SB143

174114-4

By Senator Albritton

RFD: Judiciary

First Read: 03-FEB-16
ENGROSSED

A BILL

TO BE ENTITLED

AN ACT

To amend Sections 22-9A-17, 30-1-5, 30-1-12, 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 two parties; to provide that the judge of probate would record each 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 formed marriage; and to repeal Sections 30-1-9, 30-1-10, 30-1-11, 30-1-13, 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, 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 persons desiring to unite in marriage may do so by submitting the affidavits, forms, and data specified in Section 30-1-5 and Section 2 of the act amending this section for recording with the office of the judge of probate. The recording of the affidavits, forms, and data establishes legal recognition of the marriage as of the date the affidavits and forms were properly signed by the two parties so long as such documentation was provided to the probate office within 30 days of the last party's signature. Each
(b) The office of the judge of probate shall record, in a permanent record, each marriage presented to the probate office for filing so long as the affidavits, forms, and data are submitted as required by this act, and shall forward each 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 a parent or guardian, notarized, 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 marriages filed in the office. The judge
of probate shall record, in a permanent record, all marriages
presented to the probate court and shall forward the original
documentation to the Office of Vital Statistics in accordance
with Section 22-9A-17.

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

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

(b) The marriage document required to be executed by the parties 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 full legal names of both of the parties.
(2) A notarized affidavit from each party declaring all of the following:

a. The affiant is not currently married.

b.1. The affiant is not a minor; or
2. The affiant is a minor and has the consent of a parent or guardian.

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

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

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

(3) The signatures of the parties.

(4) 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.

(c) A marriage conforming to the requirements of this section shall be valid on the date the marriage is executed by both parties, provided the affidavits, forms, and data are recorded in the office of the judge of probate within 30 days of the date of the last party's signature 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
A marriage may be conducted or engaged in by the parties by an officiant or other presiding person to be selected by the persons entering into the marriage. The state shall have no requirement for any such ceremony or proceeding which, if performed or not performed, will have no legal effect upon the validity of the marriage.

(e) The affidavits, forms, and data 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 form provided by the Office of Vital Statistics shall be transmitted by the office of the judge of probate to the Office of Vital Statistics 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 prima facie 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, or child support.

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

(i) The Department of Public Health shall prepare a form to meet the minimum requirements of this act.
Section 3. Sections 30-1-9, 30-1-10, 30-1-11, 30-1-13, and 30-1-14 of the Code of Alabama 1975, are repealed.

Section 4. This act shall become effective 60 days 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 Judiciary............................ Q3-FEB-16

Read for the second time and placed on the calendar with 1 substitute and............................ Q3-MAR-16

Read for the third time and passed as amended .... 15-MAR-16

Yeas 23
Nays 3

Patrick Harris
Secretary