

Introduced: 2/16/63
Referred: Judiciary

1 IN THE HOUSE

RULES COMMITTEE
BY REQUEST OF THE GOVERNOR

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 marriage
7 code for the State of Alaska; and providing
8 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 license
18 under sec. 171 of this chapter. No person may be joined
19 in marriage in this state until a license has been obtained
20 for that purpose as provided in this chapter. No marriage
21 performed in this state is valid without solemnization as
22 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,

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computed according to rules of the civil law.

Sec. 25.05.031. VOIDABLE MARRIAGES. When either party to a marriage is incapable of consenting to it at the time of the marriage for want of marriageable age of consent or sufficient understanding, or when the consent of either party is obtained by force or fraud, the marriage is voidable but only at the suit of the party under the disability or upon whom the force or fraud is imposed.

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

- (1) the licensing officer did not have jurisdiction to issue the license;
- (2) there was an omission, informality, or irregularity of form in the application for the license or in the license itself;
- (3) either or both witnesses to the marriage were incompetent;
- (4) the marriage was solemnized after the expiration date of the license;
- (5) there were no witnesses to the marriage if a valid license was issued and if the solemnization of the marriage can be otherwise proven.

(b) When a license has been issued and the marriage solemnized as provided in this chapter and the parties to it have immediately thereafter assumed the habit and repute of

1 husband and wife and have continued to cohabit as husband
2 and wife for one year or until the death of either of them,
3 the marriage shall not be void or voidable solely on the
4 ground the license cannot be produced.

5 Sec. 25.05.051. EFFECT OF EXISTING FORMER MARRIAGE.
6 If, during the lifetime of a husband or wife with whom a
7 marriage is still in force, a person remarries and the
8 parties to the subsequent marriage live together as husband
9 and wife and one of the parties to the subsequent marriage
10 believes in good faith that the former husband or wife is
11 dead or that the former marriage has been annulled or dis-
12 solved by a divorce or is without knowledge of the former
13 marriage, then after the death or divorce of the other party
14 to the former marriage, if they continue to live together
15 as husband and wife in good faith on the part of one of
16 them, they shall have been legally married from the time of
17 removal of the impediment, and the issue of the subsequent
18 marriage are the legitimate issue of both parents, whether
19 born before or after the removal of the impediment.

20 Sec. 25.05.061. MARRIAGE WITHOUT LICENSE. All marriages
21 contracted hereafter are void unless a license has first
22 been obtained as provided in this chapter. If the parties to
23 a marriage void for failure to obtain a license validate the
24 marriage by complying with the requirements of this chapter,
25 any issue of the void marriage are legitimate.

26 ARTICLE II. LICENSING OFFICERS

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

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

13 ARTICLE III. PROCEDURE TO OBTAIN A LICENSE

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

29 Sec. 25.05.101. PREMARITAL CERTIFICATE. Before a

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

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

19 Sec. 25.05.121. MARRIAGE LICENSE. The marriage license
20 issued by any licensing officer in this state authorizes
21 the marriage ceremony to be performed anywhere in the state.
22 The license shall be directed "to any person authorized by
23 the laws of this state to solemnize marriage," and shall
24 authorize him to solemnize marriage between the parties
25 identified by the license within three months of the date
26 of the license. If either party is not of legal age for
27 marriage, his or her age and the fact of the consent of
28 his or her parents or guardian shall be stated. If either
29 party has previously been married, the number of previous

1 marriages shall be stated. The registrar may require other
2 matter necessary to identify the parties to be included in
3 the license. The issuance of a license does not remove or
4 dispense with any legal disability, impediment, or prohibi-
5 tion rendering marriage between the parties illegal, and a
6 statement to that effect shall be included in the license.

7 ARTICLE IV. MEDICAL REPORTS

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

17 Sec. 25.05.141. LABORATORY RESULTS CONFIDENTIAL. A
18 detailed report of the standard serological tests on a
19 separate laboratory report form to be furnished by the
20 department, together with the premarital certificate, shall
21 be sent from the laboratory to the physician requesting the
22 report. The physician shall retain this report as a part of
23 his confidential files. A duplicate shall be sent by the
24 laboratory to the department where it shall be held in
25 absolute confidence and shall not be open for public inspec-
26 tion. The report shall not be produced for evidence in any
27 court. The reports may be used in the compilation of aggre-
28 gate statistics and reports without disclosing the identities
29 of the persons involved.

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

12 ARTICLE V. SPECIAL CIRCUMSTANCES

13 Sec. 25.05.161. WAIVER OF WAITING PERIOD. If a three-
14 day waiting period would result in undue hardship or delay
15 in an individual case, the licensing officer may waive the
16 three-day requirement.

17 Sec. 25.05.171. MARRIAGEABLE AGE OF CONSENT. (a) A
18 license may be issued to a person under the legal age of
19 marriage if he or she has attained the marriageable age of
20 consent, which is 18 years of age for males and 16 years
21 of age for females, but only if the consent of the minor's
22 parents, or guardian, or of the parent having actual care,
23 custody, and control of the minor is obtained. Consent
24 shall be given by them under oath, and filed of record in
25 the office of the licensing officer and entered by him on
26 the marriage license docket before he issues the license.
27 If there is no guardian of the minor, or if there is no
28 competent person having actual care, custody and control of
29 the minor, then the licensing officer may, in his discretion,

1 make an order consenting to the marriage of the minor.

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

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

29 ARTICLE VI. FORMS, RECORDS, AND REPORTS

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

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

22 Sec. 25.05.211. REPORTS BY MARRIAGE COMMISSIONER. Be-
23 fore the first of each month each marriage commissioner shall
24 forward to the magistrate acting as recorder for the recording
25 district within which the marriage commissioner has juris-
26 diction the duplicate copies of all marriage license docket
27 sheets executed during the preceding month, the completed
28 original marriage certificates and duplicate copies for any
29 marriage ceremonies performed by him during the preceding

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month, and any fees and reports required by rule of the supreme court.

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

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

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

Sec. 25.05.241. FEES. The supreme court shall establish marriage license fees and provide for accounting for and disposing of the fees.

Sec. 25.05.251. VITAL STATISTICS ACT. Nothing in this chapter repeals or abrogates any part of AS 18.50, the Vital Statistics Act. The records and requirements leading up to and including the issuance of the marriage license are not

1 included in the definition of "vital statistics" under that
2 Act; however, the registrar shall supply the necessary forms
3 and instructions for the record work of the licensing
4 officers.

5 ARTICLE VII. SOLEMNIZATION

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

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

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

24 Sec. 25.05.281. MARRIAGE SOLEMNIZED BY UNAUTHORIZED
25 PERSON. After a license has been obtained, a marriage solem-
26 nized before any person professing to be a minister, priest,
27 or rabbi of any church or congregation in the state or any
28 judicial officer or marriage commissioner is valid regardless
29 of a lack of power or authority in the person, if the marriage

1 is consummated with a belief on the part of the persons so
2 married, or either of them, that they have been lawfully
3 joined in marriage.

4 Sec. 25.05.291. CIVIL AND RELIGIOUS CEREMONIES. When
5 a religious ceremony between two parties follows a civil
6 ceremony between them, one license is sufficient for both
7 ceremonies.

8 Sec. 25.05.301. FORM OF SOLEMNIZATION. In the solemn-
9 ization of marriage no particular form is required except that
10 the parties shall assent or declare in the presence of each
11 other and the person solemnizing the marriage, and in the
12 presence of at least two competent witnesses, that they take
13 each other to be husband and wife. A competent witness for
14 this purpose is a person of sound mind capable of under-
15 standing the seriousness of the ceremony. At the time of
16 the ceremony the person solemnizing the marriage shall
17 complete the certification on the original marriage certi-
18 ficate and he and the two attending witnesses shall sign the
19 original marriage certificate and the necessary copies.

20 Sec. 25.05.311. MARRIAGE WITHOUT SOLEMNIZATION. All
21 marriages contracted hereafter are void unless the marriage
22 has been solemnized as provided in this chapter. If the
23 parties to a marriage void for failure to solemnize the
24 marriage validate the marriage by complying with the require-
25 ments of this chapter, any issue of the void marriage are
26 legitimate.

27 Sec. 25.05.321. CERTIFICATES. The person solemnizing
28 the marriage shall, on the forms provided by the bureau,
29 complete two short-form certificates, and after he and the

1 two witnesses have signed them, give one to each of the
2 parties to the marriage. Any church or congregation may
3 design and furnish its own form for this purpose, containing
4 as a minimum the items contained in the form furnished by
5 the bureau. The original marriage certificate and any
6 required copies shall be filed as required by the Vital Statistics
7 Act, (AS 18.50), and regulations issued pursuant to it.
8 The person solemnizing the marriage shall keep the license.

9 ARTICLES VIII. PENALTIES

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

17 Sec. 25.05.341. MISREPRESENTATION AND VIOLATION OF
18 CONFIDENCE. A person who misrepresents any fact required
19 to be stated on the application for a license or any form
20 related to it; or a licensing officer who issues a marriage
21 license without the required premarital certificates or
22 waiver order, or who issues a marriage license having reason
23 to believe that any material facts have been misrepresented;
24 or a state official or employee who knowingly and willfully
25 discloses to an unauthorized person any information dis-
26 closing identity from a premarital laboratory report; or
27 any person who otherwise fails to comply with the provisions
28 of the premarital examination requirements of this chapter,
29 is guilty of a misdemeanor and upon conviction is punishable

1 by a fine of not more than \$500.

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

15 Sec. 25.05.361. UNLAWFUL SOLEMNIZATION OF MARRIAGE.
16 Anyone who solemnizes a marriage without first receiving a
17 proper marriage license from the parties as provided in
18 this chapter or without the parties declaring to take each
19 other as husband and wife, or without requiring the presence
20 of two competent witnesses, or who solemnizes a marriage
21 involving a person under the legal age of marriage without
22 the consent of the licensing official when authorized, the
23 parents or guardian of such person being stated in the license,
24 or who solemnizes a marriage knowing of any legal impediment
25 thereto, or who solemnizes a marriage after the expiration
26 of the license, or who falsely certifies to the date of a
27 marriage solemnized by him, is guilty of a misdemeanor and
28 upon conviction is punishable by imprisonment for not more
29 than six months, or by a fine of not more than \$500, or by

1 both.

2 Sec. 25.05.371. SOLEMNIZATION OF MARRIAGE BY UN-
3 AUTHORIZED PERSON. A person not authorized by this chapter
4 who willfully or knowingly undertakes to solemnize a marriage
5 in this state is guilty of a misdemeanor and upon conviction
6 is punishable by imprisonment for not more than one year, or
7 by a fine of not more than \$1,000 or by both.

8 ARTICLE IX. GENERAL PROVISIONS

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

10 (1) "department" means the Department of Health
11 and Welfare;

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

13 (3) "registrar" means the State Registrar of
14 Vital Statistics:

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

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

20 * Sec. 2. AS 25.05.010 - AS 25.05.280 and AS 25.10 are re-
21 pealed.

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