

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 3: Solemnization § 40-1-301

(1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor, city judge, or justice of the peace, by a tribal judge, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court. (2) If a party to a marriage is unable to be present at the solemnization, the party may authorize in writing a third person to act as proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, the person may solemnize the marriage by proxy. If the person solemnizing the marriage is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy. (3) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it if either party to the marriage believed that person to be qualified. (4) One party to a proxy marriage must be a member of the armed forces of the United States on federal active duty or a resident of Montana at the time of application for a license and certificate pursuant to 40-1-202. One party or a legal representative shall appear before the clerk of court and pay the marriage license fee. For the purposes of this subsection, residency must be determined in accordance with 1-1-215.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 1: General Provisions § 40-1-104

All marriages contracted within this state prior to January 1, 1976, or outside the state, that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicile of the parties are valid in this state.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 1: General Provisions § 40-1-101

This chapter shall be liberally construed and applied to promote its underlying purposes, which are to: (1) provide adequate procedures for the solemnization and registration of marriage; (2) strengthen and preserve the integrity of marriage and safeguard family relationships.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 1: General Provisions § 40-1-102

This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 1: General Provisions § 40-1-103

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

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 1: General Provisions § 40-1-105

(1) Except for proceedings under the Uniform Child Custody Jurisdiction and Enforcement Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter. (2) A proceeding for declaration of invalidity of marriage must be entitled, "In re the Marriage of..... and.....". A parenting or support proceeding must be entitled, "In re the (parenting) (support) of.....". (3) The initial pleading in all proceedings under this chapter must be denominated a petition. A responsive pleading must be denominated a response. Other pleadings, and all pleadings in other matters under this chapter, must be denominated as provided in the Montana Rules of Civil Procedure. (4) In this chapter, "decree" includes "judgment".

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The provisions of other portions of this code in relation to contracts and the capacity of persons to enter into them have no application to the contract of marriage.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 1: General Provisions § 40-1-107

(1) The director of the department of public health and human services shall prescribe the form for an application for a marriage license, which must include the following information: (a) name, sex, address, [social security number,] and date and place of birth of each party to the proposed marriage; (b) if either party was previously married, the party's name and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse; (c) name and address of the parents or guardian of each party; and (d) whether the parties are related to each other and, if so, their relationship. (2) The director of the department of public health and human services shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage. [(3) The license, certificate, or consent may not contain the social security number, and the department shall keep the number from this source confidential, except that the department may use the number in administering Title IV-D of the Social Security Act.] (4) The information contained in the marriage license application is subject to the disclosure restrictions provided in 50-15-122(5). (Bracketed language terminates on occurrence of contingency--sec. 1, Ch. 27, L. 1999.)

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 2: License Provisions § 40-1-201

(1) A Montana resident may not be joined in marriage within this state until a license has been obtained for that purpose from a clerk of the district court. (2) A license authorizes a marriage ceremony to be performed in any county of this state. (3) If both parties are nonresidents of the state, the license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of the persons is a nonresident of the county where the license is to issue, the

nonresident's part of the application may be completed and sworn to or affirmed before the person authorized to accept license applications in the county and state in which that person resides.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 2: License Provisions § 40-1-202

Except as provided in 40-1-301, when a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk of the district court and paid the marriage license fee of \$53, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished: (1) satisfactory proof that each party to the marriage will have attained 18 years of age at the time the marriage license is effective or will have attained 16 years of age and has obtained judicial approval as provided in 40-1-213; (2) satisfactory proof that the marriage is not prohibited; and (3) a certificate of the results of any medical examination required by the laws of this state or a waiver of the medical certificate requirement as provided in 40-1-203.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 2: License Provisions § 40-1-203

(1) Before a person authorized by law to issue marriage licenses may issue a marriage license, each applicant for a license shall provide a birth certificate or other satisfactory evidence of age and, if the applicant is a minor, the approval required by 40-1-213. Each female applicant, unless exempted on medical grounds by rule of the department of public health and human services or as provided in subsection (2), shall file with the license issuer a medical certificate from a physician who is licensed to practice medicine and surgery in any state or United States territory or from any other person authorized by rule of the department to issue a medical certificate. The certificate must state that the applicant has been given a blood test for rubella immunity, that the report of the test results has been shown to the applicant tested, and that the other party to the proposed marriage contract has examined the report. (2) In lieu of a medical certificate, applicants for a marriage license may file an informed consent form acknowledging receipt and understanding of written rubella immunity information and declining rubella immunity testing. Filing of an informed consent form will effect a waiver of the requirement for a blood test for rubella immunity. Informed consent must be recorded on a form provided by the department and must be signed by both applicants. The informed consent form must include: (a) the reasons for undergoing a blood test for rubella immunity; (b) the information that the results would provide about the woman's rubella antibody status; (c) the risks associated with remaining uninformed of the rubella antibody status, including the potential risks posed to a fetus, particularly in the first trimester of pregnancy; and (d) contact information indicating where applicants may obtain additional information regarding rubella and rubella immunity testing. (3) A person who by law is able to obtain a marriage license in this state is also able to give consent to any examinations, tests, or waivers required or allowed by this section. In submitting the blood specimen to the laboratory, the physician or other person authorized to issue a medical certificate shall designate that it is a premarital test.

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(1) The medical certificate must contain a statement from a physician or other person authorized by rule of the department of public health and human services to make the reports, setting forth: (a) the name of the test; (b) the name and address of the physician or other person authorized by rule of the department to sign the certificate; (c) the name and address of the laboratory performing the test; and (d) the name of the person whose blood was tested. (2) In the event that an error is discovered in the results of the test, the results must be expunged from the records of the department of public health and human services. (3) (a) The certificate and statement must be on a form to be provided and distributed, upon request, by the department of public health and human services. (b) This form is referred to in 40-1-205 through 40-1-209 as the "certificate form".

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 2: License Provisions § 40-1-205

Certificate forms provided by other states having comparable laws will be accepted for persons who have received a rubella blood test outside of Montana. Certificates provided by the United States armed forces will be accepted for military personnel if the certificates are signed by a medical officer commissioned in the United States armed forces or United States public health service and the certificates state the examinations are rubella blood tests.

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(1) The rubella blood test is acceptable for the purposes of 40-1-203 through 40-1-209 only if it is approved by the department of public health and human services and performed by one of the following: (a) the laboratory of the department of public health and human services; (b) a laboratory approved by the department of public health and human services; (c) a laboratory operated by any other state; or (d) a laboratory operated by the United States public health service or the United States armed forces. (2) The test may be made on request at the laboratory of the department of public health and human services. (3) The department of public health and human services shall adopt reasonable rules for: (a) reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state; and (b) exemptions, on medical grounds, from the premarital rubella blood test.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 2: License Provisions § 40-1-207

An applicant for a marriage license may be examined free of charge by the county physician or county health officer.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 2: License Provisions § 40-1-208

(1) An applicant for a marriage license, a physician or other person authorized by rule of the department of public health and human services to issue a medical certificate, or a person in charge of or authorized to make reports or statements for a laboratory who misrepresents the person's identity or any of the facts called for by the certificate form prescribed by 40-1-203 through 40-1-205; a licensing officer who issues a marriage license without having received the certificate form, if required, or who has reason to believe that any of the facts on the certificate form have been misrepresented and

nevertheless issues a marriage license; or any person who otherwise fails to comply with the provisions of 40-1-203 through 40-1-209 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$100. (2) Medical certificates, laboratory statements or reports, applications, and waivers referred to in 40-1-203 through 40-1-209 are confidential and may not be divulged to or open to inspection by any person other than state or local health officers or their representatives. A person who divulges the information or opens to inspection the certificates, statements, reports, applications, or waivers, without authority, to any person not entitled to the material by law is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$100.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 2: License Provisions § 40-1-209

The department of public health and human services shall provide the necessary printing and pay the necessary expenses related to the checking and approval of laboratories, clerical and technical assistance involved in the administration of 40-1-203 through 40-1-209, and other expenditures necessary in carrying out the provisions and purposes of 40-1-203 through 40-1-209. All claims for the expenses must be submitted for approval and audit to the department of public health and human services and must be paid in accordance with law.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 2: License Provisions § 40-1-210

No license to marry shall be issued if, at the time of making application, either of the applicants is under the influence of intoxicating liquor or narcotic drug.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 2: License Provisions § 40-1-212

A license to marry is effective upon issuance and expires after 180 days.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 2: License Provisions § 40-1-213

(1) The district court may order the clerk of the district court to issue a marriage license and a marriage certificate form to a party 16 or 17 years of age who has no parent capable of consenting to the party's marriage or has the consent of both parents or of the parent having the actual care, parenting authority, and control to the party's marriage, if capable of giving consent, or of the party's guardian. The court must require both parties to participate in a period of marriage counseling involving at least two separate counseling sessions not less than 10 days apart with a designated counselor as a condition of the order for issuance of a marriage license and a marriage certificate form under this section. (2) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve the party's best interests. Pregnancy alone does not establish that the best interests of the party will be served. (3) The district court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 3: Solemnization § 40-1-311

(1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 shall, prior to executing the declaration, secure the medical certificate required by this chapter. The declaration and the certificate or the waiver provided for in 40-1-203 must be filed by the clerk of the district court in the county where the contract was executed. (2) A declaration of marriage must contain substantially the following: (a) the names, ages, and residences of the parties; (b) the fact of marriage; (c) the name of father and maiden name of mother of both parties and address of each; (d) a statement that both parties are legally competent to enter into the marriage contract. (3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county. (4) The fee for filing a declaration is \$53 and must be paid to the clerk at time of filing.

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It is unlawful for any person other than the parties to the written declaration to draw any declaration of marriage unless the person is licensed to practice law in the state of Montana.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 3: Solemnization § 40-1-313

Any person violating the provisions of 40-1-311 or 40-1-312, upon conviction, shall be subject to a fine of not less than \$300 or 6 months in a county jail, or both.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 3: Solemnization § 40-1-321

(1) Upon receipt of the marriage certificate, the clerk of the district court shall register the marriage. (2) Every person solemnizing a marriage who shall neglect to make and deliver to the clerk of the district court a certificate thereof within 30 days after having solemnized such marriage shall forfeit for such neglect a sum not less than \$10 or more than \$50; and any clerk of the district court who shall neglect to record such certificate so delivered within 1 month after its delivery shall forfeit the like penalty.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 3: Solemnization § 40-1-322

The original certificate of marriage and the record thereof by the clerk of the district court or a copy of such record duly certified by the clerk of the district court shall be received by all courts in all places as presumptive evidence of such marriage.

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If the record of the solemnization of a marriage heretofore entered into has been lost or destroyed and not known to exist, the parties may join in a written declaration of such marriage, substantially showing: (1) the names, ages, and residences of the parties; (2) the date and place of marriage and other pertinent facts of the marriage; (3) that the record of the solemnized marriage has become lost or destroyed, as the case may be, and is not known to exist.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 3: Solemnization § 40-1-324

The written declaration of marriage provided for in 40-1-323 shall be attested by at least two witnesses and formally acknowledged by an official authorized to administer oaths in the state of Montana. The filing of the declaration with the clerk of the district court in the county of the residence of the parties shall serve as an official record of the marriage of the parties.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 4: Validity of Marriages -- Declaration of Invalidity § 40-1-401

(1) The following marriages are prohibited: (a) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties; (b) a marriage between an ancestor and a descendant or between a brother and a sister, whether the relationship is by the half or the whole blood, or between first cousins; (c) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood; (d) a marriage between persons of the same sex. (2) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment. (3) Children born of a prohibited marriage are legitimate. (4) A contractual relationship entered into for the purpose of achieving a civil relationship that is prohibited under subsection (1) is void as against public policy.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 4: Validity of Marriages -- Declaration of Invalidity § 40-1-402

(1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances: (a) a party lacked capacity to consent to the marriage at the time that the marriage was entered into, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud involving the essentials of marriage; (b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time that the marriage was entered into, the other party did not know of the incapacity; (c) a party was under 16 years of age or was 16 or 17 years of age and did not have the consent of the party's parents or guardian or judicial approval; or (d) the marriage is prohibited. (2) A declaration of invalidity under subsections (1)(a) through (1)(c) may be sought by any of the following persons and must be commenced within the times specified, but a declaration of invalidity may not be sought after the death of either party to the marriage: (a) for lack of capacity to consent because of mental incapacity or infirmity, no later than 1 year after the petitioner obtained knowledge of the described condition; (b) for lack of capacity to consent because of the influence of alcohol, drugs, or other incapacitating substances, no later than 1 year after the petitioner obtained knowledge of the described condition; (c) for lack of capacity to consent because of force, duress, or fraud, no later than 2 years after the petitioner obtained knowledge of the described condition; (d) for the reason set forth in subsection (1)(b), by either party, no later than 4 years after the petitioner obtained knowledge of the described condition; (e) for the reason set forth in subsection (1)(c), by the underaged party or the party's parent or guardian, before the time that the underaged party reaches the age at which the party could have married without satisfying the omitted requirement. (3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time before the death of one of the parties. (4) Children born of a marriage declared invalid

are legitimate. (5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of chapter 4 relating to property rights of the spouses, maintenance, support, and parenting of children on dissolution of marriage are applicable to nonretroactive decrees of invalidity.

(6) The clerk of the court shall give notice of the entry of a decree declaring the invalidity of a marriage:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered, who shall enter the fact of invalidity in the book in which the marriage license and certificate are recorded; or (b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that the official enter the fact of invalidity in the appropriate record.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 4: Validity of Marriages -- Declaration of Invalidity § 40-1-403

Common-law marriages are not invalidated by this chapter. Declarations of marriage pursuant to 40-1-311 through 40-1-313, 40-1-323, and 40-1-324 are not invalidated by this chapter.

Montana Code Annotated - Title 40: Family Law - Chapter 1: Marriage - Part 4: Validity of Marriages -- Declaration of Invalidity § 40-1-404

A person who has cohabited with another to whom the person is not legally married in the good faith belief that the person was married to that person is a putative spouse until knowledge of the fact that the person is not legally married terminates that status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of that status, whether or not the marriage is prohibited, as provided in 40-1-401, or declared invalid, as provided in 40-1-402. If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.