

1 HB362
2 175045-1
3 By Representative Hill (J)
4 RFD: Judiciary
5 First Read: 03-MAR-16

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8 SYNOPSIS: Under existing law, marriage licenses are
9 issued by the judge of probate and the marriage is
10 required to be solemnized by a person authorized to
11 perform marriages.

12 This bill establishes the procedure for two
13 people to enter into a marriage and requires the
14 recording of such marriage with the judge of
15 probate.

16 This bill would require the judge of probate
17 to transmit each recorded marriage received by the
18 judge of probate during the preceding calendar
19 month to the Office of Vital Statistics on or
20 before the fifth day of the following calendar
21 month.

22 This bill would eliminate the requirement of
23 marriage licenses.

24 This bill would provide that the two parties
25 desiring to enter into a marriage must record
26 certain affidavits, forms, and data regarding the

1 parties entering into the marriage with the judge
2 of probate.

3 This bill would provide that it shall be the
4 responsibility of the two parties entering into the
5 marriage to record the required documentation with
6 the judge of probate. This bill would specify that
7 the judge of probate would have no authority to
8 reject any recording of a marriage, so long as the
9 affidavits, forms, and data are provided.

10 This bill would provide that a religious,
11 civil, or independent ceremony of marriage, or
12 other officiation, or administration of marital
13 vows may be conducted or engaged in by the parties.

14 This bill would eliminate the requirement
15 for solemnization of a marriage for it to be
16 considered valid.

17 This bill would provide for an additional
18 fee to be collected by the judge of probate for
19 recording the marriage.

20
21 A BILL

22 TO BE ENTITLED

23 AN ACT

24
25 To amend Sections 22-9A-17, 30-1-5, 30-1-12, and
26 30-1-16 of the Code of Alabama 1975, to abolish the
27 requirement that a marriage license be issued by the judge of

1 probate and replace existing state statutory marriage law with
2 a statutory contract for marriage; to provide that a marriage
3 would be entered into by two parties; to provide that the
4 judge of probate would record each marriage presented to the
5 probate court for recording and would forward the contract to
6 the Office of Vital Statistics; to provide for the content of
7 a properly formed marriage; to provide for a recording fee;
8 and to repeal Sections 30-1-9, 30-1-10, 30-1-11, 30-1-13, and
9 30-1-14 of the Code of Alabama 1975.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Sections 22-9A-17, 30-1-5, 30-1-12, and
12 30-1-16 of the Code of Alabama 1975, are amended to read as
13 follows:

14 "§22-9A-17.

15 ~~"(a) A record of each marriage performed in this~~
16 ~~state shall be filed with the Office of Vital Statistics and~~
17 ~~shall be registered if it has been completed and filed in~~
18 ~~accordance with this section.~~

19 ~~"(b) The judge of probate who issues the marriage~~
20 ~~license shall prepare the record on the form or in a format~~
21 ~~prescribed and furnished by the State Registrar upon the basis~~
22 ~~of information obtained from the parties to be married.~~

23 ~~"(c) Each person who performs a marriage shall~~
24 ~~certify the fact of marriage and return the record to the~~
25 ~~judge of probate who issued the license within 30 days after~~
26 ~~the ceremony.~~

1 ~~"(d) Every judge of probate issuing marriage~~
2 ~~licenses shall complete and forward to the Office of Vital~~
3 ~~Statistics on or before the fifth day of each calendar month~~
4 ~~the records of marriage returned to the judge of probate~~
5 ~~during the preceding calendar month.~~

6 "(a) Two persons desiring to unite in marriage may
7 do so by submitting the affidavits, forms, and data specified
8 in Section 30-1-5 and Section 2 of the act amending this
9 section for recording with the office of the judge of probate.
10 The recording of the affidavits, forms, and data establishes
11 legal recognition of the marriage as of the date the
12 affidavits and forms were properly signed by the two parties
13 so long as such documentation was provided to the probate
14 office within 30 days of the last party's signature. Each
15 marriage filed with the probate office shall be filed and
16 registered with the Office of Vital Statistics.

17 "(b) The office of the judge of probate shall
18 record, in a permanent record, each marriage presented to the
19 probate office for filing so long as the affidavits, forms,
20 and data are submitted as required by this act, and shall
21 forward each marriage filed with the probate office during the
22 preceding calendar month to the Office of Vital Statistics on
23 or before the fifth day of the following calendar month.

24 "§30-1-5.

25 "If the person intending to marry is at least 16
26 years of age and under 18 years of age and has not had a
27 former wife or husband, ~~the judge of probate shall require the~~

1 ~~consent of the parents or guardians of the minor to the~~
2 ~~marriage, to be given either personally or in writing, and, if~~
3 ~~the latter, the execution thereof shall be proved. The judge~~
4 ~~of probate shall also require a bond to be executed in the~~
5 ~~penal sum of two hundred dollars (\$200), payable to the State~~
6 ~~of Alabama, with condition to be void if there is no lawful~~
7 ~~cause why such marriage should not be celebrated~~ the consent
8 of the parents or guardians of the minor to the marriage shall
9 be required. Evidence of consent shall be in the form of an
10 affidavit signed by a parent or guardian, notarized, and filed
11 with the probate court.

12 "§30-1-12.

13 "The judge of probate must keep a book, in which
14 shall be registered all ~~licenses issued by him and which shall~~
15 ~~state whether the parties, or either of them, were of the age~~
16 ~~specified in Section 30-1-5. If not, he must also state~~
17 ~~whether either of them had been previously married, or if~~
18 ~~consent had been given to the marriage by the parent or~~
19 ~~guardian. If such consent was in writing, he must transcribe~~
20 ~~it on the same page on which he records the license, and the~~
21 ~~record so made, or a certified copy thereof, is presumptive~~
22 ~~evidence of the facts~~ marriages filed in the office. The judge
23 of probate shall record, in a permanent record, all marriages
24 presented to the probate court and shall forward the original
25 documentation to the Office of Vital Statistics in accordance
26 with Section 22-9A-17.

27 "§30-1-16.

1 ~~"(a) In all instances where a marriage license has~~
2 ~~been issued and certificate returned and vital error has been~~
3 ~~made on the face of the application, license, or certificate,~~
4 ~~necessitating that a correction be made thereof, the judge of~~
5 ~~probate of the county in which the license was issued shall,~~
6 ~~upon proper petition being filed by either party to the~~
7 ~~marriage or someone delegated or authorized by him or her, in~~
8 ~~his or her name and behalf, giving the names and residences of~~
9 ~~the parties to the marriage, and if the residence is not~~
10 ~~known, an affidavit by petitioner or petitioner's attorney~~
11 ~~that the residence is not known and that diligent effort has~~
12 ~~been made to locate same, together with a clear statement~~
13 ~~setting up wherein the correction should be made in the~~
14 ~~application license or certificate, set a date for hearing the~~
15 ~~petition after first having given notice of the time and place~~
16 ~~of the hearing for at least six days by personal service~~
17 ~~thereof if the other resides in the State of Alabama, unless~~
18 ~~both parties join in the petition and in such case the~~
19 ~~petition may be set down for immediate hearing. If the other~~
20 ~~party to the marriage is a nonresident or has absented himself~~
21 ~~or herself from the state for six months or longer and his or~~
22 ~~her address is known, then service may be made by sending a~~
23 ~~copy of the petition by registered or certified mail, with~~
24 ~~return receipt requested, to the address of the other party.~~
25 ~~If the address is not known, service may be made by~~
26 ~~advertisement in a newspaper published in the county where the~~
27 ~~petition is filed by one weekly insertion therein.~~

1 ~~"(b) The judge of probate shall, after the filing of~~
2 ~~the petition and proof of service thereon made, hear any~~
3 ~~competent evidence that may be offered or such as may be~~
4 ~~required by him, and if he is satisfied from the proof made~~
5 ~~that the alleged error or mistake should be corrected,~~
6 ~~thereupon enter a decree correcting same.~~

7 ~~"(c) The decree made and entered as herein provided~~
8 ~~shall be recorded in a permanent record in the office of the~~
9 ~~judge of probate and a copy thereof sent to the Office of~~
10 ~~Vital Statistics of the State of Alabama, and a certified copy~~
11 ~~of the decree issued by the Office of Vital Statistics shall~~
12 ~~be admissible evidence and prima facie proof in any court of~~
13 ~~the correctness of the facts stated therein.~~

14 ~~"(d) The cost of the proceeding shall be paid as~~
15 ~~provided by law in proceedings in the probate court of the~~
16 ~~State of Alabama, same to be paid by the petitioner or~~
17 ~~petitioners.~~

18 "In all marriages where a vital error has been made,
19 the parties to the marriage may file amended affidavits,
20 forms, and data with the judge of probate. The fee for filing
21 amended affidavits, forms, and data shall be the same as for
22 an original filing. The amended affidavits, forms, and data
23 shall state that they are amended and shall reference the date
24 in which the original affidavits, forms, and data were filed.
25 The judge of probate shall record the amended affidavits,
26 forms, and data if agreed to by the parties and shall forward
27 the original amended affidavits, forms, and data to the Office

1 of Vital Statistics. If the parties cannot agree on the
2 amended affidavits, forms, and data, either party may file an
3 action in circuit court to correct the error."

4 Section 2. (a) On the effective date of this act and
5 thereafter, the only requirement for a marriage in this state
6 shall be for parties who are otherwise legally authorized to
7 be married to enter into a marriage as provided herein.

8 (b) The marriage document required to be executed by
9 the parties shall contain information to identify the parties
10 as set forth in Section 22-9A-6, Code of Alabama 1975, as well
11 as the following minimum information:

12 (1) The full legal names of both of the parties.

13 (2) A notarized affidavit from each party declaring
14 all of the following:

15 a. The affiant is not currently married.

16 b.1. The affiant is not a minor; or

17 2. The affiant is a minor and has the consent of a
18 parent or guardian.

19 c. The affiant is legally competent to enter into a
20 marriage.

21 d. The parties are not related by blood or adoption
22 such that the marriage would violate Section 13A-13-3, Code of
23 Alabama 1975.

24 e. The affiant is entering into the marriage
25 voluntarily and of his or her own free will and not under
26 duress or undue influence.

27 (3) The signatures of the parties.

1 (4) If one of the parties to the marriage is a
2 minor, a sworn affidavit of the parent or guardian of the
3 minor consenting to the marriage.

4 (c) A marriage conforming to the requirements of
5 this section shall be valid on the date the marriage is
6 executed by both parties, provided the affidavits, forms, and
7 data are recorded in the office of the judge of probate within
8 30 days of the date of the last party's signature in
9 accordance with Section 22-9A-17 of the Code of Alabama 1975.

10 (d) A civil and independent or religious ceremony of
11 marriage, celebration of marriage, solemnization of marriage,
12 or any other officiation, or administration of the vows of
13 marriage may be conducted or engaged in by the parties by an
14 officiant or other presiding person to be selected by the
15 persons entering into the marriage. The state shall have no
16 requirement for any such ceremony or proceeding which, if
17 performed or not performed, will have no legal effect upon the
18 validity of the marriage.

19 (e) The affidavits, forms, and data shall be filed
20 in the office of the judge of probate and shall constitute a
21 legal record of the marriage of the parties. A copy of the
22 form provided by the Office of Vital Statistics shall be
23 transmitted by the office of the judge of probate to the
24 Office of Vital Statistics and made a part of its record.

25 (f) A judge of probate shall accept for recording a
26 certificate of marriage for an out-of-state marriage. Such
27 recording with the office of the judge of probate shall be

1 prima facie evidence of the validity of the out-of-state
2 marriage. Certificates of marriage for out-of-state marriages
3 shall not be forwarded to the Office of Vital Statistics.

4 (g) This section shall not affect any other legal
5 aspects of marriage in this state, including, but not limited
6 to, divorce, spousal support, child custody, or child support.

7 (h) All requirements to obtain a marriage license by
8 the State of Alabama are hereby abolished and repealed. The
9 requirement of a ceremony of marriage to solemnized the
10 marriage is abolished.

11 (i) The Department of Public Health shall prepare a
12 form to meet the minimum requirements of this act.

13 Section 3. In addition to all other fees collected
14 by the judge of probate for recording a civil contract of
15 marriage, the judge of probate shall collect an additional fee
16 of thirty-five dollars (\$35) which shall be forwarded to the
17 State Treasurer and deposited into the State General Fund.
18 This additional fee shall be in addition to any fees provided
19 for in Section 30-6-11, Code of Alabama 1975, as last amended
20 by Act 2015-493, 2015 Regular Session.

21 Section 4. Sections 30-1-9, 30-1-10, 30-1-11,
22 30-1-13, and 30-1-14 of the Code of Alabama 1975, are
23 repealed.

24 Section 5. This act shall become effective 60 days
25 following its passage and approval by the Governor, or its
26 otherwise becoming law.