

ALASKA MARRIAGE CODE

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CS FOR HB #339

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2

CS FOR HOUSE BILL NO. 339

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SECOND LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act to provide a comprehensive

7

Marriage Code for the State of Alaska."

8

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9

ARTICLE I.

10

REQUIREMENTS FOR MARRIAGE

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Section 1.01. Civil Contract. Marriage is a civil contract

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which may be entered into by a male who is 19 years of age or

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older with a female who is 18 years of age or older, who are

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otherwise capable. No person may be joined in marriage in this

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state until a license has been obtained for that purpose as pro-

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vided in this code.

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Sec. 1.02. Prohibited Marriages. Marriage is prohibited

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and void if performed when

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(1) either party to the proposed marriage has a hus-

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band or wife living; or

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(2) the parties to the proposed marriage are more

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closely related to each other than the fourth degree of consan-

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guinity, whether of the whole or half blood, computed according

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to rules of the civil law.

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Sec. 1.03. Voidable Marriages. When either party to a

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marriage is incapable of consenting to it at the time of the

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marriage for want of legal age or sufficient understanding, or

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when the consent of either party is obtained by force or fraud,

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the marriage is voidable but only at the suit of the party

1 laboring under the disability or upon whom the force or fraud is
2 imposed.

3 Sec. 1.04. Matters Insufficient to Render Marriage Voidable.

4 (a) No marriage is voidable for any of the following reasons if
5 the marriage is in other respects lawful and is consummated with
6 the full belief on the part of the persons married, or either of
7 them, that they have been lawfully joined in marriage:

8 (1) the license has been issued without the consent of
9 the parents or guardian of a minor;

10 (2) the licensing officer did not have jurisdiction to
11 issue the license;

12 (3) there was an omission, informality, or irregularity
13 of form in the application for the license or in the license it-
14 self;

15 (4) either or both witnesses to the marriage were in-
16 competent;

17 (5) the marriage was performed after the expiration
18 date of the license.

19 (b) When a marriage has been celebrated as provided in
20 this code and the parties to it have immediately thereafter
21 assumed the habit and repute of husband and wife and have contin-
22 ued to behave uninterruptedly as husband and wife for one year or
23 until the death of either of them, it shall be deemed that a
24 license was issued.

25 Sec. 1.05. Effect of Existing Former Marriage. If, during
26 the lifetime of a husband or wife with whom a marriage is still
27 in force, a person remarries and the parties to the subsequent
28 marriage live together as husband and wife and one of the parties
29 to the subsequent marriage believes in good faith that the former

1 husband or wife is dead or that the former marriage has been
2 annulled or dissolved by a divorce or is without knowledge of
3 the former marriage, then after the death or divorce of the other
4 party to the former marriage, if they continue to live together
5 as husband and wife in good faith on the part of one of them,
6 they shall have been legally married from the time of removal of
7 the impediment, and the issue of the subsequent marriage are the
8 legitimate issue of both parents, whether born before or after
9 the removal of the impediment.

10 Sec. 1.06. Marriage without License. All marriages con-
11 tracted hereafter are void unless a license has first been
12 obtained as provided in this code. The parties to a marriage
13 voided for failure to obtain a license may validate the marriage
14 by complying with the requirements of this code. The issue of
15 the marriage, if any, thereupon become legitimate.

16 ARTICLE II.

17 LICENSING OFFICERS

18 Sec. 2.01. Persons to Issue License. Licensing officers
19 are the only officials empowered to issue marriage licenses in
20 accordance with the provisions of this code.

21 Sec. 2.02. Marriage Commissioners. The presiding judge in
22 each judicial district may, when the public interest requires,
23 appoint one or more suitable persons as marriage commissioners.
24 A marriage commissioner may, within his jurisdiction, issue
25 marriage licenses and solemnize marriages in the same manner as
26 a magistrate and may exercise any power necessarily incident to
27 his duties. The presiding judge shall describe in the order of
28 appointment of the marriage commissioner his area of jurisdiction.
29 The clerk of court shall issue to the marriage commissioner a

1 certified copy of the order of appointment, and send a copy of
2 it to the bureau.

3 ARTICLE III.

4 PROCEDURE TO OBTAIN A LICENSE

5 Sec. 3.01. Application for License. One of the contracting
6 parties to a prospective marriage shall, at least three days be-
7 fore the time of issuance, file with the licensing officer written,
8 verbal, or telegraphic application for a license. Before issu-
9 ance of the license, each contracting party shall file with the
10 same licensing officer a premarital certificate; and shall make
11 a statement under oath that the contemplated marriage meets the
12 requirements of law, giving the names, relationship if any, resi-
13 dence, occupation, and age of each party; naming guardians of
14 any party under the legal age for marriage; and describing any
15 prior marriage or marriages of either party, and the manner of
16 dissolution of them. This statement may be made and executed
17 before a notary public who shall certify it to the licensing
18 officer.

19 Sec. 3.02. Premarital Certificate. Before a licensing
20 officer issues a marriage license, each party shall file with
21 him a premarital certificate from a licensed physician or surgeon
22 stating (1) the name and age of the applicant; (2) that the appli-
23 cant has been given a physical examination, including a blood
24 test for the Rh factor and a standard serological test for
25 syphilis; and (3) that in the opinion of the physician or surgeon
26 the applicant is not infected with venereal disease, or if in-
27 fected is not in and will not reach a state of the disease in which
28 the disease is communicable. No license shall be issued more than
29 30 days after the serological test.

1 Sec. 3.03. Issuance of License. No marriage license shall
2 be issued unless both of the contracting parties are identified
3 to the satisfaction of the licensing officer. If all requirements
4 have been met, and there is no legal objection to the contempla-
5 ted marriage and neither party is under the influence of intoxi-
6 cating liquor or otherwise incapable of understanding the serious-
7 ness of the proceeding, the licensing officer shall issue a
8 license.

9 Sec. 3.04. Marriage License. The marriage license issued
10 by any licensing officer in this state authorizes the marriage
11 ceremony to be performed anywhere in the state. The license shall
12 be directed "to any person authorized by the laws of this state
13 to solemnize marriage," and shall authorize him to solemnize
14 marriage between the parties identified by the license within
15 three months of the date of the license. If either party is not
16 of legal age for marriage, his or her age and the fact of the
17 consent of his or her parents or guardian shall be stated. If
18 either party has previously been married, the number of previous
19 marriages shall be stated. The registrar may require other
20 matter necessary to identify the parties to be included in the
21 license. The issuance of a license does not remove or dispense
22 with any legal disability, impediment, or prohibition rendering
23 marriage between the parties illegal, and a statement to that
24 effect shall be included in the license.

25 ARTICLE IV.

26 MEDICAL REPORTS

27 Sec. 4.01. Laboratory Report of Standard Serological Test.
28 The person in charge of the laboratory making the serological
29 test or tests, or some other person authorized to make such

1 reports shall make on the premarital certificate the required
2 report setting forth the name of the test, the date it was made,
3 the name and address of the physician or surgeon to whom the re-
4 port was sent, and the name and address of the person whose blood
5 was tested, but not stating the result of the test.

6 Sec. 4.02. Laboratory Results Confidential. A detailed re-
7 port of the Rh factor and the standard serological tests on a
8 separate laboratory report form to be furnished by the department,
9 together with the premarital certificate, shall be sent from the
10 laboratory to the physician requesting the report. The physician
11 shall retain this report as a part of his confidential files.
12 A duplicate shall be sent by the laboratory to the department
13 where it shall be held in absolute confidence. The report shall
14 not be produced for evidence in any court. The reports may be
15 used in the compilation of aggregate statistics and reports
16 without disclosing the identities of the persons involved.

17 Sec. 4.03. Tests and Laboratories. For the purposes of
18 this code a standard serological test is a test for syphilis
19 approved by the department, made at a laboratory or clinic ap-
20 proved by the department. The department may make regulations
21 pursuant to the Administrative Procedure Act governing the ap-
22 proval of laboratories or clinics for standard serological tests.
23 The laboratories of the department shall make required premarital
24 laboratory tests without charge on the request of any licensed
25 physician or surgeon. In submitting the sample to the laboratory
26 the physician shall identify it as a premarital test sample.

27 ARTICLE V.

28 SPECIAL CIRCUMSTANCES

29 Sec. 5.01. Waiver of Waiting Period. If a three-day wait-

1 ing period would result in undue hardship or delay in an indi-
2 vidual case, the licensing officer may waive the three-day re-
3 quirement.

4 Sec. 5.02. Marriageable Age of Consent. (a) A license
5 may be issued to a person under the legal age of marriage if
6 he or she has attained the marriageable age of consent, which is
7 18 years of age for males and 16 years of age for females, but
8 only if the consent of the minor's parents, or guardian, or of
9 the parent having actual care, custody, and control of the minor
10 is obtained. Consent shall be given by them under oath, and
11 filed of record in the office of the licensing officer and entered
12 by him on the marriage license docket before he issues the
13 license. If there is no guardian of the minor, or if there is
14 no competent person having actual care, custody and control of
15 the minor, then the licensing officer may, in his discretion,
16 make an order consenting to the marriage of the minor.

17 (b) If either or both of the applicants are under the mar-
18 riageable age of consent but present the consents required by
19 (a) of this section, and if the female applicant also presents
20 a certificate from a licensed physician stating that the female
21 applicant is pregnant, and if the other requirements have been
22 met, the licensing officer shall issue the marriage license.
23 If there is no licensed physician in the area the licensing offi-
24 cer may issue the certificate recommending marriage.

25 Sec. 5.03. Waiver Order. A licensing officer may, on
26 joint application by both applicants for a marriage license,
27 waive the requirements as to physical examinations, laboratory
28 tests, and premarital certificates if he believes that the public
29 health and welfare will not be adversely affected and if (1)

1 there is no licensed physician or surgeon to make the physical
2 examination in the area in which the applicants and the licensing
3 officer reside; or (2) a delay has been certified by the physician
4 taking the blood test in a community where no laboratory is
5 located, the certificate stating that the blood test was sent to
6 the laboratory at least three days before the certification and
7 that no return has as yet been received from the laboratory; or
8 (3) the examination or test is contrary to the tenets or prac-
9 tices of the religious creed of which the applicant is an ad-
10 herent. The waiver order shall be filed with the marriage
11 license docket in lieu of the premarital certificates. No fee
12 or court costs for the waiver order may be charged.

13 ARTICLE VI.

14 FORMS, RECORDS, AND REPORTS

15 Sec. 6.01. Marriage License Docket. Each licensing offi-
16 cer shall keep in his office in a book to be provided to him by
17 the bureau, a marriage license docket, and shall enter a complete
18 record of the applications for and the issuance of all marriage
19 licenses, and of all other information he is required by law to
20 obtain. Marriage commissioners shall keep the marriage license
21 docket in duplicate. The marriage license docket shall be open
22 for public inspection or examination during office hours. Docket
23 sheets and related forms pertaining to applications or licenses
24 issued under Sec. 5.02(b) shall be removed from the docket and
25 shall not be open to public inspection.

26 Sec. 6.02. Notes on Docket. When the licensing officer
27 issues any marriage license he shall indicate on the correspond-
28 ing marriage license docket sheet that he has on file the pre-
29 marital certificates of each applicant or a waiver order. He

1 shall enter the dates of the laboratory tests or the waiver order.
2 The licensing officer shall attach the premarital certificates
3 or waiver order to the docket sheet.

4 Sec. 6.03. Reports by Marriage Commissioner. Before the
5 first of each month each marriage commissioner shall forward to
6 the magistrate acting as recorder for the recording district with-
7 in which the marriage commissioner has jurisdiction the duplicate
8 copies of all marriage license docket sheets executed during the
9 preceding month, the completed original marriage certificates
10 and duplicate copies for any marriage ceremonies performed by him
11 during the preceding month, and any fees and reports required by
12 rule of the supreme court.

13 Sec. 6.04. Forms. (a) Forms for applications, statements,
14 consent of parents, affidavits, licenses, and other forms neces-
15 sary to comply with this code shall be prescribed by the reg-
16 istrar and provided at the expense of the state. The registrar
17 shall furnish all necessary forms to each licensing officer. He
18 shall provide them with a suitable book in which to keep the
19 marriage license docket. The forms for the premarital certificate
20 shall be provided and distributed by the department to approved
21 laboratories or clinics inside the state. A premarital certifi-
22 cate which has been approved by the proper authority in any state
23 or Canadian province requiring premarital examinations for venereal
24 disease shall be accepted in Alaska.

25 (b) The registrar shall supervise the record work and re-
26 quired reporting of the licensing officers. In other respects
27 the licensing officers are under the supervision of the supreme
28 court.

29 Sec. 6.05. Reports of Licenses Issued. The registrar may
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1 require reports of licenses issued upon forms to be furnished by
2 him.

3 Sec. 6.06. Fees. The supreme court shall establish mar-
4 riage license fees and provide for accounting for and disposing
5 of the fees.

6 Sec. 6.07. Vital Statistics Act. Nothing in this code
7 repeals or abrogates any part of the Vital Statistics Act. The
8 records and requirements leading up to and including the issuance
9 of the marriage license are not included in the definition of
10 "vital statistics" under that Act; however, the registrar shall
11 supply the necessary forms and instructions for the record work
12 of the licensing officers.

13 ARTICLE VII.

14 SOLEMNIZATION

15 Sec. 7.01. Who May Solemnize. (a) Marriages may be
16 solemnized (1) by a minister or priest of any church or congrega-
17 tion in the state, or by a commissioned officer of the Salvation
18 Army, or by the principal officer or elder of recognized churches
19 or congregations which traditionally do not have regular ministers
20 or priests, anywhere within the state; (2) by a marriage commis-
21 sioner or judicial officer of the state anywhere within his
22 jurisdiction; or (3) before or in any religious organization or
23 congregation according to the established ritual or form commonly
24 practiced therein.

25 (b) No provision of this section shall be construed to
26 waive the requirement of obtaining a marriage license.

27 Sec. 7.02. Duty of Officiating Person before Ceremony.
28 The officiating person shall satisfy himself that the parties
29 presenting themselves to be married by him are the parties named

1 in the license. If he knows of any legal impediment to the
2 marriage he shall not perform the ceremony.

3 Sec. 7.03. Marriage Solemnized by Unauthorized Person.

4 A marriage solemnized before any person professing to be a
5 minister or priest of any church or congregation in the state or
6 any judicial officer or marriage commissioner is valid regard-
7 less of a lack of power or authority in the person, if the
8 marriage is consummated with a belief on the part of the persons
9 so married, or either of them, that they have been lawfully
10 joined in marriage.

11 Sec. 7.04. Civil and Religious Ceremonies. When a reli-
12 gious ceremony between two parties follows a civil ceremony
13 between them, one license is sufficient for both ceremonies.

14 Sec. 7.05. Form of Solemnization. In the solemnization of
15 marriage no particular form is required except that the parties
16 shall assent or declare in the presence of each other and the
17 person solemnizing the marriage, and in the presence of at
18 least two competent witnesses, that they take each other to be
19 husband and wife. A competent witness for this purpose is a
20 person of sound mind capable of understanding the seriousness of
21 the ceremony. At the time of the ceremony the person solemniz-
22 ing the marriage shall complete the certification on the original
23 marriage certificate and he and the two attending witnesses shall
24 sign the original marriage certificate and the necessary copies.

25 Sec. 7.06. Certificates. The person solemnizing the
26 marriage shall, on the forms provided by the bureau, complete
27 two short-form certificates, and after he and the two witnesses
28 have signed them, give one to each of the parties to the marriage.

29 Any church or congregation may design and furnish its own form
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1 for this purpose, containing as a minimum the items contained
2 in the form furnished by the bureau. The original marriage certi-
3 ficate and any required copies shall be filed as required by the
4 Vital Statistics Act and regulations issued pursuant to it. The
5 person solemnizing the marriage shall keep the license.

6 ARTICLE VIII.

7 PENALTIES

8 Sec. 8.01. Unlawful Issuance of License. A licensing
9 officer who knowingly issues a marriage license knowing it to be
10 in violation of the provisions of this code or who willfully
11 and wrongfully refuses to issue a license is guilty of a misde-
12 meanor and upon conviction is punishable by imprisonment for not
13 more than six months, or by a fine of not more than \$500, or by
14 both.

15 Sec. 8.02. Misrepresentation and Violation of Confidence.
16 A person who misrepresents any fact required to be stated on the
17 application for a license or any form related to it; or a licens-
18 ing officer who issues a marriage license without the required
19 premarital certificates or waiver order, or who issues a marriage
20 license having reason to believe that any material facts have
21 been misrepresented; or a state official or employee who know-
22 ingly and willfully discloses to an unauthorized person any in-
23 formation disclosing identity from a premarital laboratory report;
24 or any person who otherwise fails to comply with the provisions
25 of the premarital examination requirements of this code, is
26 guilty of a misdemeanor and upon conviction is punishable by a
27 fine of not more than \$300.

28 Sec. 8.03. Violation Concerning Marriage License Docket.
29 A licensing officer who refuses or neglects to enter upon the

GENERAL PROVISIONS

1
2 Sec. 9.01. Definitions. As used in this code, unless
3 the context otherwise requires

4 (1) "department" means the Department of Health and
5 Welfare;

6 (2) "bureau" means the Bureau of Vital Statistics;

7 (3) "registrar" means the State Registrar of Vital
8 Statistics;

9 (4) "licensing officer" means any district or deputy
10 magistrate, or a marriage commissioner appointed under Sec. 2.02
11 of this Act.

12 Sec. 9.02. Short Title. This Act may be cited as the
13 "Alaska Marriage Code."

14 ARTICLE X.

15 REPEAL

16 Sec. 10.01. Repeal. Secs. 21-1-1 through 21-1-5, 21-1-13
17 through 21-1-18, 21-1-20, 21-1-33, 21-1-42 through 21-1-43, and
18 21-1-51 through 21-1-54, ACLA 1949; Secs. 21-1-31 through 21-1-32,
19 21-1-34, 21-1-35, 21-1-41 and 21-1-44, ACLA 1949 am Chap. 28,
20 SLA 1960; Sec. 21-1-11, ACLA 1949, am Chap. 93, SLA 1955; Sec.
21 21-1-12, ACLA 1949, am Chap. 65, SLA 1951, am Chap. 37, SLA 1953;
22 Sec. 21-1-19, ACLA 1949, am Chap. 39, SLA 1953; and Chap. 64,
23 SLA 1949, am Chap. 63, SLA 1953, are hereby repealed.

24 ARTICLE XI.

25 EFFECTIVE DATE

26 Sec. 11.01. Effective Date. This Act takes effect on the
27 day after its passage and approval or on the day it becomes law
28 without such approval.