SB377

By Senators Albritton, Allen, Waggoner, Pittman, and Singleton

RFD: Judiciary

First Read: 14-APR-15
SYNOPSIS: Under existing law, the judge of probate issues marriage licenses upon proof that the parties are eligible to marry and, if either party is not of age, the proper consent has been obtained from a parent or guardian. Also under existing law, the judge of probate collects fees for each license issued; the license is valid for 30 days; the parties to the marriage must have a marriage ceremony performed or the marriage solemnized by a religious official or other official authorized by law to solemnize marriages, and the official solemnizing the marriage must return the completed license form indicating that the ceremony was performed and the date it was performed to the judge of probate within the 30-day period for recording; and the judge of probate is required to forward the completed license to the Office of Vital Statistics.
This bill would abolish the requirement to obtain a marriage license from the judge of probate.

This bill would provide that marriage would be entered into by simple contract, would specify the information required to be included in the contract of marriage, would specify that each party entering into a contract of marriage would submit a properly executed contract to the judge of probate for recording, and would require the judge of probate to forward a copy of the contract of marriage to the Office of Vital Statistics.

This bill would also authorize the judge of probate to collect a fee for recording the contract of marriage. This bill would provide that the fee currently collected by the judge of probate and paid to the district attorney upon issuance would be paid when the marriage contract is presented for recording.

This bill would provide for an additional fee to be paid to the General Fund.

A BILL
TO BE ENTITLED
AN ACT
To amend Sections 12-19-90, 22-9A-17, 30-1-5, 30-1-12, 30-1-13, 30-1-14, 30-1-16, and 30-6-11 of the Code of Alabama 1975, to abolish the requirement that a marriage license be issued by the judge of probate; 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 office 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 provide fees for recording; and to repeal Sections 30-1-9, 30-1-10, and 30-1-11 of the Code of Alabama 1975.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. (a) Effective July 1, 2015, the only requirement to be married in this state shall be for parties who are otherwise legally authorized to be married to enter into a contract of marriage as provided herein.

(b) A contract to be married shall contain the following minimum information:

(1) The names of the parties.

(2) A statement that the parties are legally authorized to be married.

(3) A statement that the parties voluntarily and based on each parties' own freewill enter into a marriage.

(4) The signatures of the parties.
The marriage contract shall be executed in the office of the judge of probate and shall be witnessed by two adult witnesses.

(c) A marriage contract meeting the requirements of this section shall be valid upon signing.

(d) No civil or religious ceremony shall be required to be married.

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

(f) 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.

(g) A recording fee of twenty-five dollars ($25) pursuant to Section 12-19-90, Code of Alabama 1975, an additional fee of thirty dollars ($30) pursuant to Section 30-6-11, Code of Alabama 1975, and an additional fee of twenty dollars ($20) pursuant to Section 3 shall be paid to the judge of probate upon filing of a marriage contract pursuant to this act. If the parties elect to file a longer contract, the parties shall pay an additional fee of two dollars ($2) for each additional page over two pages in the contract filed. The judge of probate shall disburse the fees as required by law.
(h) Effective July 1, 2015, any requirement to obtain a marriage license issued by the judge of probate is abolished and repealed.

(i) The circuit court of a county may correct an error in marriage contract pursuant to a civil action in the circuit court.

(j) The Office of the Attorney General shall prepare a form to meet the minimum requirements.

Section 2. Sections 12-19-90, 22-9A-17, 30-1-5, 30-1-12, 30-1-13, 30-1-14, 30-1-16, and 30-6-11 of the Code of Alabama 1975, are amended to read as follows:

"§12-19-90.

"(a) The following fees for service provided by the probate offices shall be charged and paid into the county treasury or to the judge of probate as may be authorized or required by law:

"(1) Probate of will of not more than five pages, whether contested or not, with three certified copies of letters and including final settlement when not more than 10 pages. An additional charge of $3.00 per page for wills over five pages in length and for final settlements in excess of 10 pages in length shall be made ..... $45.00

"(2) Grant of letters of administration with three certified copies of letters of administration and including final settlement when not more than 10 pages (when over 10 pages an additional charge of $3.00 per page) ..... 45.00
(3) Grant of letters of guardianship or conservatorship, three certified copies ..... 20.00

(4) Partial or final settlement of guardianship or conservatorship ..... 15.00

(5) Each additional certified copy of letters testamentary, letters of administration, or letters of guardianship or conservatorship ..... 3.00

(6) Proceedings in filing and granting petition of adoption, including one certified copy of decree for petitioner, one certified copy for the Department of Human Resources, and one copy to the State Bureau of Vital Statistics. (Fee shall apply to each child adopted) ..... 75.00

(7) Proceedings in legitimations, fee to apply to each child ..... 15.00

(8) Proceedings in change of name ..... 15.00

(9) Proceedings to set aside exemptions pursuant to Sections 43-8-110, 43-8-111, 43-8-112, and 43-8-113 ..... 35.00

(b) Fees for services other than those specified in subsection (a) shall be:

(1) Filing petitions and other papers, each ..... 3.00

(2) Docketing cause ..... 10.00

(3) Issuing each citation, summons, writ, execution for cost or other notice required by law ..... 3.00

(4) Issuing subpoenas to witnesses, each ..... 3.00
(5) Witnesses certificate ..... 3.00
(6) Order of publication ..... 3.00
(7) Posting order of publication, each ..... 3.00
(8) Notice by mail to creditor and heirs, each ..... 3.00
(9) Each notice not otherwise provided for ..... 3.00
(10) Issuing commission to take testimony ..... 10.00
(11) Entering returns of sheriff, printer, or commissioner, each ..... 3.00
(12) Appointment of guardian ad litem, special attorney, or administrator ad litem ..... 5.00
(13) Approving bonds ..... 10.00
(14) Presiding in noncontested cause or examining papers, pleadings, taking testimony, etc. ..... 10.00
(15) Presiding in contested cause, per day ..... 25.00
(16) Examining vouchers, each ..... 1.00
(17) Examining and entering decree or other order ..... 3.00
(18) Drafting decree ..... 10.00
(19) Each certificate with seal 3.00
(20) Each certificate without seal ..... 3.00
(21) Filing and docketing each claim ..... 3.00
"(22) Filing and recording, including recording documents filed for record, irrespective of size type, per page ..... 3.00

"(23) Filing and recording all oil, gas, mineral and/or coal leases, per page ..... 3.00

"(24) If the instrument conveys any interest in real or personal property within this state and recites more than two grantors or grantees, mortgagors or mortgagees, lessors or lessees, transferors or transferees, assignors or assignees, buyers or sellers, or vendors or vendees, an additional fee for indexing each name in excess of two entered in the direct index or two entered in the reverse index ..... 1.00

"(25) Copy of an instrument, per page ..... 1.00

"(26) Each entry of an estray, to be paid by taker ..... 3.00

"(27) Each record of a mark or brand ..... 3.00

"(28) Filing and recording certificate of incorporation organized as a profit-making organization ..... 50.00

"(29) Filing and recording certificate of incorporation organized as a nonprofit corporation ..... 15.00

"(30) Each certificate given under Title 22 in relation to hospitals, diseases, infection, and quarantine ..... 3.00

"(31) Each satisfaction of a mortgage ..... 3.00
(32) Issuing and recording contract of marriage license ..... 10.00 25.00 for the first two pages and $2.00 per page for each additional page

(33) Celebrating rites of matrimony ..... 15.00

(34) Proceedings to correct record of marriage ..... 15.00

(35) Recording certificates of judgment ..... 3.00

(36) Administering oath for affidavit ..... 3.00

(37) Issuing writs of ad quod damnum for the erection of dams or public mills ..... 15.00

(38) Establishing facts of birth ..... 15.00

(39) Proceedings appointing notary public and recording ..... 15.00

(40) Hearing pertaining to mental illness ..... 25.00

(41) Restoration to capacity ..... 15.00

(42) Taking questions and answers and recording the same in proceedings to perpetuate testimony, per page ..... 5.00

(43) Trying and sealing weights and measures, for each weight and measure sealed, to be paid by the person for whom the service is performed ..... .50

(44) Fees on all sums paid to the probate judge as escheats, two percent of total amount.
"(45)(43) Recording or copying plats, for each lot contained therein, $1.00 per lot, but in no case more than $200.00 for one map, nor less than $15.00 for one map.

"(46)(44) Presiding over the county commission and keeping minutes of the county commission, for each day ..... 10.00

"(47)(45) For recording minutes and proceedings of the county commission, for each page or fraction thereof ..... 2.00

"(48)(46) Discharging his or her duties in relation to public roads, on proof to the county commission that he or she had discharged such duties, annually, to be paid out of the county treasury or, in the discretion of the county commission, to be paid out of the county gasoline tax fund, not exceeding ..... 400.00

"(49)(47) For certifying record on appeal under either Rule 10 (d) or (e) of the Alabama Rules of Appellate Procedure ..... 15.00

"(50)(48) All other official duties, for the compensation of which no express provision is made by law, such sum as may be allowed by the county commission to be paid out of the county treasury, not exceeding $500.00 per annum.

"(51)(49) Commissions on state and county licenses issued in the probate office, five percent on the amount collected and paid over.

"(c) For any proceeding in the probate court or for receiving, keeping and paying out money or distributing money
where there is no fee now allowed by law, the same fees shall be charged as are now allowed to the register in the circuit court as provided for in subdivision (3) of Section 12-19-71. Provided, however, for any proceeding under the equity power of the probate court the same fees shall be charged as are provided in this section.

"(d) This section shall not repeal, amend nor affect any local law or general law of local application prescribing fees for judges of probate.

"(e) The increases provided in subsections (a) and (b) by Act 2000-108 shall not apply to counties in Category 2 as defined in Section 11-2A-1 or to Cullman County.

"§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 shall record each contract of marriage presented to the probate court for filing and shall forward a copy to the Office of Vital Statistics.

"(c) Each person who performs a marriage shall certify the fact of marriage and return the record by signing the contract of marriage. The contract of marriage shall be
submitted to the judge of probate who issued the license within 30 days after the ceremony for recording.

"(d)(c) Every judge of probate issuing marriage licenses shall complete and shall forward a copy of each contract of marriage recorded with the judge of probate during the preceding calendar month along with any supporting documentation to the Office of Vital Statistics on or before the fifth day of each the following calendar month the records of marriage returned to the judge of probate during the preceding 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 religious official or other person performing the marriage 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. Evidence of consent shall be in the form of an affidavit signed by a parent or guardian and the official performing the ceremony.

"§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. Contracts of marriage recorded in the office. The judge of probate shall record all contracts of marriage presented to the probate office and shall forward a copy to the Office of Vital Statistics.  

"§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, by filing the contract of marriage 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 contracts of marriage. A certified copy thereof is presumptive evidence of the fact.  

"§30-1-14.  
"Any judge, minister of the gospel, or other person uniting persons in matrimony or any clerk or keeper of the minutes of a religious society celebrating marriage by the consent of the parties before the congregation, who fails to return a certificate thereof to file the contract of marriage
with the judge of probate, as required by law, is guilty of a misdemeanor.

"§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 the contract of marriage, the parties to the contract of marriage may file an amended contract with the judge of probate. The fee for an amended contract shall be the same as for an original contract of marriage. The amended contract of marriage shall state that it is an amended contract and shall reference the date in which the original contract was filed."
The judge of probate shall record the amended contract of marriage and shall forward a copy of the amended contract to the Office of Vital Statistics. If the parties can not agree on the amended contract, either party to the contract may file an action in circuit court to correct the error.

"§30-6-11.

"Commencing October 1, 1999, and thereafter, in addition to any and all other fees collected for any contract of marriage license, the probate judge shall collect thirty dollars ($30) which shall be forwarded to the district attorney of the judicial circuit of his or her county. The funds shall be designated only for the purposes of this chapter, and forwarded monthly to the office for distribution on a formula, pursuant to Section 30-6-7 and this chapter. Provided, however, no unspent and unencumbered funds generated by this chapter shall revert to the General Fund of the State Treasury at the end of the fiscal year. Any such unspent and unencumbered funds shall be returned to the respective judicial circuits from which they were generated. The district attorney shall use the funds exclusively for the purposes of establishing, maintaining, or funding, or any combination thereof, of domestic violence shelters. The funds shall be used for the establishment or maintenance of a domestic violence shelter within 12 months of the end of the fiscal year during which they were collected. If funds collected pursuant to this chapter have not been expended for the purposes of establishing or maintaining a domestic violence shelter within 12 months of the end of the fiscal year, the district attorney shall return unspent funds to the respective judicial circuit from which they were generated.
shelter within the time period designated in this section, those funds shall revert to the office for distribution to certified domestic violence facilities according to the formula established by the office pursuant to Section 30-6-7 and this chapter."

Section 3. In addition to all other fees collected by the judge of probate for recording a contract of marriage, the judge of probate shall collect an additional twenty dollars ($20) which shall be forwarded to the State Treasurer and deposited into the General Fund.

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

Section 5. This act shall become effective on July 1, 2015.