

1 HB41
2 171576-2
3 By Representative Hill (J)
4 RFD: Judiciary
5 First Read: 10-SEP-15

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8 SYNOPSIS: Under existing law, marriage licenses are
9 issued by the judge of probate.

10 This bill would provide that judges of
11 probate would no longer issue marriage licenses
12 upon proof of eligibility for marriage, but
13 instead, will be statutorily required to receive
14 and record civil contracts of marriage presented by
15 parties to the civil contract.

16 This bill would require the judge of probate
17 to transmit a copy of each civil contract filed
18 with the judge of probate during the preceding
19 calendar month to the Office of Vital Statistics on
20 or before the fifth day of the following calendar
21 month.

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

24 This bill would provide that parties
25 desiring to enter a marital union may enter a civil
26 contract for marriage to be known as a civil
27 contract.

1 This bill would provide that it shall be the
2 responsibility of the parties to the contract for
3 marriage to record the civil contract with the
4 judge of probate as evidence of their marital
5 union. The bill would specify that the judge of
6 probate would have no authority or responsibility
7 to make determinations of the eligibility of the
8 parties to the contract for marriage, other than
9 age determination, which shall be proved by
10 submission of a consent form by the parents or
11 guardians of a minor to the marriage contract.

12 This bill would provide that a religious,
13 civil, or independent ceremony of marriage, or
14 other officiation, or administration of the vows,
15 may, but need not be, conducted or engaged in by
16 the parties to the civil contract as a condition of
17 the contract of marriage.

18 This bill would provide that the state shall
19 have no role in the independent or religious
20 ceremony of marriage.

21
22 A BILL
23 TO BE ENTITLED
24 AN ACT

25
26 To amend Sections 22-9A-17, 30-1-5, 30-1-12,
27 30-1-13, and 30-1-16 of the Code of Alabama 1975, to abolish

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

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

16 "§22-9A-17.

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

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

25 ~~"(c) Each person who performs a marriage shall~~
26 ~~certify the fact of marriage and return the record to the~~

1 ~~judge of probate who issued the license within 30 days after~~
2 ~~the ceremony.~~

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

8 "(a) Persons desiring to unite in marriage may do so
9 by entering into a civil contract of marriage filed with the
10 office of the judge of probate. The recording of a civil
11 contract of marriage with the office of the judge of probate
12 shall be presumptive evidence of the validity of the marriage.
13 Each civil contract of marriage filed with the probate office
14 shall be filed and registered with the Office of Vital
15 Statistics and shall be registered.

16 "(b) The office of the judge of probate shall
17 record, in a permanent record, each civil contract of marriage
18 presented to the probate office for filing and shall forward a
19 copy of each civil contract of marriage filed with the probate
20 office during the preceding calendar month, along with any
21 supporting documentation, to the Office of Vital Statistics on
22 or before the fifth day of the following calendar month.

23 "§30-1-5.

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

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

11 "§30-1-12.

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

26 "§30-1-13.

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

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

13 "§30-1-16.

14 ~~"(a) In all instances where a marriage license has~~
15 ~~been issued and certificate returned and vital error has been~~
16 ~~made on the face of the application, license, or certificate,~~
17 ~~necessitating that a correction be made thereof, the judge of~~
18 ~~probate of the county in which the license was issued shall,~~
19 ~~upon proper petition being filed by either party to the~~
20 ~~marriage or someone delegated or authorized by him or her, in~~
21 ~~his or her name and behalf, giving the names and residences of~~
22 ~~the parties to the marriage, and if the residence is not~~
23 ~~known, an affidavit by petitioner or petitioner's attorney~~
24 ~~that the residence is not known and that diligent effort has~~
25 ~~been made to locate same, together with a clear statement~~
26 ~~setting up wherein the correction should be made in the~~
27 ~~application license or certificate, set a date for hearing the~~

1 ~~petition after first having given notice of the time and place~~
2 ~~of the hearing for at least six days by personal service~~
3 ~~thereof if the other resides in the State of Alabama, unless~~
4 ~~both parties join in the petition and in such case the~~
5 ~~petition may be set down for immediate hearing. If the other~~
6 ~~party to the marriage is a nonresident or has absented himself~~
7 ~~or herself from the state for six months or longer and his or~~
8 ~~her address is known, then service may be made by sending a~~
9 ~~copy of the petition by registered or certified mail, with~~
10 ~~return receipt requested, to the address of the other party.~~
11 ~~If the address is not known, service may be made by~~
12 ~~advertisement in a newspaper published in the county where the~~
13 ~~petition is filed by one weekly insertion therein.~~

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

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

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

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

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

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

25 (1) The names of the parties.

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

1 (3) A statement that the parties voluntarily and of
2 their own free will enter into a marriage.

3 (4) The signatures of the parties.

4 (5) The signature of two adult witnesses.

5 (6) If one of the parties to the marriage is a
6 minor, a sworn affidavit of the parent or guardian of the
7 minor consenting to the marriage.

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

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

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

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

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

11 (h) All requirements to obtain a marriage license by
12 the State of Alabama are hereby abolished and repealed.

13 (i) The circuit courts have jurisdiction to correct
14 any error in a civil contract of marriage pursuant to a civil
15 action.

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

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

26 Section 4. Sections 30-1-9, 30-1-10, 30-1-11, and
27 30-1-14 of the Code of Alabama 1975, are repealed.

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