

THE 79
GENERAL STATUTES

OF THE
STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated
All General Laws of the State in Force December 31, 1894

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AND A GENERAL INDEX BY THE EDITORIAL STAFF OF THE NATIONAL
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CONTAINING THE CONSTITUTION OF THE UNITED STATES, THE ORDINANCE OF 1787,
THE ORGANIC ACT, ACT AUTHORIZING A STATE GOVERNMENT, THE STATE
CONSTITUTION, THE ACT OF ADMISSION INTO THE UNION, AND

Sections 1 to 4821 of the General Statutes

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CHAPTER 61.

MARRIAGE.

§ 4768. Marriage a civil contract.

Marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting, is essential:

(G. S. 1866, c. 61, § 1; G. S. 1878, c. 61, § 1.)

A mutual agreement between competent parties, *per verba de presenti*, to take each other for husband and wife, deliberately made and acted upon by living together professedly in that relation, is sufficient, without any formal solemnization or ceremony, to give it validity in law. State v. Worthingham, 23 Minn. 529.

§ 4769. Who is capable of contracting marriage.

Every male person who has attained the full age of eighteen years, and every female who has attained the full age of fifteen years, is capable in law of contracting marriage, if otherwise competent.

(G. S. 1866, c. 61, § 2; G. S. 1878, c. 61, § 2.)

§ 4770. Persons prohibited from marrying.

No marriage shall be contracted while either of the parties has a husband or wife living, nor between parties who are nearer of kin than first cousins, computing by the rules of the civil law, whether the half or the whole blood.

(G. S. 1866, c. 61, § 3; G. S. 1878, c. 61, § 3.)

§ 4771. Marriages, by whom solemnized.

Marriages may be solemnized by any justice of the peace in the county in which he is elected; and, throughout the state, by any judge of a court of record, the superintendent of the department for the deaf and dumb in the Minnesota Deaf, Dumb, and Blind Institute, or any ordained minister of the gospel, in regular communion with any religious society.

(G. S. 1866, c. 61, § 4; G. S. 1878, c. 61, § 4; as amended 1885, c. 38.)

§ 4772. Credentials of ministers to be filed and recorded, etc.

Ministers of the gospel, before they are authorized to perform the marriage rite, shall file a copy of their credentials of ordination with the clerk of the district court of some county in this state, who shall record the same, and give a certificate thereof; and the place where such credentials are recorded shall be endorsed upon each certificate of marriage granted by any minister, and recorded with the same.

(G. S. 1866, c. 61, § 5; G. S. 1878, c. 61, § 5.)

§ 4773. Parties may be examined on oath.

All judges, justices of the peace, and ministers of the gospel may, before solemnizing any marriage, examine at least one of the parties on oath, which oath they are authorized to administer, as to the legality of such intended marriage; and in no case shall such judge, justice or minister solemnize a marriage, if he is satisfied that there is any legal impediment thereto.

(G. S. 1866, c. 61, § 6; G. S. 1878, c. 61, § 6.)

§ 4774. License to be obtained from clerk before marriage.

Previous to persons being joined in marriage, a license shall be obtained from the clerk of the district court of the county in which the female resides or, if not a resident of this state, then from the clerk of the district court in the county where the marriage is to take place in this state; but if there

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apprenticeship or service, if it has not already been done in the manner before provided; and the minor may thereupon be bound out anew.

(G. S. 1866, c. 60, § 14; G. S. 1878, c. 60, § 14.)

§ 4764. Power of court to order refunding of money.

When any servant, apprentice or master is discharged from any indenture, in pursuance of the provisions of this chapter, and any sum of money has been paid or agreed for by either party on the execution of such indenture, the court may, at the time they discharge such person from the indenture, also order such sum of money, or any part thereof, as the equity of the case may require, to be refunded, if paid, to him who advanced the same, or his personal representative; and if not paid, they may, by order, discharge the same, and direct any securities given therefor to be delivered up or cancelled.

(G. S. 1866, c. 60, § 15; G. S. 1878, c. 60, § 15.)

§ 4765. Death of master discharges apprentice.

No indenture of apprenticeship or service made in pursuance of this chapter, shall bind the minor after the death of the master; but the minor shall be thenceforth discharged therefrom, and may be bound out anew.

(G. S. 1866, c. 60, § 16; G. S. 1878, c. 60, § 16.)

§ 4766. Provisions of chapter to apply to mistresses.

All the foregoing provisions shall apply as well to mistresses as to masters.

(G. S. 1866, c. 60, § 17; G. S. 1878, c. 60, § 17.)

§ 4767. Chapter not to affect common-law right of father.

Nothing contained in this chapter shall affect a father's right, at common law, to assign or contract for the service of his children during their minority.

(G. S. 1866, c. 60, § 18; G. S. 1878, c. 60, § 18.)

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shall be no such clerk in the county where such female resides, or where the marriage is to be solemnized, then no such license shall be required.

(G. S. 1866, c. 61, § 7; G. S. 1878, c. 61, § 7.)

§ 4775. Duty of clerk—Inquiry as to impediments—Record of license—Consent of parents—Fees.

The clerk of the district court, as aforesaid, may inquire of the party applying for marriage license, as aforesaid, upon oath or affirmation, relative to the legality of such contemplated marriage; and if the clerk shall be satisfied that there is no legal impediment thereto, then he shall grant such marriage license, and shall make a record thereof; and if any persons intending to marry shall be under age, and shall not have had a former wife or husband, the consent of the parents or guardians shall be personally given before the clerk, or certified under the hand of such parent or guardian, attested by two witnesses, one of whom shall appear before said clerk, and make oath or affirmation that he saw said parent or guardian subscribe, or heard him or her acknowledge the same; and said clerk is hereby authorized to administer such oath or affirmation, and thereupon issue and sign such license, and affix thereto the seal of the court. The clerk shall be entitled to receive, as his fee for administering the oath, and granting the license with the seal affixed thereto, recording the certificate of marriage, and filing the necessary papers, the sum of two dollars; and if any clerk shall in any other manner issue or sign any marriage license, he shall forfeit and pay a sum not exceeding one thousand dollars to, and for the use of, the parties aggrieved.

(G. S. 1866, c. 61, § 8; G. S. 1878, c. 61, § 8.)

§ 4776. No particular form of marriage required.

In the solemnization of marriage, no particular form is required, except that the parties shall declare, in the presence of the judge, minister or magistrate, and the attending witnesses, that they take each other as husband and wife; and in every case there shall be at least two witnesses present, besides the person performing the ceremony.

(G. S. 1866, c. 61, § 9; G. S. 1878, c. 61, § 9.)

§ 4777. Certificate of marriage to be given.

Whenever a marriage is solemnized, the person solemnizing the same shall give to each of the parties, if requested, a certificate thereof, specifying therein the names and residence of the parties, and of at least two of the witnesses present, and the time and place of such marriage.

(G. S. 1866, c. 61, § 10; G. S. 1878, c. 61, § 10.)

§ 4778. Record and certificate of marriage.

Every person solemnizing a marriage shall make a record thereof, and within one month make and deliver to the clerk of the district court of the county where the marriage took place, or of the county to which said county is attached for judicial purposes, a certificate under his hand containing the particulars mentioned in the preceding section, which certificate shall be filed and recorded by said clerk in a book kept by him for that purpose; and said clerk shall be entitled to receive the sum of twenty-five cents for recording said duplicate certificate from the person offering the same for record.

(G. S. 1866, c. 61, § 11, as amended 1871, c. 94, § 1; G. S. 1878, c. 61, § 11; 1883, c. 68, § 1.)

§ 4779. Failure to deliver certificate—Penalty.

Every person solemnizing a marriage, who neglects to make and deliver to the clerk a certificate thereof, within the time above specified, shall forfeit a sum not more than one hundred dollars; and every clerk who neglects to record such certificate, so delivered, shall forfeit the like penalty.

(G. S. 1866, c. 61, § 12; G. S. 1878, c. 61, § 12.)

§ 4780. Solemnizing marriage illegally—False certificate—Penalty.

If any person authorized by law to join persons in marriage, knowingly solemnizes any marriage contrary to the provisions of this chapter, or wil-

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fully makes any false certificate of any marriage, or pretended marriage, he shall forfeit for every such offence a sum not exceeding five hundred dollars, or may be imprisoned not exceeding one year.

(G. S. 1866, c. 61, § 13; G. S. 1878, c. 61, § 13.)

§ 4781. Solemnizing by unauthorized person, etc., penalty.

If any person undertakes to join others in marriage, knowing that he is not lawfully authorized to do so, or knowing of any legal impediment to the proposed marriage, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by imprisonment not more than one year, or by a fine not more than five hundred dollars, or by both such fine and imprisonment, in the discretion of the court.

(G. S. 1866, c. 61, § 14; G. S. 1878, c. 61, § 14.)

§ 4782. Want of authority not to avoid marriage.

No marriage solemnized before any person professing to be a judge, justice of the peace, or minister of the gospel, shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected, on account of any want of jurisdiction or authority in such supposed judge, justice or minister: provided, the marriage is consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

(G. S. 1866, c. 61, § 15; G. S. 1878, c. 61, § 15.)

See *State v. Brecht*, 41 Minn. 50, 54, 42 N. W. Rep. 602.

§ 4783. Marriage among quakers — Duty of clerk — Penalty.

All marriages solemnized among the people called friends or quakers, in the form heretofore practised and in use in their meetings, are valid, and not affected by any of the foregoing provisions; and the clerk of the meeting in which such marriage is solemnized, shall, within one month after every such marriage, deliver a certificate of the same to the clerk of the district court of the county where such marriage took place, or of the county to which such county is attached for judicial purposes, on penalty of forfeiting not more than one hundred dollars; which certificate shall be filed and recorded by such clerk, under a like penalty; and if such marriage does not take place in such meeting, such certificate shall be signed by the parties, and at least six witnesses present, and filed and recorded as above provided, under a like penalty.

(G. S. 1866, c. 61, § 16; G. S. 1878, c. 61, § 16.)

§ 4784. Illegitimate children — Marriage of parents.

Illegitimate children become legitimized by the subsequent marriage of their parents with each other, and the issue of marriages declared null in law shall nevertheless be legitimate.

(G. S. 1866, c. 61, § 17; G. S. 1878, c. 61, § 17.)

Cited, *McArthur v. Craigie*, 22 Minn. 353.

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