

1 SB20
2 180824-2
3 By Senator Albritton
4 RFD: Judiciary
5 First Read: 07-FEB-17
6 PFD: 01/04/2017

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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
18 A BILL

19 TO BE ENTITLED

20 AN ACT

21
22 To amend Sections 22-9A-17, 30-1-5, 30-1-12, and
23 30-1-16 of the Code of Alabama 1975, to abolish the
24 requirement that a marriage license be issued by the judge of
25 probate and replace existing state statutory marriage law; to
26 provide that a marriage would be entered into by two parties;
27 to provide that the judge of probate would record each

1 marriage presented to the probate court for recording and
2 would forward the document to the Office of Vital Statistics;
3 to provide for the content of a properly formed marriage; and
4 to repeal Sections 30-1-9, 30-1-10, 30-1-11, 30-1-13, and
5 30-1-14 of the Code of Alabama 1975.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Sections 22-9A-17, 30-1-5, 30-1-12, and
8 30-1-16 of the Code of Alabama 1975, are amended to read as
9 follows:

10 "§22-9A-17.

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

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

19 ~~"(c) Each person who performs a marriage shall~~
20 ~~certify the fact of marriage and return the record to the~~
21 ~~judge of probate who issued the license within 30 days after~~
22 ~~the ceremony.~~

23 ~~"(d) Every judge of probate issuing marriage~~
24 ~~licenses shall complete and forward to the Office of Vital~~
25 ~~Statistics on or before the fifth day of each calendar month~~
26 ~~the records of marriage returned to the judge of probate~~
27 ~~during the preceding calendar month.~~

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

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

19 "§30-1-5.

20 "~~If the~~ a person intending to marry is at least 16
21 years of age and under 18 years of age and has not had a
22 former wife or husband, ~~the judge of probate shall require the~~
23 ~~consent of the parents or guardians of the minor to the~~
24 ~~marriage, to be given either personally or in writing, and, if~~
25 ~~the latter, the execution thereof shall be proved. The judge~~
26 ~~of probate shall also require a bond to be executed in the~~
27 ~~penal sum of two hundred dollars (\$200), payable to the State~~

1 of Alabama, with condition to be void if there is no lawful
2 cause why such marriage should not be celebrated the consent
3 of a parent or guardian of the minor to the marriage shall be
4 required. Evidence of consent shall be in the form of an
5 affidavit signed by a parent or guardian, notarized, and filed
6 with the probate court.

7 "§30-1-12.

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

22 "§30-1-16.

23 "(a) In all instances where a marriage license has
24 been issued and certificate returned and vital error has been
25 made on the face of the application, license, or certificate,
26 necessitating that a correction be made thereof, the judge of
27 probate of the county in which the license was issued shall,

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

23 "(b) The judge of probate shall, after the filing of
24 the petition and proof of service thereon made, hear any
25 competent evidence that may be offered or such as may be
26 required by him, and if he is satisfied from the proof made

1 ~~that the alleged error or mistake should be corrected,~~
2 ~~thereupon enter a decree correcting same.~~

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

10 ~~"(d) The cost of the proceeding shall be paid as~~
11 ~~provided by law in proceedings in the probate court of the~~
12 ~~State of Alabama, same to be paid by the petitioner or~~
13 ~~petitioners.~~

14 "In all marriages where a vital error has been made,
15 the parties to the marriage may file amended affidavits,
16 forms, and data with the judge of probate. The fee for filing
17 amended affidavits, forms, and data shall be the same as for
18 an original filing. The amended affidavits, forms, and data
19 shall state that they are amended and shall reference the date
20 in which the original affidavits, forms, and data were filed.
21 The judge of probate shall record the amended affidavits,
22 forms, and data if agreed to by the parties and shall forward
23 the original amended affidavits, forms, and data to the Office
24 of Vital Statistics. If the parties cannot agree on the
25 amended affidavits, forms, and data, either party may file an
26 action in circuit court to correct the error."

1 Section 2. (a) On the effective date of this act and
2 thereafter, the only requirement for a marriage in this state
3 shall be for parties who are otherwise legally authorized to
4 be married to enter into a marriage as provided herein.
5 However, the judge of probate shall continue to collect the
6 recording fee provided for in subdivision (32) of subsection
7 (b) of Section 12-19-90 for each marriage recorded with the
8 judge of probate. Futhermore, at the time the marriage is
9 recorded, the judge of probate shall also collect the fee
10 provided for in Section 30-6-11 to be distributed as provided
11 in that section.

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

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

17 (2) A notarized affidavit from each party declaring
18 all of the following:

19 a. The affiant is not currently married.

20 b.1. The affiant is at least 18 years of age; or

21 2. The affiant is at least 16 and under 18 years of
22 age and has the consent of a parent or guardian.

23 c. The affiant is legally competent to enter into a
24 marriage.

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

1 e. The affiant is entering into the marriage
2 voluntarily and of his or her own free will and not under
3 duress or undue influence.

4 (3) The signatures of the parties.

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

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

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

1 (f) This section shall not affect any other legal
2 aspects of marriage in this state, including, but not limited
3 to, divorce, spousal support, child custody, or child support.

4 (g) All requirements to obtain a marriage license by
5 the State of Alabama are hereby abolished and repealed. The
6 requirement of a ceremony of marriage to solemnized the
7 marriage is abolished.

8 (h) The Alabama Law Institute, in collaboration with
9 the Department of Public Health, shall prepare a form to meet
10 the minimum requirements of this act.

11 Section 3. Sections 30-1-9, 30-1-10, 30-1-11,
12 30-1-13, and 30-1-14 of the Code of Alabama 1975, are
13 repealed.

14 Section 4. This act shall become effective 90 days
15 following its passage and approval by the Governor, or its
16 otherwise becoming law.