty Co. (1950) 217 SC 66, 59 SE2d 640.

**SECTION 20‑1‑240.** Information to be provided to applicants for marriage licenses.

 All authorized offices, officials, or individuals empowered to issue a marriage license shall, at the time of application, provide to applicants for marriage licenses:

 (1) family planning information supplied to the issuing officials by the Department of Health and Environmental Control; and

 (2) the “South Carolina Family Respect” information pamphlet published and provided by the office of the Governor.

HISTORY: 1962 Code Section 20‑23.5; 1973 (58) 792; 2001 Act No. 4, Section 1, eff November 30, 2000.

CROSS REFERENCES

Publication and distribution of “South Carolina Family Respect” pamphlet, see Section 20‑1‑720.

Library References

Marriage 25(2), 25(4).

Westlaw Topic No. 253.

C.J.S. Marriage Section 28.

Attorney General’s Opinions

The marriage license fee collected by the probate court shall go into the general fund of the county. 1980 Op Atty Gen, No 78‑196, p. 221 (November 16, 1978) 1978 WL 22664.

**SECTION 20‑1‑250.** Applicants under age of consent; consent of relative or guardian.

 A marriage license must not be issued when either applicant is under the age of sixteen. When either applicant is between the ages of sixteen to eighteen and that applicant resides with father, mother, other relative, or guardian, the probate judge or other officer authorized to issue marriage licenses shall not issue a license for the marriage until furnished with a sworn affidavit signed by the father, mother, other relative, or guardian giving consent to the marriage.

HISTORY: 1962 Code Section 20‑24; 1952 Code Section 20‑24; 1942 Code Section 8558; 1932 Code Section 8558; Civ. C. ‘22 Section 5524; Civ. C. ‘12 Section 3745; 1911 (27) 131; 1912 (27) 613; 1913 (28) 76; 1915 (29) 216, 220; 1916 (29) 751; 1917 (30) 113, 127, 129; 1918 (30) 698; 1919 (31) 67, 112, 211, 245; 1920 (31) 736, 738, 1065; 1921 (32) 107, 152; 1922 (32) 781, 790; 1928 (35) 1205; 1931 (37) 12, 29, 122; 1933 (38) 148; 1934 (38) 1425; 1939 (41) 173, 179; 1946 (44) 1444; 1947 (45) 109, 234; 1948 (45) 1612; 1955 (49) 126; 1957 (50) 306; 2000 Act No. 397, Section 2, eff August 17, 2000.

Library References

Marriage 19.

Westlaw Topic No. 253.

C.J.S. Marriage Section 21.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bigamy Section 18, Marriage Before Age of Consent.

S.C. Jur. Mortgages Section 12, Capacity of Parties.

United States Supreme Court Annotations

Federal constitutional right to marry—Supreme Court cases. 96 L Ed 2d 716.

Attorney General’s Opinions

The Probate Court could require an alleged emancipated applicant for a marriage license to execute an affidavit as to his/her age, family status, and the facts relative to emancipation. The court could further require a copy of the emancipation papers and attempt to obtain an affidavit of consent from either a parent or grandparent. However, it is doubtful that the court could refuse to issue a license on the grounds that such consent is lacking. 1994 Op Atty Gen, No. 94‑62, p. 137 (October 20, 1994) 1994 WL 649305.

NOTES OF DECISIONS

In general 1

1. In general

This section [Code 1962 Section 20‑24] does not declare that if a marriage is entered into when one or both of the parties are under the age limit prescribed, the marriage shall be void. State v. Ward (S.C. 1944) 204 S.C. 210, 28 S.E.2d 785. Marriage And Cohabitation 238

The marriage of a person who has not reached the age of competency established by this section [Code 1962 Section 20‑24], but is competent by the common law, is valid, provided such marriage is entered into in accordance with the rules of the common law. State v. Ward (S.C. 1944) 204 S.C. 210, 28 S.E.2d 785. Marriage And Cohabitation 264

**SECTION 20‑1‑260.** Proof of age required of minor applicant.

 The probate judge or any other officer authorized by law to issue marriage licenses shall not issue any license to any applicant under the age of eighteen years until he has filed a birth certificate, or a hospital or baptismal certificate which has been issued and dated within one year after birth, or a certified copy thereof, showing that he is of lawful age, which shall be filed in the records of his office with the application for such license. Provided, when an original birth, baptismal or hospital certificate is presented a copy of it shall be made and the original returned to the applicant. If the applicant shall certify in writing to the probate judge or such officer that he, after diligent effort, is unable to obtain a birth certificate or a hospital or baptismal certificate, the applicant shall then be required to have his parents, legal guardian or person with whom he resides execute an affidavit before any person authorized by law to administer an oath and under seal, which affidavit shall contain such information as will establish the age of the applicant. Provided, further, that upon the request of the applicant, any original birth, baptismal or hospital certificate presently on file with the court may be copied and the original returned to the applicant.

 Persons applying for marriage licenses in lieu of furnishing birth certificates or hospital or baptismal certificates may present the following: military service identification card; selective service identification card; passports and visas.

HISTORY: 1962 Code Section 20‑24.1; 1957 (50) 306; 1958 (50) 1904; 1960 (51) 1943; 1976 Act No. 467; 1976 Act No. 695 Section 1; 1977 Act No. 180.

Library References

Marriage 25(2).

Westlaw Topic No. 253.

United States Supreme Court Annotations

Federal constitutional right to marry—Supreme Court cases. 96 L Ed 2d 716.

Attorney General’s Opinions

Discussion of what should be required of emancipated seventeen‑year‑old applicants for marriage licenses, to prove that they are in fact emancipated. S.C. Op.Atty.Gen. Opinion No. 94‑62 (Oct. 20, 1994) 1994 WL 649305.

Any person who applies for a marriage license may use a military service identification card, selective service identification card, passport, or visa in lieu of furnishing a birth certificate in order to establish his or her age. 1967‑68 Op Atty Gen, No. 2542, p. 235 (November 15, 1968) 1968 WL 8937.

**SECTION 20‑1‑270.** Proof of age required of applicant over age eighteen and under age twenty‑five.

 All persons over eighteen years of age and under twenty‑five years of age shall furnish documentary evidence to the probate judge or any other officer authorized under the law to issue marriage licenses which shall prove the age of the applicant to the satisfaction of such probate judge or other officer. The probate judge or other officer shall enter upon the record of the application a brief description of evidence submitted.

HISTORY: 1962 Code Section 20‑24.2; 1957 (50) 306; 1976 Act No. 695 Section 1.

Library References

Marriage 25(2).

Westlaw Topic No. 253.

United States Supreme Court Annotations

Federal constitutional right to marry—Supreme Court cases. 96 L Ed 2d 716.

**SECTION 20‑1‑280.** Penalty for furnishing false affidavit.

 Any person furnishing the probate judge or any other officer authorized under the law to issue marriage licenses with a false affidavit shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in the sum of one hundred dollars.

HISTORY: 1962 Code Section 20‑24.3; 1957 (50) 306.

Library References

Marriage 34.

Westlaw Topic No. 253.

C.J.S. Marriage Sections 37 to 41.

Attorney General’s Opinions

Discussion of the possible penalty that could be imposed against an individual if that individual provides incorrect information, such as a name, in association with an application for a marriage license. S.C. Op.Atty.Gen. (Aug. 27, 2007) 2007 WL 3244892.

**SECTION 20‑1‑290.** Wilful failure of license‑issuing officer to comply with Sections 20‑1‑250, 20‑1‑260 and 20‑1‑270 as cause for removal.

 The wilful failure of any officer responsible for the issuance of marriage licenses to comply with the terms of Sections 20‑1‑250, 20‑1‑260 and 20‑1‑270 shall be grounds or cause for removal from office.

HISTORY: 1962 Code Section 20‑24.4; 1957 (50) 306.

Library References

Marriage 25(5).

Westlaw Topic No. 253.

C.J.S. Marriage Section 29.

**SECTION 20‑1‑300.** Issuance of license to unmarried female and male under eighteen years of age when female is pregnant or has borne a child.

 Notwithstanding the provisions of Sections 20‑1‑250 to 20‑1‑290, a marriage license may be issued to an unmarried female and male under the age of eighteen years who could otherwise enter into a marital contract, if such female be pregnant or has borne a child, under the following conditions:

 (a) the fact of pregnancy or birth is established by the report or certificate of at least one duly licensed physician;

 (b) she and the putative father agree to marry;

 (c) written consent to the marriage is given by one of the parents of the female, or by a person standing in loco parentis, such as her guardian or the person with whom she resides, or, in the event of no such qualified person, with the consent of the superintendent of the department of social services of the county in which either party resides;

 (d) without regard to the age of the female and male; and

 (e) without any requirement for any further consent to the marriage of the male.

HISTORY: 1962 Code Section 20‑24.5; 1962 (52) 1704; 1972 (57) 2382.

Library References

Marriage 25(2).

Westlaw Topic No. 253.

RESEARCH REFERENCES

ALR Library

159 ALR 104 , Ratification of Marriage by One Under Age, Upon Attaining Marriageable Age.

Encyclopedias

36 Am. Jur. Proof of Facts 2d 441, Validity of Marriage.

Attorney General’s Opinions

Section 20‑1‑300, relating to the issuance of a marriage license, now has no impact with respect to males under sixteen and females under fourteen. No marriage license should thus issue with respect to these persons. S.C. Op.Atty.Gen. (Sept. 2, 1997) 1997 WL 665423.

Any person who applies for a marriage license may use a military service identification card, selective service identification card, passport, or visa in lieu of furnishing a birth certificate in order to establish his or her age. 1967‑68 Op Atty Gen, No. 2542, p. 235 (November 15, 1968) 1968 WL 8937.

A female, single, twelve years of age and pregnant, and a male, eighteen years of age, who admits paternity, and otherwise meet the requirements of this section [Code 1962 Section 20‑24.5], as amended, may be issued a marriage license. 1970‑71 Op Atty Gen, No. 3175, p. 144 (September 14, 1971) 1971 WL 17549.

**SECTION 20‑1‑310.** Form of license and certificate.

 The form of license and certificate of marriage shall be prescribed and furnished by the State Registrar and shall contain information required by the standard certificate as recommended by the national agency in charge of vital statistics, all of which are declared necessary for registration, identification, legal, health and research purposes, with such additions as are necessary to meet requirements imposed by the State.

HISTORY: 1962 Code Section 20‑25; 1952 Code Section 20‑25; 1942 Code Section 8559; 1932 Code Section 8559; Civ. C. ‘22 Section 5525; Civ. C. ‘12 Section 3746; 1911 (27) 131; 1970 (56) 2558.

Library References

Marriage 25(2), 31.

Westlaw Topic No. 253.

C.J.S. Marriage Section 35.

Attorney General’s Opinions

Due to advancing electronic technology which was not in existence when statutes governing marriages were adopted, legislative clarification is recommended clarifying marriage statutes, particularly as to proxy or telephonic marriages or use of “faxed” applications for licenses. 1991 Op Atty Gen, No. 91‑58, p. 146 (November 12, 1991) 1991 WL 474788.

NOTES OF DECISIONS

In general 1

1. In general

Applied in State v. Rogers (S.C. 1919) 112 S.C. 466, 100 S.E. 143.

**SECTION 20‑1‑320.** Division of vital statistics shall distribute license forms.

 The Division of Vital Statistics of the Department of Health and Environmental Control shall, for the purpose of uniformity, print and distribute necessary forms of marriage license and certificate to be used by all probate courts of this State in the issuance of marriage licenses.

HISTORY: 1962 Code Section 20‑26; 1952 Code Section 20‑26; 1950 (46) 2307.

Library References

Marriage 25(2), 31.

Westlaw Topic No. 253.

C.J.S. Marriage Section 35.

NOTES OF DECISIONS

In general 1

1. In general

Cited in State v. Rogers (S.C. 1919) 112 S.C. 466, 100 S.E. 143.

**SECTION 20‑1‑330.** Issue of licenses in triplicate; disposition.

 The officer issuing marriage license certificates shall issue them in triplicate, all of which shall be delivered to either of the contracting parties and the parties to whom they are delivered shall in turn deliver them to the minister or officer who performs the wedding ceremony. The minister or officer who performs the wedding ceremony shall fill them out as required by law and deliver one to the contracting parties, without additional charge, and the other two within fifteen days to the officer who issued the license certificates.

HISTORY: 1962 Code Section 20‑27; 1952 Code Section 20‑27; 1942 Code Section 8560; 1932 Code Section 8560; 1924 (33) 1135; 1950 (46) 2452.

Library References

Marriage 25(2), 32.

Westlaw Topic No. 253.

C.J.S. Marriage Section 35.

Attorney General’s Opinions

Due to advancing electronic technology which was not in existence when statutes governing marriages were adopted, legislative clarification is recommended clarifying marriage statutes, particularly as to proxy or telephonic marriages or use of “faxed” applications for licenses. 1991 Op Atty Gen, No. 91‑58, p. 146 (November 12, 1991) 1991 WL 474788.

**SECTION 20‑1‑340.** Record of license and certificate kept by probate judge or clerk of court.

 The probate judge or clerk of court who issued any such license shall, upon the return of the two copies to him by the person who performs the wedding ceremony, record and index such certificate in a book kept for that purpose and send one copy to the Division of Vital Statistics of the Department of Health and Environmental Control within fifteen days after the marriage license is returned to his offices. The judge of probate shall issue a certified copy of any such license and certificate to any person and he may charge the sum of fifty cents for so doing unless otherwise prohibited by law.

HISTORY: 1962 Code Section 20‑28; 1952 Code Section 20‑28; 1942 Code Section 8561; 1932 Code Section 8561; Civ. C, ‘22 Section 5526; Civ. C. ‘12 Section 3747; 1911 (27) 131; 1945 (44) 25; 1950 (46) 2307; 1970 (56) 2558.

CROSS REFERENCES

Issue of certified copies without charge, see Section 44‑63‑110.

Library References

Marriage 32.

Westlaw Topic No. 253.

C.J.S. Marriage Section 35.

Attorney General’s Opinions

A Probate Court is not required to record a marriage unless a license and certificate have been issued. S.C. Op.Atty.Gen. (February 15, 2013) 2013 WL 770263.

NOTES OF DECISIONS

In general 1

1. In general

Applied in State v. Rogers (S.C. 1919) 112 S.C. 466, 100 S.E. 143.

**SECTION 20‑1‑350.** Filing of license and certificate and issuance of certified copies by Department of Health and Environmental Control.

 The Department of Health and Environmental Control shall properly file and index every marriage license and certificate and may provide a certified copy of any license and certificate upon application of proper parties except that upon request the Department of Social Services or its designee must be provided at no charge with a copy or certified copy of a license and certificate for the purpose of establishing paternity or establishing, modifying, or enforcing a child support obligation.

HISTORY: 1962 Code Section 20‑29; 1952 Code Section 20‑29; 1950 (46) 2307; 1979 Act No. 41 Section 1; 1997 Act No. 71, Section 5, eff June 10, 1997.

CROSS REFERENCES

Fee for furnishing certified copy of license or certificate, see Section 44‑63‑110.

Department of Health and Environmental Control regulations, see S.C. Code of Regulations R. 61‑1 et seq.

Library References

Marriage 32.

Westlaw Topic No. 253.

C.J.S. Marriage Section 35.

**SECTION 20‑1‑360.** Effect of article on marriage without license.

 Nothing contained in this article shall render illegal any marriage contracted without the issuance of a license.

HISTORY: 1962 Code Section 20‑31; 1952 Code Section 20‑31; 1942 Code Section 8563; 1932 Code Section 8563; Civ. C. ‘22 Section 5528; Civ. C. ‘12 Section 3749; 1911 (27) 131.

Library References

Marriage 25(1).

Westlaw Topic No. 253.

LAW REVIEW AND JOURNAL COMMENTARIES

Untying the Knot: The Propriety of South Carolina’s Recognition of Common Law Marriage. 58 S.C. L. Rev. 555 (Spring 2007).

Attorney General’s Opinions

Discussion of the possible penalty that could be imposed against an individual if that individual provides incorrect information, such as a name, in association with an application for a marriage license. S.C. Op.Atty.Gen. (Aug. 27, 2007) 2007 WL 3244892.

NOTES OF DECISIONS

In general 1

1. In general

Evidence was sufficient to support finding that companions who lived together did not intend to be married, as required to find surviving companion a common‑law spouse entitled to an elective share of deceased companion’s estate, even though they lived together continuously and were regarded in the community as husband and wife; deceased companion declared in her last will and testament that she was living with, but not married to, her companion, and the companions filed federal tax returns as “single,” rather than “married filing separately”. In re Estate of Duffy (S.C.App. 2011) 392 S.C. 41, 707 S.E.2d 447. Marriage And Cohabitation 386(2); Wills 788(2)

When deciding whether common‑law marriage has been formed, a lack of intent to be married overrides the presumption of marriage that arises from cohabitation and reputation. Callen v. Callen (S.C. 2005) 365 S.C. 618, 620 S.E.2d 59. Marriage And Cohabitation 363

For the relationship to become marital after impediment that precludes formation of common‑law marriage is removed, there must be a new mutual agreement either by way of civil ceremony or by way of recognition of the illicit relation and a new agreement to enter into a common‑law marriage. Callen v. Callen (S.C. 2005) 365 S.C. 618, 620 S.E.2d 59. Marriage And Cohabitation 215(1); Marriage And Cohabitation 216; Marriage And Cohabitation 261

When there is an impediment to marriage, such as one party’s existing marriage to a third person, no common‑law marriage may be formed, regardless of whether mutual assent is present. Callen v. Callen (S.C. 2005) 365 S.C. 618, 620 S.E.2d 59. Marriage And Cohabitation 213; Marriage And Cohabitation 270

If factual elements concerning intent of each party to be married to the other and a mutual understanding of each party’s intent are present, then the court should find as a matter of law that a common‑law marriage exists. Callen v. Callen (S.C. 2005) 365 S.C. 618, 620 S.E.2d 59. Marriage And Cohabitation 215(1)

When determining whether parties formed common‑law marriage, fact finder is to look for “mutual assent”: the intent of each party to be married to the other and a mutual understanding of each party’s intent. Callen v. Callen (S.C. 2005) 365 S.C. 618, 620 S.E.2d 59. Marriage And Cohabitation 215(1)

No express contract to be married is necessary to find that a common‑law marriage has been formed; the agreement may be inferred from the circumstances. Callen v. Callen (S.C. 2005) 365 S.C. 618, 620 S.E.2d 59. Marriage And Cohabitation 215(1); Marriage And Cohabitation 353

Common‑law marriage is formed when two parties contract to be married. Callen v. Callen (S.C. 2005) 365 S.C. 618, 620 S.E.2d 59. Marriage And Cohabitation 213

Evidence was insufficient to establish common law marriage where deceased, allegedly common‑law wife, used surname of person seeking status as common‑law husband out of convenience and to ease stigma that some people attach to living together, husband was already married when he began living with her, and there was insufficient evidence of new marriage agreement after impediment to marriage was removed; there was also testimony from niece of deceased that subsequent to removal of impediment to marry, decedent still did not consider herself married. Weathers v. Bolt (S.C.App. 1987) 293 S.C. 486, 361 S.E.2d 773.

It was no error for trial court to find that parties did not enter into marriage relationship in good faith believing they each had capacity to marry, where only evidence on this point came from person seeking status as common‑law husband who testified that former wife had told him she had obtained divorce; he made no effort to verify divorce and in fact testified he did not know whether or not he was ever divorced prior to death of former wife, and further acknowledged he was aware that subsequent to commencement of his relationship with decedent, his marriage to another woman was annulled because of his prior marriage to woman whom he alleged had divorced him. Weathers v. Bolt (S.C.App. 1987) 293 S.C. 486, 361 S.E.2d 773.

Marriage under defective or no license may be valid. The fact that a marriage is solemnized pursuant to a defective or improperly obtained license or without any license at all does not affect its validity. Johnson v. Johnson (S.C. 1960) 235 S.C. 542, 112 S.E.2d 647.

Applied in State v. Ward (S.C. 1944) 204 S.C. 210, 28 S.E.2d 785.

**SECTION 20‑1‑370.** Disposition of license fee.

 Of the fee of one dollar required under the provisions of Section 20‑1‑230 the probate judge shall retain twenty‑five cents as his compensation and the remaining seventy‑five cents shall be paid into the county treasury and go to the school fund of the county, except that:

 (1) in Clarendon County the entire fee of one dollar shall be collected in advance and paid monthly by the officer collecting it to the county treasurer for credit to the ordinary funds of said county, in such manner as may be required by law;

 (2) in Richland and Sumter Counties the entire fee of one dollar shall be paid to the county treasury;

 (3) in Oconee County the probate judge shall retain the sum of fifty cents as his compensation and the remaining fifty cents shall be paid into the county treasury and credited to the general fund of the county;

 (4) in the counties of Bamberg, Greenville, Lancaster and Lee the probate judge shall retain the sum of fifty cents as his compensation;

 (5) in the counties of Allendale, Barnwell, Calhoun, Chester, Chesterfield, Dorchester, Fairfield, Florence, Greenwood, Hampton, McCormick and Marion the probate judge and in Darlington County the clerk of court shall retain the entire fee as his compensation; and

 (6) in Marlboro County the license fee of one dollar shall be turned over monthly by the judge of probate to the county treasurer and go to the general fund of the county.

HISTORY: 1962 Code Section 20‑32; 1952 Code Section 20‑32; 1942 Code Section 8558; 1932 Code Section 8558; Civ. C. ‘22 Section 5524; Civ. C. ‘12 Section 3745; 1911 (27) 131; 1912 (27) 613; 1913 (28) 76; 1915 (29) 216, 220; 1916 (29) 751; 1917 (30) 113, 127, 129; 1918 (30) 698; 1919 (31) 67, 112, 211, 245; 1920 (31) 736, 738, 1065; 1921 (32) 107, 152; 1922 (32) 781, 790; 1928 (35) 1205; 1931 (37) 12, 29, 122; 1933 (38) 148; 1934 (38) 1425; 1939 (41) 173, 179; 1946 (44) 1444; 1947 (45) 109, 234; 1948 (45) 1612; 1953 (48) 294, 422; 1954 (48) 1747; 1955 (49) 235, 616; 1956 (49) 2107, 2355; 1957 (50) 631.

Library References

Marriage 25(2).

Westlaw Topic No. 253.

NOTES OF DECISIONS

In general 1

1. In general

An act which amended this section [Code 1962 Section 20‑32] by providing for the compensation of the probate judge of Pickens County was held to be unconstitutional as special legislation in Hudson v. Pickens County (S.C. 1939) 190 S.C. 490, 3 S.E.2d 603.

**SECTION 20‑1‑375.** Marriage license fee.

 In addition to the marriage license fee authorized pursuant to Section 20‑1‑230, there is imposed an additional twenty dollar fee for each marriage license applied for. This additional fee must be remitted to the State Treasurer and credited to the Domestic Violence Fund established pursuant to Section 20‑4‑160.

HISTORY: 2001 Act No. 91, Section 2, eff August 22, 2001.

Library References

Marriage 25(2).

Westlaw Topic No. 253.

**SECTION 20‑1‑380.** Disposition of fines.

 All fines imposed and recovered for any violation of this article shall be paid to the county treasurer and credited by him to the school fund of the county in which the violation occurs.

HISTORY: 1962 Code Section 20‑33; 1952 Code Section 20‑33; 1942 Code Section 8562; 1932 Code Section 8562; Civ. C. ‘22 Section 5527; Civ. C. ‘12 Section 3748; 1911 (27) 131.

Library References

Fines 20.

Marriage 25(5), 30, 53.

Westlaw Topic Nos. 174, 253.

C.J.S. Fines Section 6.

C.J.S. Marriage Sections 29, 32, 47.

ARTICLE 5

Proceedings to Determine Status of Marriage

**SECTION 20‑1‑510.** Jurisdiction to determine validity of marriage.

 The court of common pleas shall have authority to hear and determine any issue affecting the validity of a contract of marriage.

HISTORY: 1962 Code Section 20‑41; 1952 Code Section 20‑41; 1942 Code Section 8567; 1932 Code Section 8567; Civ. C. ‘22 Section 5532; Civ. C. ‘12 Section 3753; Civ. C. ‘02 Section 2660; G. S. 2028; R. S. 2159; 1882 (17) 681.

CROSS REFERENCES

Provisions relative to equitable apportionment of marital property, see Section 20‑3‑610 et seq.

Library References

Marriage 55.

Westlaw Topic No. 253.

C.J.S. Marriage Sections 35, 51.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Divorce Section 5, Annulment Distinguished.

NOTES OF DECISIONS

In general 1

1. In general

A husband seeking an annulment on the ground that his wife failed to disclose psychological problems resulting in her sexual incapacity failed to prove the invalidity of the marriage contract where he and his wife shared a bed on many occasions during their 5‑year courtship and agreed to not engage in sexual relations, the wife told him about her problems before the marriage, the problem was revealed during an “engaged encounter” they attended before the marriage, and the full extent of the problem was not known until after the marriage; furthermore, the parties’ cohabitation would bar an annulment even if fraud had been proven, whether or not actual sexual intercourse had taken place. E.D.M. v. T.A.M. (S.C. 1992) 307 S.C. 471, 415 S.E.2d 812.

The validity of a marriage is determined by the law of the place where it is contracted, and will be recognized in another state unless such recognition is contrary to a strong public policy of that state. Zwerling v. Zwerling (S.C. 1978) 270 S.C. 685, 244 S.E.2d 311. Marriage And Cohabitation 251

Since marriage which followed Mexican divorce was valid in New York where it was contracted, its validity was recognized in South Carolina, there being no South Carolina public policy prohibiting a recognition of the marriage under the circumstances. Zwerling v. Zwerling (S.C. 1978) 270 S.C. 685, 244 S.E.2d 311. Marriage And Cohabitation 251

Cited in Harmon v. Harmon (S.C. 1971) 257 S.C. 154, 184 S.E.2d 553.

Where two persons claim title to the same property, it is appropriate for both to be made a party to the action wherein title is to be determined. This prevents a multiplicity of actions. By a like reasoning, it is appropriate for two alleged wives claiming the same husband to be brought into the litigation. Ex parte Harmon (S.C. 1971) 256 S.C. 328, 182 S.E.2d 300.

It is evident that the legislature manifested no intention in this section [Code 1962 Section 20‑41] to set forth the requirements of residence and domicil in an action to annul a marriage contract as it has in actions for divorce. Foster v. Nordman (S.C. 1964) 244 S.C. 485, 137 S.E.2d 600.

**SECTION 20‑1‑520.** Affirmation of marriage if validity has been denied or doubted.

 When the validity of a marriage shall be denied or doubted by either of the parties, the other may institute a suit for affirming the marriage and, upon due proof of the validity thereof, it shall be decreed to be valid and such decree shall be conclusive upon all persons concerned.

HISTORY: 1962 Code Section 20‑42; 1952 Code Section 20‑42; 1942 Code Section 8566; 1932 Code Section 8566; Civ. C. ‘22 Section 5531; Civ. C. ‘12 Section 3752; Civ. C. ‘02 Section 2659; G. S. 2027; R. S. 2158; 1872 (15) 30.

Library References

Marriage 55.

Westlaw Topic No. 253.

C.J.S. Marriage Sections 35, 51.

NOTES OF DECISIONS

In general 1

1. In general

Applied in State v Smith (1915) 101 SC 293, 85 SE 958. State v Sellers (1926) 140 SC 66, 134 SE 873.

A proceeding under this section [Code 1962 Section 20‑42] is an adjudication, the primary purpose of which is to declare the status of individuals, and to that extent it possesses characteristics of a proceeding in rem, and therefore, adjudication of the validity of a marriage is conclusive on the world, even in subsequent actions on different subject matters. Headen v. Pope & Talbot, Inc., C.A.3 (Pa.)1958, 252 F.2d 739. Judgment 825

A subsidiary finding made in a proceeding under this section [Code 1962 Section 20‑42] to adjudicate the validity of a second marriage that a prior marriage had been annulled is admissible in evidence in a later action against a corporation not a party to the former proceedings as tending to show that a decree of annulment had been granted. Headen v. Pope & Talbot, Inc., C.A.3 (Pa.)1958, 252 F.2d 739.

Cited in Harmon v. Harmon (S.C. 1971) 257 S.C. 154, 184 S.E.2d 553.

Where two persons claim title to the same property, it is appropriate for both to be made a party to the action wherein title is to be determined. This prevents a multiplicity of actions. By a like reasoning, it is appropriate for two alleged wives claiming the same husband to be brought into the litigation. Ex parte Harmon (S.C. 1971) 256 S.C. 328, 182 S.E.2d 300.

**SECTION 20‑1‑530.** Declaration of invalidity.

 If any such contract has not been consummated by the cohabitation of the parties thereto the court may declare such contract void for want of consent of either of the contracting parties or for any other cause going to show that, at the time the supposed contract was made, it was not a contract.

HISTORY: 1962 Code Section 20‑43; 1952 Code Section 20‑43; 1942 Code Section 8567; 1932 Code Section 8567; Civ. C. ‘22 Section 5532; Civ. C. ‘12 Section 3753; Civ. C. ‘02 Section 2660; G. S. 2028; R. S. 2159; 1882 (17) 681.

Library References

Marriage 18, 20(1), 33.

Westlaw Topic No. 253.

C.J.S. Marriage Sections 19 to 20, 22 to 23, 25 to 26, 36, 92.

RESEARCH REFERENCES

ALR Library

159 ALR 104 , Ratification of Marriage by One Under Age, Upon Attaining Marriageable Age.

Encyclopedias

36 Am. Jur. Proof of Facts 2d 441, Validity of Marriage.

S.C. Jur. Divorce Section 5, Annulment Distinguished.

NOTES OF DECISIONS

In general 1

Annulment 2

1. In general

Cited in Foster v. Nordman (S.C. 1964) 244 S.C. 485, 137 S.E.2d 600.

The proviso expressed in this section [Code 1962 Section 20‑43] to the effect that there must have been no cohabitation between the parties has been held to be inapplicable to an action to invalidate a marriage which the parties were legally incompetent to contract. Hughey v. Ray (S.C. 1945) 207 S.C. 374, 36 S.E.2d 33. Marriage And Cohabitation 323

Applied in State v Smith (1915) 101 SC 293, 85 SE 958; Miller v Miller (1895) 43 SC 306, 21 SE 254. Campbell v. Moore (S.C. 1939) 189 S.C. 497, 1 S.E.2d 784.

This section [Code 1962 Section 20‑43] was intended to apply only to those marriages in which the parties may at a later time be able to contract the relation, and not to those who are forbidden to marry. Davis v. Whitlock (S.C. 1911) 90 S.C. 233, 73 S.E. 171, Am.Ann.Cas. 1913D,538. Marriage And Cohabitation 319

2. Annulment

There is no legal distinction between a marriage which is annulled and one terminated by reason of bigamy, since legally they are both void from their inception. Splawn v. Splawn (S.C. 1993) 311 S.C. 423, 429 S.E.2d 805. Marriage And Cohabitation 270; Marriage And Cohabitation 338

A husband seeking an annulment on the ground that his wife failed to disclose psychological problems resulting in her sexual incapacity failed to prove the invalidity of the marriage contract where he and his wife shared a bed on many occasions during their 5‑year courtship and agreed to not engage in sexual relations, the wife told him about her problems before the marriage, the problem was revealed during an “engaged encounter” they attended before the marriage, and the full extent of the problem was not known until after the marriage; furthermore, the parties’ cohabitation would bar an annulment even if fraud had been proven, whether or not actual sexual intercourse had taken place. E.D.M. v. T.A.M. (S.C. 1992) 307 S.C. 471, 415 S.E.2d 812.

In an action to annul a marriage, the State is a silent but not an inactive third party. Fogel v. McDonald (S.C. 1931) 159 S.C. 506, 157 S.E. 830. Marriage And Cohabitation 330

Marriage is annulled only when fully sanctioned by law. Fogel v. McDonald (S.C. 1931) 159 S.C. 506, 157 S.E. 830.

In an action to annul a marriage, the judge should prevent the dissolution of the marriage contract by collusion, default, or coercive pressure exerted upon either or both parties. Fogel v. McDonald (S.C. 1931) 159 S.C. 506, 157 S.E. 830. Marriage And Cohabitation 314

**SECTION 20‑1‑540.** Adjudication of presumed death.

 When a person has been married in this State or was living with his or her spouse in this State after marriage and the one has left the other and has been absent from the other for seven years, without the latter knowing or hearing anything about such absent spouse, the abandoned spouse may by an action in the court of common pleas or other court of competent jurisdiction serve the absent spouse by publication in the manner provided in Sections 15‑9‑710 and 15‑9‑740 and bring the issue as to such facts before the court of common pleas or other court of competent jurisdiction. And when it shall be satisfactorily established to the presiding judge of such court or to a jury on an issue sent to the jury by the judge that such absent spouse has not been heard from for seven years the complaining spouse shall have an adjudication of the issue and such absent spouse shall be conclusively presumed dead in so far as any children or kindred resulting from any marriage of the abandoned spouse during such absence may be concerned, notwithstanding the fact that such absent spouse may later appear alive. The reappearance or return of the absent spouse shall not alter such adjudication or invalidate or upset any subsequent marriage entered into by the abandoned spouse.

HISTORY: 1962 Code Section 20‑44; 1952 Code Section 20‑44; 1942 Code Section 8568; 1932 Code Section 8568; Civ. C. ‘22 Section 5533; Civ. C. ‘12 Section 3754; Civ. C. ‘02 Section 2661; G. S. 2029; R. S. 2160; 1712 (2) 203; 1946 (44) 1486.

CROSS REFERENCES

Effect of 7‑year absence on bigamous nature of marriage, see Section 20‑1‑80.

Library References

Death 2.

Marriage 40(6).

Westlaw Topic Nos. 117, 253.

C.J.S. Death Sections 8 to 15.

C.J.S. Marriage Sections 18, 43 to 45, 53, 55.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Bigamy Section 17, Absence of Spouse for Seven Years.

S.C. Jur. Bigamy Section 28, Civil Adjudication of Presumed Death of Absent Spouse.

**SECTION 20‑1‑550.** Service on defendant in action to annul marriage.

 When a marriage has been contracted or solemnized in this State and an action is brought under Sections 20‑1‑80, 20‑1‑510, and 20‑1‑530 seeking to annul it, the plaintiff shall serve his complaint on the defendant by publication as provided in Sections 15‑9‑710 and 15‑9‑740. The original summons must be filed in the office of the clerk of court of the county in which the action is pending.

 Service by publication as provided in Sections 15‑9‑710 and 15‑9‑740 also is available to a plaintiff in an action for annulment whose marriage was contracted or solemnized outside of this State when the plaintiff was a resident of this State at the time of the marriage or has been a resident of this State for at least one year prior to the commencement of the action.

HISTORY: 1962 Code Section 20‑45; 1952 Code Section 20‑45; 1946 (44) 1564; 1960 (51) 1564; 1997 Act No. 152, Section 29, eff June 11, 1997.

CROSS REFERENCES

Service by publication in annulment proceedings, see Section 15‑9‑710.

Library References

Marriage 60(4).

Westlaw Topic No. 253.

C.J.S. Marriage Sections 70, 74, 78.

NOTES OF DECISIONS

In general 1

1. In general

Section does not purport to set forth conditions necessary to jurisdiction. There is nothing in this section [Code 1962 Section 20‑45] which purports to set forth the conditions necessary to jurisdiction or from which it can be inferred that South Carolina courts have jurisdiction of an annulment action where the marriage was entered into in South Carolina by nonresidents. Foster v. Nordman (S.C. 1964) 244 S.C. 485, 137 S.E.2d 600.

This section [Code 1962 Section 20‑45] is not applicable where all parties are residents of another state. Foster v. Nordman (S.C. 1964) 244 S.C. 485, 137 S.E.2d 600.

The courts of the state where the marriage is celebrated have no jurisdiction to annul the marriage if neither of the parties is domiciled within the state. Foster v. Nordman (S.C. 1964) 244 S.C. 485, 137 S.E.2d 600.

**SECTION 20‑1‑560.** Service on persons in military or naval services overseas in action to annul marriage.

 No action shall be brought under the provisions of Section 20‑1‑550 against a man or woman in the military or naval service who is beyond the seas, nor until after such man or woman in the military or naval service has returned from beyond the seas for a period of three months, unless such defendant consents to such proceeding.

HISTORY: 1962 Code Section 20‑46; 1952 Code Section 20‑46; 1946 (44) 1564.

Library References

Armed Services 34.4(4).

Westlaw Topic No. 34.

C.J.S. Armed Services Sections 1, 172.

**SECTION 20‑1‑570.** Establishment of official record of marriages.

 An official record of any marriage contracted in this State prior to June 30, 1911 or of any marriage so contracted subsequent to said date when a certificate of the performance thereof has not been filed may be made and established in the manner hereinafter prescribed.

 The official record of marriage may be established by filing with the official whose duty it is to record marriages in the county in which the marriage was contracted (a) an affidavit of one or more of the witnesses to the marriage, (b) an affidavit of two or more reputable persons who were informed of the marriage and have knowledge that the persons so claiming to be married have lived together as husband and wife or (c) a certificate from the person officiating at the marriage if he were a minister of the Gospel or person qualified by law to administer an oath.

 No more than the sum of one dollar shall be charged by the recording official for the establishment of such record.

HISTORY: 1962 Code Section 20‑47; 1952 Code Section 20‑47; 1942 Code Section 8571‑1; 1933 (38) 260; 1945 (44) 164.

Library References

Marriage 32.

Westlaw Topic No. 253.

C.J.S. Marriage Section 35.

Attorney General’s Opinions

A Probate Court is not required to record a marriage unless a license and certificate have been issued. S.C. Op.Atty.Gen. (February 15, 2013) 2013 WL 770263.

**SECTION 20‑1‑580.** Effect of establishment of official record of marriage and record.

 The record herein permitted, when so established, shall be accepted by all the courts in this State as conclusive evidence of the marriage and shall be of the same force and effect as the records now required by law. The judge of probate or other officer whose duty it is to record and file such records shall purchase, out of county funds in his hands or by requisition upon the proper county official, a suitable book for the proper recording of marriages proved as provided in Section 20‑1‑570.

HISTORY: 1962 Code Section 20‑48; 1952 Code Section 20‑48; 1942 Code Section 8571‑1; 1933 (38) 260.

Library References

Marriage 32.

Westlaw Topic No. 253.

C.J.S. Marriage Section 35.

ARTICLE 7

South Carolina Family Respect Act

**SECTION 20‑1‑700.** Short title.

 This act may be cited as the “South Carolina Family Respect Act”.

HISTORY: 2001 Act No. 4, Section 2, eff November 30, 2000.

Library References

Parent and Child 1.

Westlaw Topic No. 285.

C.J.S. Parent and Child Sections 1 to 12, 201.

**SECTION 20‑1‑710.** Legislative purpose.

 The General Assembly finds that the family is the fundamental building block of society. Within healthy families children are instilled with values essential to the vitality of our State. These values include personal responsibility, honesty, duty, commitment to others, a work ethic, respect for authority, and sound educational habits. Because the family plays such a crucial role in developing these and other civic virtues essential to self‑government, parents have a duty to themselves, their children, and society at large to instill these virtues in their children. Therefore, as much as it is able, the State should promote strong families, for the family is the cradle of an ordered and vibrant republic. Self‑government depends upon civic virtue, and civic virtue in turn depends upon healthy families. The purpose of this act is to emphasize the importance of families to the success and well‑being of our State.

HISTORY: 2001 Act No. 4, Section 2, eff November 30, 2000.

Library References

Parent and Child 1.

Westlaw Topic No. 285.

C.J.S. Parent and Child Sections 1 to 12, 201.

**SECTION 20‑1‑720.** Publication and distribution of “South Carolina Family Respect” pamphlet.

 (A) The office of the Governor shall publish an informational pamphlet entitled “South Carolina Family Respect” consistent with the intent and provisions of this act. The office of the Governor shall distribute the pamphlet to the agencies, offices, and entities listed in subsection (B). It is the duty of the government agencies, offices, and entities listed in subsection (B) to promote the ideals of this pamphlet and distribute it to their constituencies and clients.

 (B) The informational pamphlet must be distributed to:

 (1) all probate judges and clerks of court who issue marriage licenses who shall give it to each couple at the time they apply for the license;

 (2) all family court judges who shall give it to all couples who file a petition for divorce or a petition for approval of a separation agreement;

 (3) the Department of Social Services who shall give it to each person who applies for welfare benefits;

 (4) the Department of Health and Environmental Control to be included and mailed out with each certified birth certificate issued, as provided in Section 44‑63‑80;

 (5) all public school districts in the State that teach sex education programs. All public school districts must include a discussion of the pamphlet in its sex and family education curriculum;

 (6) all state and local agencies and institutions that provide health services including, but not limited to, family planning services and distribution of contraceptives, to be given to all pregnant minors, persons receiving birth control, and persons receiving information on family planning or sexually transmitted diseases;

 (7) all local mental health centers to be distributed where appropriate in particular counseling situations;

 (8) all county programs for adolescent pregnancy prevention initiatives, as provided in Section 44‑122‑40. Each initiative must include a discussion of the pamphlet with the adolescents it counsels;

 (9) all public colleges, universities, and other institutions of higher learning to be distributed to all first year students during their orientation; and

 (10) the pamphlet must be made available for voluntary distribution to:

 (i) all clergy and counselors who provide marriage counseling;

 (ii) all private high schools;

 (iii) all private institutions of higher learning; and

 (iv) the general public.

HISTORY: 2001 Act No. 4, Section 2, eff November 30, 2000.

Library References

Parent and Child 1.

Westlaw Topic No. 285.

C.J.S. Parent and Child Sections 1 to 12, 201.