

No. 46

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2nd Session, 15th Legislature, Alberta  
13 Elizabeth II

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## **BILL 46**

A Bill respecting the Solemnization of Marriage

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HON. DR. ROSS

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Printed by L. S. WALL, Printer to the Queen's Most Excellent Majesty,  
Edmonton, Alberta, 1965

## **Explanatory Note**

**General.** This Bill will repeal and replace The Solemnization of Marriage Act (chapter 319 of the Revised Statutes). It is a revision of that Act with a number of changes, additions and omissions. The section references in the explanatory notes are to the equivalent provisions in the present Act.

**2.** Definitions.

**3.** Who may solemnize a marriage. The present section 3 (1) in part.

**4.** Registration of clergyman. See present section 3.

# BILL

No. 46 of 1965

An Act respecting the Solemnization of Marriage

(Assented to \_\_\_\_\_, 1965)

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "*The Marriage Act*".
2. In this Act,
  - (a) "clergyman" means a person qualified to be registered under section 4;
  - (b) "Director" means the Director of Vital Statistics appointed under *The Vital Statistics Act, 1959*;
  - (c) "issuer" means an issuer of marriage licences appointed under section 11.
3. No person may solemnize a marriage except
  - (a) a clergyman registered under this Act, or
  - (b) a marriage commissioner appointed under this Act.
4. (1) Subject to this section, the Director may register as a person authorized to solemnize marriage any person whose name is submitted to him by the governing authority of the religious body to which the person belongs.
  - (2) A registration under subsection (1) expires on the thirty-first day of December of the year for which the registration is made.
  - (3) No person shall be registered unless the religious body to which he belongs is sufficiently well established, both as to continuity of existence and as to rites and usages respecting the solemnization of marriage, to warrant, in the opinion of the Director, the registration of its clergymen as persons authorized to solemnize marriage.
  - (4) No person shall be registered unless it appears to the Director that
    - (a) the person is twenty-one years of age or over and resident in the Province,
    - (b) the person has been ordained or appointed according to the rites and usages of the religious body to which he belongs or is, by the rules of that religious body, deemed ordained or appointed,

**5.** The Director of Vital Statistics is to keep a record of registered clergymen.

**6.** Duty of religious bodies to inform Director of changes with respect to registered clergymen. See the present section 3 (2).

- (c) the person is recognized by that religious body as entitled to solemnize marriage according to its rites and usages, and
  - (d) the person
    - (i) is in charge of or officiating in connection with a congregation, branch or local unit in the Province of the religious body, or
    - (ii) having been formerly so in charge of or officiating in connection with a congregation, branch or local unit in the Province, has been superannuated or placed on the supernumerary list, or
    - (iii) is a retired clergyman in good standing of the religious body, though not in charge of or officiating in connection with a congregation, branch or local unit.
- (5) Notwithstanding subsection (4), in the case of a person who is in the Province temporarily and who, if he were resident and officiating in the Province, could be registered under this section, the Director may register him as authorized to solemnize marriage during a period to be fixed by the Director, in which case the certificate of registration shall state the period so fixed.

**5.** (1) The Director shall issue a certificate of registration to each clergyman who is registered under this Act.

- (2) The Director shall keep a record showing
  - (a) the name of each clergyman registered under this Act,
  - (b) the name of the religious body to which he belongs,
  - (c) the date of his registration, and
  - (d) his registration number.

- 6.** (1) The governing authority of every religious body
- (a) shall notify the Director when one of its registered clergymen dies or ceases to reside in the Province or in any other way ceases to possess the qualifications entitling him to be registered, and
  - (b) shall send to the Director at least once every year, or oftener as required by the Director, a list of all the members in the Province of that religious body who are recognized by it as entitled to solemnize marriage.

(2) Where it appears to the Director that any person registered under this Act has ceased to possess the qualifications entitling him to be registered, the Director may cancel the registration.

**7.** Appointment of marriage commissioners (the present section 3 (1) (c)) and the form of civil ceremonies.

**8.** A marriage licence is required in every instance—the present sections 4 (a), 5 and 18. A certificate of publication of banns as a legal substitute for a marriage licence is omitted.

**9.** (1) Requirement of witness to a marriage. The present section 7 (1).

(2) Requirement for interpreter.

**10.** Certificate of the marriage to be given.

**7.** (1) The Lieutenant Governor in Council may appoint persons twenty-one years of age or older and resident in the Province as marriage commissioners for the Province or any district of the Province.

(2) No particular form of ceremony is required in the solemnization of a marriage by a marriage commissioner except that in some part of the ceremony, in the presence of the marriage commissioner and the witnesses, each of the parties shall declare:

I do solmenly declare that I do not know of any lawful impediment why I, AB, may not be joined in matrimony to CD.

and each of the parties shall say to the other:

I call upon those persons present to witness that I, AB, do take thee, CD, to be my lawful wedded wife (*or* husband).

(3) Where the parties to a marriage solemnized by a marriage commissioner desire a religious ceremony in addition thereto, a certificate of the marriage given by the marriage commissioner who solemnized it is sufficient authority for a clergyman to perform the religious ceremony.

(4) A religious ceremony performed as mentioned in subsection (3) is in addition to and does not supersede the solemnization of the marriage by the marriage commissioner and this Act does not apply to such a religious ceremony, nor shall it be registered under *The Vital Statistics Act, 1959* as a marriage.

**8.** No person shall solemnize a marriage

- (a) except under the authority of a marriage licence issued to the parties pursuant to this Act, and
- (b) except within three months after the date of the issue of the licence.

**9.** (1) No person shall solemnize a marriage without the presence of the parties and at least two credible adult witnesses.

(2) No person shall solemnize a marriage where one or both of the parties speak a language different to that in which the marriage ceremony is to be performed unless an interpreter is present to interpret and explain clearly to such party or parties the meaning of the ceremony.

**10.** In addition to registering the marriage as required by *The Vital Statistics Act, 1959*, the person who solemnizes a marriage shall give the parties a signed certificate of the marriage specifying the names of the parties, the date and place of the marriage and the names of the witnesses.

**11.** Marriage licence issuers. The present sections 2 (b), 8 and 19.

**12.** Issue of licence. See the present section 6 (1).

**13.** Information required with an application for a marriage licence. See present section 15.

**14.** Further evidence may be required. The present section 17.



**11.** (1) The Lieutenant Governor in Council may appoint for any district issuers of marriage licences.

(2) An issuer may appoint in writing and for a period of not more than three months a deputy to act for him in his absence, and the deputy issuer possesses all the powers of the issuer appointing him, and shall sign each licence issued by him with the name of the issuer as well as his own name in the following manner:

A.B.,  
Issuer of Marriage Licences,  
per C.D.,  
Deputy Issuer.

(3) An issuer is *ex officio* a commissioner empowered to administer oaths and may take and receive the affidavits, declarations or affirmations required under this Act and the regulations.

**12.** An application for a marriage licence shall be made by both parties to an intended marriage and subject to the conditions and prohibitions

(a) of sections 13 to 18, and

(b) of any other law in force in the Province,  
the issuer to whom the application is made shall issue the licence applied for.

**13.** (1) An issuer shall not issue a marriage licence until the prescribed licence fee is paid to him and until each of the applicants for the licence has delivered to him

(a) an affidavit of particulars, in the prescribed form, and

(b) a medical certificate given in accordance with section 22.

(2) The affidavit referred to in subsection (1) shall be sworn to by each applicant before the issuer, except that where either of the applicants is unable to swear the affidavit before the issuer, the issuer may permit the affidavit to be made before a justice of the peace or notary public, in which case the affidavit shall state the reason relied upon to excuse personal attendance before the issuer.

**14.** (1) If an issuer has reason to suspect that any statement in the affidavit of an applicant for a marriage licence is not correct, he shall require a further affidavit or affidavits, or other evidence of the truth of the statement, and all such affidavits and a minute of such evidence shall be forwarded to the Director.

(2) An issuer

(a) may require the production of witnesses to identify any applicant for a licence, and

**15.** Issue of licence to divorced person. See present section 16.

**16.** Marriage of persons under 16. See present section 26.

**17.** Marriage of persons under 21 may require consents. See the present sections 23 and 6 (4).

- (b) may examine under oath or otherwise the applicant or other witnesses as to any matter pertaining to the issue of the licence.

**15. (1)** When a previous marriage of an applicant for a licence has been dissolved by a decree of divorce or declared a nullity, an issuer shall not issue a marriage licence

- (a) until the twenty-first day after the date of entry of the final decree or of the order declaring the nullity, and
- (b) until the applicant furnishes the issuer
  - (i) with a certificate from the clerk of the Supreme Court that no appeal has been entered from the final decree or order declaring the nullity and that the time for appeal has expired, or
  - (ii) where an appeal has been entered, with evidence satisfactory to the issuer that the appeal has been finally disposed of.

(2) Subsection (1) does not apply in the case of a final decree or declaration granted outside the Province, but in such a case the applicant shall furnish the issuer

- (a) with a certificate of the dissolution or annulment or decree absolute or decree of annulment or a certified notarial copy or photocopy thereof, or
- (b) with other evidence of the divorce or annulment satisfactory to the Director.

**16. (1)** No person shall

- (a) issue a marriage licence for, or
  - (b) solemnize the marriage of,
- any person under the age of sixteen years.

(2) This section does not apply with respect to a female who is shown by the certificate of a duly qualified medical practitioner to be either pregnant or the mother of a living child.

**17. (1)** Where either of the applicants for a licence is under the age of twenty-one years, and if the consent of any persons to the marriage is required under section 18, the issuer shall not issue the licence until with respect to the applicant under twenty-one years of age there is deposited with him every consent, if any, required under section 18 or an order under section 19 dispensing with any such consent.

(2) In a case to which subsection (1) applies the issuer shall send, by mail, a notice to all persons who may give the required consent, stating that a marriage licence has been applied for, the name and address of each of the applicants and the requirements of this Act with respect to consent, unless

**18.** Persons whose consents are required. See present sections 23 and 24.

- (a) every required consent or an order dispensing with any such consent, has been deposited with him, or
  - (b) other arrangements, satisfactory to the issuer, are made to obtain the required consents.
- (3) The Director, in his discretion, may authorize an issuer to accept and act upon any document which does not comply with the requirements of the regulation with respect to the form and content of a consent but which, in the circumstances, shows to the satisfaction of the Director that consent to the marriage is given.

18. (1) Subject to this section, the persons whose consents are required for the marriage of a person under twenty-one years of age are

- (a) in the case of a person under eighteen years of age, the father and the mother, and
- (b) in the case of a person over eighteen years of age, either the father or the mother.

(2) Notwithstanding subsection (1),

- (a) where the parents of an applicant are divorced or separated under a decree of judicial separation or a separation agreement, the consent may be given by the parent or other person who has legal custody of the applicant, or
- (b) where one of the parents of an applicant under eighteen years of age is dead or mentally incompetent the consent may be given by the other parent, or
- (c) where both of the parents of an applicant are dead or mentally incompetent the consent may be given by
  - (i) a lawfully appointed guardian, or
  - (ii) an acknowledged guardian who brought up or who for three years immediately preceding the application for a licence has supported the applicant,

or

- (d) where an applicant is a ward of the government under *The Child Welfare Act* the consent may be given by the Superintendent of Child Welfare,

and no other consents are required in respect of that applicant.

(3) Notwithstanding subsection (1), where

- (a) both the parents of an applicant are dead or mentally incompetent and there is no guardian of the applicant, or
- (b) an applicant has been previously married and is now divorced or is a widow or widower, or
- (c) an applicant is
  - (i) an ex-ward of the government under *The Child Welfare Act*, and

**19.** Order dispensing with a consent. The present section 25.

**20.** Petition for presumption of death. The present section 29.

(ii) over the age of eighteen years,  
and a legal guardian has not been appointed for the  
applicant,

no consents are required in respect of that applicant.

(4) Notwithstanding subsection (1), where an applicant

(a) is over the age of eighteen years, and

(b) is living and for not less than three months immediately preceding the date of application for the licence has been living apart from his parents or guardian without having received financial aid from his parents or guardian,

no consent is required in respect of that applicant but the issuer

(c) shall send notice of the application and the requirements of this Act with respect to consent to the persons to whom, but for this subsection, he would be required to send a notice by subsection (2) of section 17, and

(d) may not issue the licence applied for until the eighth day after the day on which the notice was mailed.

(5) The exceptions set out in subsections (2), (3) and (4) only apply with respect to an applicant who deposits with the issuer such proof of the facts as the issuer may require.

**19.** (1) Subject to subsection (2), a person

(a) who is not of the age of twenty-one years, and

(b) who is unable to obtain the consent of a parent or guardian required under section 18,

may, upon notice to the parent or guardian, apply to a judge of the Supreme Court or district court, and the judge may in his discretion grant an order dispensing with the consent.

(2) No order shall be made under this section in respect of a person under the age of sixteen years, unless that person is a female and is shown by a certificate of a duly qualified medical practitioner to be either pregnant, or the mother of a living child.

**20.** (1) Any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may present a petition to the Supreme Court to have it presumed that the other party is dead, and the Court, if satisfied that such reasonable grounds exist, may make a decree of presumption of death.

(2) In any such proceedings the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner and the petitioner has no reason to believe that the other party has been living within that time is evidence that he or she is dead until the contrary is proved.

**21.** Voiding marriage of minors when conditions of Act are not met. The present sections 23 (3) and 27.

**22.** Medical certificate. See the present section 15.



**21.** (1) The consents required under section 18 and the medical certificate required under sections 16 and 19 are a condition precedent to a valid marriage, and where a form of marriage is solemnized between persons, either of whom is under eighteen years of age without a required consent or medical certificate, the marriage is void unless

- (a) carnal intercourse has taken place between the parties prior to the ceremony, or
- (b) the marriage has been consummated, or
- (c) the parties have after the ceremony, cohabited and lived together as man and wife.

(2) Where a marriage is void under subsection (1) the Supreme Court has jurisdiction and power to entertain an action by the person who was at the time of the ceremony under eighteen years of age to declare and adjudge that a valid marriage was not effected and entered into, and the Court shall so declare and adjudge if it is made to appear

- (a) that a consent required under section 18 or a medical certificate required under section 16 or 19 was not obtained prior to the ceremony, and
- (b) that
  - (i) carnal intercourse did not take place between the parties prior to the ceremony,
  - (ii) the marriage has not been consummated, and
  - (iii) the parties have not, after the ceremony, cohabited and lived together as man and wife, and
- (c) that the action was brought before the person bringing it attained the age of nineteen years.

**22.** (1) The medical certificate required by section 13 shall be given by a duly qualified medical practitioner, except that in the case of a person residing at a place where it is impossible to obtain the certificate of a duly qualified medical practitioner without great trouble or inconvenience, the issuer may, if he is satisfied of the foregoing circumstances, accept the certificate of a municipal nurse instead of the certificate of a duly qualified medical practitioner.

(2) The certificate shall

- (a) certify that a specimen of blood for the serologic test for syphilis has been taken from the applicant and has been or will be sent to the Provincial Laboratory or to a laboratory approved by the Director of the Provincial Laboratory and that the result of the test will be conveyed to the applicant, and
- (b) show that the specimen was taken within fourteen days before the date of application for the marriage licence.

**23.** Validation of marriage when Act not fully complied with.  
The present section 28.

**24.** Protection from actions. The present section 30.

**25.** Unlawfully performing marriage ceremony. The present  
section 31.

**26.** Offence and penalty. The present sections 32 and 34.

**27.** Offence to marry people who are in a state of incompetence.  
The present section 35.

(3) The person who takes a blood specimen pursuant to this section is entitled to receive from the person whose blood is taken a fee not exceeding two dollars.

(4) A laboratory to whom a blood specimen is sent shall notify the Director of the Division of Social Hygiene of the Department of Public Health of all tests that are found positive, and if the Director is not satisfied from the result of the test he may require the person whose blood was taken to submit to further tests.

**23.** (1) A marriage is not invalidated by reason only of a contravention of or non-compliance with this Act

(a) by the person who solemnized the marriage, or

(b) by the person who issued the licence for the marriage,

and the Supreme Court may, if satisfied it is proper to do so, declare that the marriage was lawfully solemnized notwithstanding any such contravention or non-compliance.

(2) An application for an order under subsection (1) may be made on petition by

(a) a party to the marriage, or

(b) the Attorney General, or

(c) the Director,

either *ex parte* or upon such notice as the judge directs.

**24.** No person who solemnizes a marriage in conformity with this Act is subject to any action or liability for damage or otherwise by reason of there having been any legal impediment to the marriage unless at the time when he performed the ceremony he was aware of the impediment.

**25.** If any person who, having been a clergyman, marriage commissioner or other person having the right to solemnize marriage, has been deposed from his ministry, or deposed or removed from the office by virtue of which he was authorized to solemnize marriage, thereafter solemnizes or undertakes to solemnize any marriage, he is guilty of an offence and liable on summary conviction to a fine of five hundred dollars or to imprisonment for a term of not more than twelve months, or to both fine and imprisonment.

**26.** A person who

(a) issues a marriage licence, or

(b) solemnizes a marriage,

contrary to this Act is guilty of an offence and liable on summary conviction to a fine of not more than one hundred dollars and in default of payment to imprisonment for a term not exceeding thirty days.

**27.** A person who

(a) issues a licence, or

**28.** Offence to make false statement.

**29.** Regulations.

**30.** Repeal of chapter 319 of the Revised Statutes.

**31.** Commencement of Act.

(b) solemnizes a marriage,  
knowing or having reason to believe that either of the parties to the intended marriage or to the marriage is mentally defective or mentally ill or is under the influence of intoxicating liquor or narcotic drugs, is guilty of an offence and liable on summary conviction to a fine of not more than five hundred dollars and in default of payment to imprisonment for a term not exceeding one year.

**28.** A person who knowingly makes any false statement in any document required under this Act, for which he is not otherwise punishable on conviction, is guilty of an offence and liable on summary conviction to a fine of not more than one hundred dollars and in default of payment to imprisonment for a term not exceeding thirty days.

**29.** The Lieutenant Governor in Council may make regulations

- (a) prescribing the fees to be paid for marriage licences,
- (b) prescribing the forms to be used in carrying out the provisions of this Act,
- (c) prescribing the duties of, the procedures to be followed by, and the fees payable to issuers of marriage licences,
- (d) authorizing the filing of special returns by an issuer of marriage licences in exceptional cases,
- (e) authorizing every Indian agent in Alberta to act *ex officio* as issuer of marriage licences for the Indians under his jurisdiction,
- (f) authorizing every Supervisor of a Metis Colony in Alberta to act *ex officio* as issuer of marriage licences for the Metis under his jurisdiction,
- (g) authorizing the waiving of the requirement of blood tests under certain conditions,
- (h) prescribing the fee that may be charged for a marriage ceremony performed by a marriage commissioner, and
- (i) for the purpose of effectively securing the due observance of this Act, and generally for the better carrying out of the provisions hereof and obtaining the information required hereby.

**30.** *The Solemnization of Marriage Act* is repealed.

**31.** This Act comes into force on the first day of January, 1966.

No. 46

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SECOND SESSION

FIFTEENTH LEGISLATURE

13 ELIZABETH II

1965

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**BILL**

An Act respecting the Solemnization  
of Marriage

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Received and read the

First time.....

Second time.....

Third time.....

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HON. DR. ROSS

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