

NOTE: At the time of the vote, the Legislature did not have an available copy of the bill text as voted on. For your convenience, Vote Smart staff has created this updated version of the bill by incorporating changes made by published Committee Reports and/or Amendments into the available text. This updated version accurately reflects the state of the bill as voted on.

SB21

171576-3

By Senator Albritton

RFD: Finance and Taxation General Fund

First Read: 08-SEP-15

ENGROSSED

A BILL
TO BE ENTITLED
AN ACT

To amend Sections 22-9A-17, 30-1-5, 30-1-12, 30-1-13, and 30-1-16 of the Code of Alabama 1975, to abolish the requirement that a marriage license be issued by the judge of probate and replace existing state statutory marriage law with a statutory contract for marriage; to provide that a marriage would be entered into by contract; to provide that the judge of probate would record each contract of marriage presented to the probate court for recording and would forward the contract to the Office of Vital Statistics; to provide for the content of a properly executed contract of marriage; to confirm the continued existence of common law marriage in Alabama; and to repeal Sections 30-1-9, 30-1-10, 30-1-11, and 30-1-14 of the Code of Alabama 1975.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§22-9A-17.

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

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

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

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

"(a) Two individuals desiring to unite in marriage may do so by entering into a civil contract of marriage filed with the office of the judge of probate. The recording of a civil contract of marriage with the office of the judge of probate shall be presumptive evidence of the validity of the marriage. Each civil contract of marriage filed with the probate office shall be filed and registered with the Office of Vital Statistics and shall be registered.

"(b) The office of the judge of probate shall record, in

permanent record, each civil contract of marriage presented to the probate office for filing and shall forward a copy of each civil contract of marriage filed with the probate office during the preceding calendar month to the Office of Vital Statistics on or before the fifth day of the following calendar month.

"§30-1-5.

"If the person intending to marry is at least 16 years of age and under 18 years of age and has not had a former wife or husband, ~~the judge of probate shall require the consent of the parents or guardians of the minor to the marriage, to be given either personally or in writing, and, if the latter, the execution thereof shall be proved. The judge of probate shall also require a bond to be executed in the penal sum of two hundred dollars (\$200), payable to the State of Alabama, with condition to be void if there is no lawful cause why such marriage should not be celebrated~~ the consent of the parents or guardians of the minor to the marriage shall be required. Evidence of consent shall be in the form of an affidavit signed by the parents or guardians and filed with the probate court.

"§30-1-12.

"The judge of probate must keep a book, in which shall be registered all ~~licenses issued by him and which shall state whether the parties, or either of them, were of the age specified in Section 30-1-5. If not, he must also state whether either of them had been previously married, or if~~

~~consent had been given to the marriage by the parent or guardian. If such consent was in writing, he must transcribe it on the same page on which he records the license, and the record so made, or a certified copy thereof, is presumptive evidence of the facts~~ civil contracts of marriage filed in the office. The judge of probate shall record, in a permanent record, all civil contracts of marriage presented to the probate court and shall forward a copy to the Office of Vital Statistics in accordance with Section 22-9A-17.

"§30-1-13.

~~"All persons or religious societies solemnizing marriage by virtue of a license or according to their peculiar forms must, within one month thereafter, certify the fact in writing to the judge of probate, setting forth the names of the parties and the time and place of the celebration thereof, which certificate must be recorded in the book kept for the registry of licenses. A certified copy thereof is presumptive evidence of the fact.~~

"Persons wishing to unite in a civil contract of marriage shall file the executed contract with the office of the judge of probate within one month of execution of the contract by both parties.

"§30-1-16.

~~"(a) In all instances where a marriage license has been issued and certificate returned and vital error has been made on the face of the application, license, or certificate,~~

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

~~"(b) The judge of probate shall, after the filing of the petition and proof of service thereon made, hear any competent evidence that may be offered or such as may be~~

~~required by him, and if he is satisfied from the proof made that the alleged error or mistake should be corrected, thereupon enter a decree correcting same.~~

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

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

"In all instances where a vital error has been made in such a civil contract, the parties to the civil contract may file a corrected contract with the judge of probate. The fee for a corrected contract shall be the same as for an original contract. The corrected contract shall state that it is a corrected contract and shall reference the date in which the original contract was filed. The judge of probate shall record the corrected contract agreed to by the parties and shall forward a copy of the corrected contract to the Office of Vital Statistics. If the parties cannot agree on the corrected contract, either party to the contract may file an action in circuit court to correct the error."

Section 2. (a) Two individuals who are otherwise legally authorized to be married may enter into a civil contract of marriage as provided herein.

(b) The civil contract shall contain information to identify the parties as set forth in Section 22-9A-6, Code of Alabama 1975, as well as the following minimum information:

- (1) The names, addresses and birthdates of the parties.
- (2) A statement that the parties are legally authorized to be married.
- (3) A statement that the parties voluntarily and of their own free will enter into a marriage.
- (4) The signatures of the parties.
- (5) The signatures of two adult witnesses.
- (6) If one of the parties to the marriage is a minor, a sworn affidavit of the parent or guardian of the minor consenting to the marriage if required by section 30-1-5.

(c) A civil contract conforming to the requirements of this section shall be valid on the date the civil contract is executed by both parties, provided the contract is recorded in the office of the judge of probate in accordance with Section 22-9A-17 of the Code of Alabama 1975.

(d) A civil and independent or religious ceremony of marriage, celebration of marriage, solemnization of marriage, or any other officiation, or administration of the vows of marriage may be conducted or engaged in by the parties to the civil contract by an officiant or other presiding party to be selected by the parties to the contract. The state shall have

no requirement for any such ceremonial proceeding which, if performed or not performed, will have no legal effect upon the validity of the civil contract.

(e) The civil contract shall be filed in the office of the judge of probate and shall constitute a legal record of the marriage of the parties. A copy of the contract shall be transmitted by the office of the judge of probate to the Office of Vital Statistics of the Department of Public Health and made a part of its record.

(f) A judge of probate shall accept for recording a certificate of marriage for an out-of-state marriage. Such recording with the office of the judge of probate shall be presumptive evidence of the validity of the out-of-state marriage. Certificates of marriage for out-of-state marriages shall not be forwarded to the Office of Vital Statistics.

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

(h) All requirements to obtain a marriage license by the State of Alabama are hereby abolished and repealed. Provided however, any license issued prior to the effective date of this act shall be valid for thirty (30) days following issuance.

(i) The circuit courts have jurisdiction to correct

any error in a civil contract of marriage pursuant to a civil action.

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

Section 3. The term "marriage license" appearing anywhere in the code of Alabama including, but not limited to, Sections 12-19-90(a)(32) and 30-6-11, Code of Alabama, 1975, shall include a civil contract of marriage.

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

Section 5. This act shall become effective November 1, 2015 following its passage and approval by the Governor, or its otherwise becoming law.

Senate

Read for the first time and referred to the Senate committee on Finance and Taxation General Fund ...	08-SEP-15
Read for the second time and placed on the calendar.....	10-SEP-15
Read for the third time and passed as amended	11-SEP-15

Yeas 26
Nays 2

Patrick Harris
Secretary