

Introduced: 2/16/63
Referred: Judiciary

RULES COMMITTEE
BY REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 75

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRD LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act to provide a comprehensive
7 marriage code for the State of Alaska;
8 and providing for an effective date."

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

10 * Section 1. AS 25.05 is amended by adding new sections to
11 read:

12 ARTICLE I. REQUIREMENTS FOR MARRIAGE

13 Sec. 25.05.011. CIVIL CONTRACT. Marriage is a civil
14 contract requiring both a license and solemnization which
15 may be entered into by (1) a male who is 21 years of age or
16 older with a female who is 18 years of age or older, who
17 are otherwise capable, or (2) those who qualify for a
18 license under sec. 171 of this chapter. No person may be
19 joined in marriage in this state until a license has been
20 obtained for that purpose as provided in this chapter. No
21 marriage performed in this state is valid without solemnization
22 as provided in this chapter.

23 Sec. 25.05.021. PROHIBITED MARRIAGES. Marriage is
24 prohibited and void if performed when

25 (1) either party to the proposed marriage has a
26 husband or wife living; or

27 (2) the parties to the proposed marriage are
28 more closely related to each other than the fourth degree
29 of consanguinity, whether of the whole or half blood,

HB #75 as am

-1-

1 computed according to rules of the civil law.

2 Sec. 25.05.031. VOIDABLE MARRIAGES. When either party
3 to a marriage is incapable of consenting to it at the time of
4 the marriage for want of marriageable age of consent or
5 sufficient understanding, or when the consent of either
6 party is obtained by force or fraud, the marriage is void-
7 able but only at the suit of the party under the disability
8 or upon whom the force or fraud is imposed.

9 Sec. 25.05.041. MATTERS INSUFFICIENT TO RENDER MARRIAGE
10 VOIDABLE. (a) No marriage is voidable for any of the fol-
11 lowing reasons if the marriage is in other respects lawful
12 and is consummated with the full belief on the part of the
13 persons married, or either of them, that they have been
14 lawfully joined in marriage:

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

17 (2) the licensing officer did not have juris-
18 diction to issue the license;

19 (3) there was an omission, informality, or
20 irregularity of form in the application for the license or
21 in the license itself;

22 (4) either or both witnesses to the marriage were
23 incompetent;

24 (5) the marriage was solemnized after the ex-
25 piration date of the license;

26 (6) there were no witnesses to the marriage if
27 the solemnization of the marriage can be otherwise proven.

28 (b) When a marriage has been solemnized as provided
29 in this chapter and the parties to it have immediately

1 thereafter assumed the habit and repute of husband and
2 wife and have continued to cohabit as husband and wife for
3 one year or until the death of either of them, it shall be
4 conclusively presumed that a license was issued, and the
5 marriage shall not be void or voidable solely on the grounds
6 that the license cannot be produced.

7 Sec. 25.05.051. EFFECT OF EXISTING FORMER MARRIAGE.

8 If, during the lifetime of a husband or wife with whom a
9 marriage is still in force, a person remarries and the
10 parties to the subsequent marriage live together as husband
11 and wife and one of the parties to the subsequent marriage
12 believes in good faith that the former husband or wife is
13 dead or that the former marriage has been annulled or dis-
14 solved by a divorce or is without knowledge of the former
15 marriage, then after the death or divorce of the other party
16 to the former marriage, if they continue to live together
17 as husband and wife in good faith on the part of one of
18 them, they shall have been legally married from the time of
19 removal of the impediment, and the issue of the subsequent
20 marriage are the legitimate issue of both parents, whether
21 born before or after the removal of the impediment.

22 Sec. 25.05.061. MARRIAGE WITHOUT LICENSE. All marriages
23 contracted hereafter are void unless a license has first
24 been obtained as provided in this chapter. The parties to
25 a marriage voided for failure to obtain a license may
26 validate the marriage by complying with the requirements
27 of this chapter. The issue of the marriage, if any, there-
28 upon become legitimate.

✓ 29 ARTICLE II. LICENSING OFFICERS

1 Sec. 25.05.071. PERSONS TO ISSUE LICENSE. Licensing
2 officers are the only officials empowered to issue marriage
3 licenses in accordance with the provisions of this chapter.

4 Sec. 25.05.081. MARRIAGE COMMISSIONERS. The presiding
5 judge in each judicial district may, when the public interest
6 requires, appoint one or more suitable persons as marriage
7 commissioners. A marriage commissioner may, within his
8 jurisdiction, issue marriage licenses and solemnize mar-
9 riages in the same manner as a magistrate and may exercise
10 any power necessarily incident to his duties. The pre-
11 siding judge shall describe in the order of appointment of
12 the marriage commissioner his area of jurisdiction. The
13 clerk of court shall issue to the marriage commissioner a
14 certified copy of the order of appointment, and send a
15 copy of it to the bureau.

16 ARTICLE III. PROCEDURE TO OBTAIN A LICENSE

17 Sec. 25.05.091. APPLICATION FOR LICENSE. One of the
18 contracting parties to a prospective marriage shall, at
19 least three days before the time of issuance, file with
20 the licensing officer written, verbal, or telegraphic
21 application for a license. Before issuance of the license,
22 each contracting party shall file with the same licensing
23 officer a premarital certificate; and shall make a state-
24 ment under oath that the contemplated marriage meets the
25 requirements of law, giving the names, relationship if any,
26 residence, occupation, and age of each party; naming
27 guardians of any party under the legal age for marriage;
28 and describing any prior marriage or marriages of either
29 party, and the manner of dissolution of them. This state-

1 ment may be made and executed before a notary public or
2 postmaster who shall certify it to the licensing officer.

3 Sec. 25.05.101. PREMARITAL CERTIFICATE. Before a
4 licensing officer issues a marriage license, each party
5 shall file with him a premarital certificate from a
6 licensed physician or surgeon stating (1) the name and age
7 of the applicant; (2) that the applicant has been given a
8 physical examination, including a standard serological test
9 for syphilis; and (3) that in the opinion of the physician
10 or surgeon the applicant is not infected with venereal
11 disease, or if infected is not in and will not reach a
12 state of the disease in which the disease is communicable.
13 No license shall be issued more than 30 days after the
14 serological test.

15 Sec. 25.05.111. ISSUANCE OF LICENSE. No marriage
16 license shall be issued unless both of the contracting
17 parties are identified to the satisfaction of the licensing
18 officer. If all requirements have been met, and there is
19 no legal objection to the contemplated marriage and neither
20 party is under the influence of intoxicating liquor or
21 otherwise incapable of understanding the seriousness of the
22 proceeding, the licensing officer shall issue a license.

23 Sec. 25.05.121. MARRIAGE LICENSE. The marriage license
24 issued by any licensing officer in this state authorizes
25 the marriage ceremony to be performed anywhere in the state.
26 The license shall be directed "to any person authorized by
27 the laws of this state to solemnize marriage," and shall
28 authorize him to solemnize marriage between the parties
29 identified by the license within three months of the date

1 of the license. If either party is not of legal age for
2 marriage, his or her age and the fact of the consent of
3 his or her parents or guardian shall be stated. If either
4 party has previously been married, the number of previous
5 marriages shall be stated. The registrar may require other
6 matter necessary to identify the parties to be included in
7 the license. The issuance of a license does not remove
8 or dispense with any legal disability, impediment, or
9 prohibition rendering marriage between the parties illegal,
10 and a statement to that effect shall be included in the
11 license.

12 ARTICLE IV. MEDICAL REPORTS

13 Sec. 25.05.131. LABORATORY REPORT OF STANDARD SERO-
14 LOGICAL TEST. The person in charge of the laboratory
15 making the serological test or tests, or some other person
16 authorized to make such reports shall make on the premarital
17 certificate the required report setting forth the name of
18 the test, the date it was made, the name and address of the
19 physician or surgeon to whom the report was sent, and the
20 name and address of the person whose blood was tested, but
21 not stating the result of the test.

22 Sec. 25.05.141. LABORATORY RESULTS CONFIDENTIAL. A
23 detailed report of the standard serological tests on a
24 separate laboratory report form to be furnished by the
25 department, together with the premarital certificate, shall
26 be sent from the laboratory to the physician requesting
27 the report. The physician shall retain this report as a
28 part of his confidential files. A duplicate shall be sent
29 by the laboratory to the department where it shall be held

1 in absolute confidence. The report shall not be produced
2 for evidence in any court. The reports may be used in the
3 compilation of aggregate statistics and reports without
4 disclosing the identities of the persons involved.

5 Sec. 25.05.151. TESTS AND LABORATORIES. For the pur-
6 poses of this chapter a standard serological test is a test
7 for syphilis approved by the department, made at a laboratory
8 or clinic approved by the department. The department may
9 make regulations pursuant to the Administrative Procedure Act
10 (AS 44.62) governing the approval of laboratories or clinics
11 for standard serological tests. The laboratories of the
12 department shall make required premarital laboratory tests
13 without charge on the request of any licensed physician or
14 surgeon. In submitting the sample to the laboratory the
15 physician shall identify it as a premarital test sample.

16 ARTICLE V. SPECIAL CIRCUMSTANCES

17 Sec. 25.05.161. WAIVER OF WAITING PERIOD. If a three-
18 day waiting period would result in undue hardship or delay
19 in an individual case, the licensing officer may waive the
20 three-day requirement.

21 Sec. 25.05.171. MARRIAGEABLE AGE OF CONSENT. (a) A
22 license may be issued to a person under the legal age of
23 marriage if he or she has attained the marriageable age of
24 consent, which is 18 years of age for males and 16 years
25 of age for females, but only if the consent of the minor's
26 parents, or guardian, or of the parent having actual care,
27 custody, and control of the minor is obtained. Consent
28 shall be given by them under oath, and filed of record in
29 the office of the licensing officer and entered by him on

1 the marriage license docket before he issues the license.
2 If there is no guardian of the minor, or if there is no
3 competent person having actual care, custody and control of
4 the minor, then the licensing officer may, in his discretion,
5 make an order consenting to the marriage of the minor.

6 (b) If either or both of the applicants are under the
7 marriageable age of consent but present the consents required
8 by (a) of this section, and if the female applicant also
9 presents a certificate from a licensed physician stating
10 that the female applicant is pregnant, and if the other
11 requirements have been met, the licensing officer shall
12 issue the marriage license. If there is no licensed
13 physician in the area the licensing officer may issue the
14 certificate recommending marriage.

15 Sec. 25.05.181. WAIVER ORDER. A licensing officer may,
16 on joint application by both applicants for a marriage
17 license, waive the requirements as to physical examinations,
18 laboratory tests, and premarital certificates if he be-
19 lieves that the public health and welfare will not be ad-
20 versely affected and if (1) there is no licensed physician
21 or surgeon to make the physical examination in the area in
22 which the applicants and the licensing officer reside; or
23 (2) a delay has been certified by the physician taking the
24 blood test in a community where no laboratory is located,
25 the certificate stating that the blood test was sent to the
26 laboratory at least three days before the certification and
27 that no return has as yet been received from the laboratory;
28 or (3) the examination or test is contrary to the tenets or
29 practices of the religious creed of which the applicant is

1 an adherent. The waiver order shall be filed with the
2 marriage license docket in lieu of the premarital certifi-
3 cates. No fee or court costs for the waiver order may be
4 charged.

5 ARTICLE VII. FORMS, RECORDS, AND REPORTS

6 Sec. 25.05.191. MARRIAGE LICENSE DOCKET. Each
7 licensing officer shall keep in his office in a book to be
8 provided to him by the bureau, a marriage license docket,
9 and shall enter a complete record of the applications for
10 and the issuance of all marriage licenses, and of all other
11 information he is required by law to obtain. Marriage
12 commissioners shall keep the marriage license docket in
13 duplicate. The marriage license docket shall be open for
14 public inspection or examination during office hours.
15 Docket sheets and related forms pertaining to applications
16 or licenses issued under sec. 171(b) of this chapter shall
17 be removed from the docket and shall not be open to public
18 inspection.

19 Sec. 25.05.201. NOTES ON DOCKET. When the licensing
20 officer issues any marriage license he shall indicate on
21 the corresponding marriage license docket sheet that he
22 has on file the premarital certificates of each applicant
23 or a waiver order. He shall enter the dates of the
24 laboratory tests or the waiver order. The licensing
25 officer shall attach the premarital certificates or waiver
26 order to the docket sheet.

27 Sec. 25.05.211. REPORTS BY MARRIAGE COMMISSIONER. Be-
28 fore the first of each month each marriage commissioner
29 shall forward to the magistrate acting as recorder for the

1 recording district within which the marriage commissioner
2 has jurisdiction the duplicate copies of all marriage
3 license docket sheets executed during the preceding month,
4 the completed original marriage certificates and duplicate
5 copies for any marriage ceremonies performed by him during
6 the preceding month, and any fees and reports required by
7 rule of the supreme court.

8 Sec. 25.05.221. FORMS. (a) Forms for applications,
9 statements, consent of parents, affidavits, licenses, and
10 other forms necessary to comply with this chapter shall be
11 prescribed by the registrar and provided at the expense of
12 the state. The registrar shall furnish all necessary forms
13 to each licensing officer. He shall provide them with a
14 suitable book in which to keep the marriage license docket.
15 The forms for the premarital certificate shall be provided
16 and distributed by the department to approved laboratories
17 or clinics inside the state. A premarital certificate
18 which has been approved by the proper authority in any
19 state or Canadian province requiring premarital examinations
20 for venereal disease shall be accepted in Alaska.

21 (b) The registrar shall supervise the record work and
22 required reporting of the licensing officers. In other
23 respects the licensing officers are under the supervision
24 of the supreme court.

25 Sec. 25.05.231. REPORTS OF LICENSES ISSUED. The
26 registrar may require reports of licenses issued upon forms
27 to be furnished by him.

28 Sec. 25.05.241. FEES. The supreme court shall estab-
29 lish marriage license fees and provide for accounting for

1 and disposing of the fees.

2 Sec. 25.05.251. VITAL STATISTICS ACT. Nothing in this
3 chapter repeals or abrogates any part of AS 18.50, the Vital
4 Statistics Act. The records and requirements leading up to
5 and including the issuance of the marriage license are not
6 included in the definition of "vital statistics" under that
7 Act; however, the registrar shall supply the necessary forms
8 and instructions for the record work of the licensing
9 officers.

10 ARTICLE VII. SOLEMNIZATION

11 Sec. 25.05.261. WHO MAY SOLEMNIZE. (a) Marriages
12 may be solemnized (1) by a minister, priest or rabbi of any
13 church or congregation in the state, or by a commissioned
14 officer of the Salvation Army, or by the principal officer
15 or elder of recognized churches or congregations which
16 traditionally do not have regular ministers, priests or rabbis
17 anywhere within the state; (2) by a marriage commissioner
18 or judicial officer of the state anywhere within his juris-
19 diction; or (3) before or in any religious organization or
20 congregation according to the established ritual or form
21 commonly practiced therein.

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

24 Sec. 25.05.271. DUTY OF OFFICIATING PERSON BEFORE CERE-
25 MONY. The officiating person shall satisfy himself that the
26 parties presenting themselves to be married by him are the
27 parties named in the license. If he knows of any legal
28 impediment to the marriage he shall not perform the ceremony.

29 Sec. 25.05.281. MARRIAGE SOLEMNIZED BY UNAUTHORIZED

1 PERSON. A marriage solemnized before any person professing
2 to be a minister, priest or rabbi of any church or congre-
3 gation in the state or any judicial officer or marriage commis-
4 sioner is valid regardless of a lack of power or authority
5 in the person, if the marriage is consummated with a belief
6 on the part of the persons so married, or either of them,
7 that they have been lawfully joined in marriage.

8 Sec. 25.05.291. CIVIL AND RELIGIOUS CEREMONIES. When
9 a religious ceremony between two parties follows a civil
10 ceremony between them, one license is sufficient for both
11 ceremonies.

12 Sec. 25.05.301. FORM OF SOLEMNIZATION. In the
13 solemnization of marriage no particular form is required
14 except that the parties shall assent or declare in the
15 presence of each other and the person solemnizing the
16 marriage, and in the presence of at least two competent
17 witnesses, that they take each other to be husband and wife.
18 A competent witness for this purpose is a person of sound
19 mind capable of understanding the seriousness of the cere-
20 mony. At the time of the ceremony the person solemnizing
21 the marriage shall complete the certification on the
22 original marriage certificate and he and the two attending
23 witnesses shall sign the original marriage certificate and
24 the necessary copies.

25 Sec. 25.05.311. MARRIAGE WITHOUT SOLEMNIZATION. All
26 marriages contracted hereafter are void unless the marriage
27 has been solemnized as provided in this chapter. The parties
28 to a marriage voided for failure to solemnize a marriage may
29 validate the marriage by complying with the requirements of

1 this chapter. The issue of the marriage, if any, thereupon
2 become legitimate.

3 Sec. 25.05.321. CERTIFICATES. The person solemnizing
4 the marriage shall, on the forms provided by the bureau,
5 complete two short-form certificates, and after he and the
6 two witnesses have signed them, give one to each of the
7 parties to the marriage. Any church or congregation may
8 design and furnish its own form for this purpose, containing
9 as a minimum the items contained in the form furnished by
10 the bureau. The original marriage certificate and any re-
11 quired copies shall be filed as required by the Vital Statis-
12 tics Act, (AS 18.50), and regulations issued pursuant to it.
13 The person solemnizing the marriage shall keep the license.

14 ARTICLE VIII. PENALTIES

15 Sec. 25.05.331. UNLAWFUL ISSUANCE OR REFUSAL OF
16 LICENSE. A licensing officer who knowingly issues a marriage
17 license knowing it to be in violation of the provisions of
18 this chapter or who willfully and wrongfully refuses to is-
19 sue a license is guilty of a misdemeanor and upon conviction
20 is punishable by imprisonment for not more than six months,
21 or by a fine of not more than \$500, or by both.

22 Sec. 25.05.341. MISREPRESENTATION AND VIOLATION OF
23 CONFIDENCE. A person who misrepresents any fact required
24 to be stated on the application for a license or any form
25 related to it; or a licensing officer who issues a marriage
26 license without the required premarital certificates or
27 waiver order, or who issues a marriage license having reason
28 to believe that any material facts have been misrepresented;
29 or a state official or employee who knowingly and willfully

1 discloses to an unauthorized person any information dis-
2 closing identity from a premarital laboratory report; or
3 any person who otherwise fails to comply with the provisions
4 of the premarital examination requirements of this chapter,
5 is guilty of a misdemeanor and upon conviction is punishable
6 by a fine of not more than \$300.

7 Sec. 25.05.351. VIOLATION CONCERNING MARRIAGE LICENSE
8 DOCKET. A licensing officer who refuses or neglects to
9 enter upon the marriage license docket before the license
10 has been issued a complete record of each application and
11 of each marriage license issued from his office, or who
12 fails to keep the marriage license docket open for in-
13 spection or examination by the public during office hours,
14 or who permits the inspection of docket sheets which are
15 specifically excluded from public inspection and examination
16 by sec. 171(b) and 191 of this chapter, is guilty of a mis-
17 demeanor and upon conviction is punishable by a fine of not
18 more than \$50. Each failure, neglect, or refusal consti-
19 tutes a separate offense.

20 Sec. 25.05.361. UNLAWFUL SOLEMNIZATION OF MARRIAGE.
21 Anyone who solemnizes a marriage without first receiving a
22 proper marriage license from the parties as provided in
23 this chapter or without the parties declaring to take each
24 other as husband and wife, or without requiring the presence
25 of two competent witnesses, or who solemnizes a marriage
26 involving a person under the legal age of marriage without
27 the consent of the licensing official when authorized, the
28 parents or guardian of such person being stated in the license,
29 or who solemnizes a marriage knowing of any legal impediment

1 thereto, or who solemnizes a marriage after the expiration
2 of the license, or who falsely certifies to the date of a
3 marriage solemnized by him, is guilty of a misdemeanor and
4 upon conviction is punishable by imprisonment for not more
5 than six months, or by a fine of not more than \$500, or by
6 both.

7 Sec. 25.05.371. SOLEMNIZATION OF MARRIAGE BY UN-
8 AUTHORIZED PERSON. A person not authorized by this chapter
9 who willfully or knowingly undertakes to solemnize a mar-
10 riage in this state is guilty of a misdemeanor and upon con-
11 viction is punishable by imprisonment for not more than one
12 year, or by a fine of not more than \$1,000 or by both.

13 ARTICLE IX. GENERAL PROVISIONS

14 Sec. 25.05.381. DEFINITIONS. As used in this chapter

15 (1) "department" means the Department of Health
16 and Welfare;

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

18 (3) "registrar" means the State Registrar of
19 Vital Statistics;

20 (4) "licensing officer" means any district or
21 deputy magistrate, or a marriage commissioner appointed
22 under sec. 081 of this chapter.

23 Sec. 25.05.391. SHORT TITLE. This chapter may be cited
24 as the "Alaska Marriage Code."

25 * Sec. 2. AS 25.05.010.- AS 25.05.280 and AS 25.10 are re-
26 pealed.

27 * Sec. 3. This Act takes effect on January 1, 1964.
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