

1 SB377  
2 165493-1  
3 By Senators Albritton, Allen, Waggoner, Pittman, and Singleton  
4 RFD: Judiciary  
5 First Read: 14-APR-15

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8 SYNOPSIS: Under existing law, the judge of probate  
9 issues marriage licenses upon proof that the  
10 parties are eligible to marry and, if either party  
11 is not of age, the proper consent has been obtained  
12 from a parent or guardian. Also under existing law,  
13 the judge of probate collects fees for each license  
14 issued; the license is valid for 30 days; the  
15 parties to the marriage must have a marriage  
16 ceremony performed or the marriage solemnized by a  
17 religious official or other official authorized by  
18 law to solemnize marriages, and the official  
19 solemnizing the marriage must return the completed  
20 license form indicating that the ceremony was  
21 performed and the date it was performed to the  
22 judge of probate within the 30-day period for  
23 recording; and the judge of probate is required to  
24 forward the completed license to the Office of  
25 Vital Statistics.

1           This bill would abolish the requirement to  
2 obtain a marriage license from the judge of  
3 probate.

4           This bill would provide that marriage would  
5 be entered into by simple contract, would specify  
6 the information required to be included in the  
7 contract of marriage, would specify that each party  
8 entering into a contract of marriage would submit a  
9 properly executed contract to the judge of probate  
10 for recording, and would require the judge of  
11 probate to forward a copy of the contract of  
12 marriage to the Office of Vital Statistics

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

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

22  
23                           A BILL  
24                           TO BE ENTITLED  
25                           AN ACT  
26

1                   To amend Sections 12-19-90, 22-9A-17, 30-1-5,  
2                   30-1-12, 30-1-13, 30-1-14, 30-1-16, and 30-6-11 of the Code of  
3                   Alabama 1975, to abolish the requirement that a marriage  
4                   license be issued by the judge of probate; to provide that a  
5                   marriage would be entered into by contract; to provide that  
6                   the judge of probate would record each contract of marriage  
7                   presented to the probate office for recording and would  
8                   forward the contract to the Office of Vital Statistics; to  
9                   provide for the content of a properly executed contract of  
10                  marriage; to provide fees for recording; and to repeal  
11                  Sections 30-1-9, 30-1-10, and 30-1-11 of the Code of Alabama  
12                  1975.

13                 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

20   (1) The names of the parties.

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

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

25   (4) The signatures of the parties.

1           The marriage contract shall be executed in the  
2 office of the judge of probate and shall be witnessed by two  
3 adult witnesses.

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

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

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

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

17           (g) A recording fee of twenty-five dollars (\$25)  
18 pursuant to Section 12-19-90, Code of Alabama 1975, an  
19 additional fee of thirty dollars (\$30) pursuant to Section  
20 30-6-11, Code of Alabama 1975, and an additional fee of twenty  
21 dollars (\$20) pursuant to Section 3 shall be paid to the judge  
22 of probate upon filing of a marriage contract pursuant to this  
23 act. If the parties elect to file a longer contract, the  
24 parties shall pay an additional fee of two dollars (\$2) for  
25 each additional page over two pages in the contract filed. The  
26 judge of probate shall disburse the fees as required by law.

1 (h) Effective July 1, 2015, any requirement to  
2 obtain a marriage license issued by the judge of probate is  
3 abolished and repealed.

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

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

9 Section 2. Sections 12-19-90, 22-9A-17, 30-1-5,  
10 30-1-12, 30-1-13, 30-1-14, 30-1-16, and 30-6-11 of the Code of  
11 Alabama 1975, are amended to read as follows:

12 "§12-19-90.

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

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

23 "(2) Grant of letters of administration with three  
24 certified copies of letters of administration and including  
25 final settlement when not more than 10 pages (when over 10  
26 pages an additional charge of \$3.00 per page) ..... 45.00

1           "(3) Grant of letters of guardianship or  
2 conservatorship, three certified copies ..... 20.00

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

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

8           "(6) Proceedings in filing and granting petition of  
9 adoption, including one certified copy of decree for  
10 petitioner, one certified copy for the Department of Human  
11 Resources, and one copy to the State Bureau of Vital  
12 Statistics. (Fee shall apply to each child adopted) .....  
13 75.00

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

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

17           "(9) Proceedings to set aside exemptions pursuant to  
18 Sections 43-8-110, 43-8-111, 43-8-112, and 43-8-113 .....  
19 35.00

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

22           "(1) Filing petitions and other papers, each ....  
23 3.00

24           "(2) Docketing cause ..... 10.00

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

27           "(4) Issuing subpoenas to witnesses, each ..... 3.00

1           "(5) Witnesses certificate ..... 3.00

2           "(6) Order of publication ..... 3.00

3           "(7) Posting order of publication, each ..... 3.00

4           "(8) Notice by mail to creditor and heirs, each

5           ..... 3.00

6           "(9) Each notice not otherwise provided for .....

7           3.00

8           "(10) Issuing commission to take testimony .....

9           10.00

10          "(11) Entering returns of sheriff, printer, or

11          commissioner, each ..... 3.00

12          "(12) Appointment of guardian ad litem, special

13          attorney, or administrator ad litem ..... 5.00

14          "(13) Approving bonds ..... 10.00

15          "(14) Presiding in noncontested cause or examining

16          papers, pleadings, taking testimony, etc. .... 10.00

17          "(15) Presiding in contested cause, per day .....

18          25.00

19          "(16) Examining vouchers, each ..... 1.00

20          "(17) Examining and entering decree or other order

21          ..... 3.00

22          "(18) Drafting decree ..... 10.00

23          "(19) Each certificate with seal 3.00

24          "(20) Each certificate without seal ..... 3.00

25          "(21) Filing and docketing each claim ..... 3.00



1           "(22) Filing and recording, including recording  
2 documents filed for record, irrespective of size type, per  
3 page ..... 3.00

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

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

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

14           "(26) Each entry of an estray, to be paid by taker  
15 ..... 3.00

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

17           "(28) Filing and recording certificate of  
18 incorporation organized as a profit-making organization .....  
19 50.00

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

22           "(30) Each certificate given under Title 22 in  
23 relation to hospitals, diseases, infection, and quarantine  
24 ..... 3.00

25           "(31) Each satisfaction of a mortgage ..... 3.00

1           "~~(32) Issuing and recording~~ Recording contract of  
2 marriage license ..... ~~10.00~~ 25.00 for the first two pages and  
3 \$2.00 per page for each additional page

4           "~~(33) Celebrating rites of matrimony~~ ..... ~~15.00~~

5           "~~(34) Proceedings to correct record of marriage~~  
6 ~~..... 15.00~~

7           "~~(35)~~ (33) Recording certificates of judgment .....  
8 3.00

9           "~~(36)~~ (34) Administering oath for affidavit .....  
10 3.00

11           "~~(37)~~ (35) Issuing writs of ad quod damnum for the  
12 erection of dams or public mills ..... 15.00

13           "~~(38)~~ (36) Establishing facts of birth ..... 15.00

14           "~~(39)~~ (37) Proceedings appointing notary public and  
15 recording ..... 15.00

16           "~~(40)~~ (38) Hearing pertaining to mental illness .....  
17 25.00

18           "~~(41)~~ (39) Restoration to capacity ..... 15.00

19           "~~(42)~~ (40) Taking questions and answers and recording  
20 the same in proceedings to perpetuate testimony, per page  
21 ..... 5.00

22           "~~(43)~~ (41) Trying and sealing weights and measures,  
23 for each weight and measure sealed, to be paid by the person  
24 for whom the service is performed ..... .50

25           "~~(44)~~ (42) Fees on all sums paid to the probate judge  
26 as escheats, two percent of total amount.

1           "~~(45)~~(43) Recording or copying plats, for each lot  
2 contained therein, \$1.00 per lot, but in no case more than  
3 \$200.00 for one map, nor less than \$15.00 for one map.

4           "~~(46)~~(44) Presiding over the county commission and  
5 keeping minutes of the county commission, for each day .....  
6 10.00

7           "~~(47)~~(45) For recording minutes and proceedings of  
8 the county commission, for each page or fraction thereof .....  
9 2.00

10          "~~(48)~~(46) Discharging his or her duties in relation  
11 to public roads, on proof to the county commission that he or  
12 she had discharged such duties, annually, to be paid out of  
13 the county treasury or, in the discretion of the county  
14 commission, to be paid out of the county gasoline tax fund,  
15 not exceeding ..... 400.00

16          "~~(49)~~(47) For certifying record on appeal under  
17 either Rule 10 (d) or (e) of the Alabama Rules of Appellate  
18 Procedure ..... 15.00

19          "~~(50)~~(48) All other official duties, for the  
20 compensation of which no express provision is made by law,  
21 such sum as may be allowed by the county commission to be paid  
22 out of the county treasury, not exceeding \$500.00 per annum.

23          "~~(51)~~(49) Commissions on state and county licenses  
24 issued in the probate office, five percent on the amount  
25 collected and paid over.

26          "(c) For any proceeding in the probate court or for  
27 receiving, keeping and paying out money or distributing money

1 where there is no fee now allowed by law, the same fees shall  
2 be charged as are now allowed to the register in the circuit  
3 court as provided for in subdivision (3) of Section 12-19-71.  
4 Provided, however, for any proceeding under the equity power  
5 of the probate court the same fees shall be charged as are  
6 provided in this section.

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

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

13 "§22-9A-17.

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

18 ~~"(b)(a) The judge of probate who issues the marriage  
19 license shall prepare the record on the form or in a format  
20 prescribed and furnished by the State Registrar upon the basis  
21 of information obtained from the parties to be married shall  
22 record each contract of marriage presented to the probate  
23 court for filing and shall forward a copy to the Office of  
24 Vital Statistics.~~

25 ~~"(c)(b) Each person who performs a marriage shall  
26 certify the fact of marriage and return the record by signing  
27 the contract of marriage. The contract of marriage shall be~~

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

3 ~~"(d)(c)~~ Every judge of probate ~~issuing marriage~~  
4 ~~licenses shall complete and shall~~ forward a copy of each  
5 contract of marriage recorded with the judge of probate during  
6 the preceding calendar month along with any supporting  
7 documentation to the Office of Vital Statistics on or before  
8 the fifth day of ~~each~~ the following calendar month ~~the records~~  
9 ~~of marriage returned to the judge of probate during the~~  
10 ~~preceding calendar month.~~

11 "§30-1-5.

12 "If the person intending to marry is at least 16  
13 years of age and under 18 years of age and has not had a  
14 former wife or husband, the ~~judge of probate~~ religious  
15 official or other person performing the marriage shall require  
16 the consent of the parents or guardians of the minor to the  
17 marriage, to be given either personally or in writing, and, if  
18 the latter, the execution thereof shall be proved. ~~The judge~~  
19 ~~of probate shall also require a bond to be executed in the~~  
20 ~~penal sum of two hundred dollars (\$200), payable to the State~~  
21 ~~of Alabama, with condition to be void if there is no lawful~~  
22 ~~cause why such marriage should not be celebrated.~~ Evidence of  
23 consent shall be in the form of an affidavit signed by a  
24 parent or guardian and the official performing the ceremony.

25 "§30-1-12.

26 "The judge of probate must keep a book, in which  
27 shall be registered all ~~licenses issued by him and which shall~~

1 ~~state whether the parties, or either of them, were of the age~~  
2 ~~specified in Section 30-1-5. If not, he must also state~~  
3 ~~whether either of them had been previously married, or if~~  
4 ~~consent had been given to the marriage by the parent or~~  
5 ~~guardian. If such consent was in writing, he must transcribe~~  
6 ~~it on the same page on which he records the license, and the~~  
7 ~~record so made, or a certified copy thereof, is presumptive~~  
8 ~~evidence of the facts contracts of marriage recorded in the~~  
9 ~~office. The judge of probate shall record all contracts of~~  
10 ~~marriage presented to the probate office and shall forward a~~  
11 ~~copy to the Office of Vital Statistics.~~

12 "§30-1-13.

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

22 "§30-1-14.

23 "Any judge, minister of the gospel, or other person  
24 uniting persons in matrimony or any clerk or keeper of the  
25 minutes of a religious society celebrating marriage by the  
26 consent of the parties before the congregation, who fails to  
27 ~~return a certificate thereof to~~ file the contract of marriage

1 with the judge of probate, as required by law, is guilty of a  
2 misdemeanor.

3 "§30-1-16.

4 ~~"(a) In all instances where a marriage license has  
5 been issued and certificate returned and vital error has been  
6 made on the face of the application, license, or certificate,  
7 necessitating that a correction be made thereof, the judge of  
8 probate of the county in which the license was issued shall,  
9 upon proper petition being filed by either party to the  
10 marriage or someone delegated or authorized by him or her, in  
11 his or her name and behalf, giving the names and residences of  
12 the parties to the marriage, and if the residence is not  
13 known, an affidavit by petitioner or petitioner's attorney  
14 that the residence is not known and that diligent effort has  
15 been made to locate same, together with a clear statement  
16 setting up wherein the correction should be made in the  
17 application license or certificate, set a date for hearing the  
18 petition after first having given notice of the time and place  
19 of the hearing for at least six days by personal service  
20 thereof if the other resides in the State of Alabama, unless  
21 both parties join in the petition and in such case the  
22 petition may be set down for immediate hearing. If the other  
23 party to the marriage is a nonresident or has absented himself  
24 or herself from the state for six months or longer and his or  
25 her address is known, then service may be made by sending a  
26 copy of the petition by registered or certified mail, with  
27 return receipt requested, to the address of the other party.~~

1 ~~If the address is not known, service may be made by~~  
2 ~~advertisement in a newspaper published in the county where the~~  
3 ~~petition is filed by one weekly insertion therein.~~

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

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

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

21 ~~"In all instances where a vital error has been made~~  
22 ~~in the contract of marriage, the parties to the contract of~~  
23 ~~marriage may file an amended contract with the judge of~~  
24 ~~probate. The fee for an amended contract shall be the same as~~  
25 ~~for an original contract of marriage. The amended contract of~~  
26 ~~marriage shall state that it is an amended contract and shall~~  
27 ~~reference the date in which the original contract was filed.~~



1 The judge of probate shall record the amended contract of  
2 marriage and shall forward a copy of the amended contract to  
3 the Office of Vital Statistics. If the parties can not agree  
4 on the amended contract, either party to the contract may file  
5 an action in circuit court to correct the error.

6 "§30-6-11.

7 "Commencing October 1, 1999, and thereafter, in  
8 addition to any and all other fees collected for any contract  
9 of marriage license, the probate judge shall collect thirty  
10 dollars (\$30) which shall be forwarded to the district  
11 attorney of the judicial circuit of his or her county. The  
12 funds shall be designated only for the purposes of this  
13 chapter, and forwarded monthly to the office for distribution  
14 on a formula, pursuant to Section 30-6-7 and this chapter.  
15 Provided, however, no unspent and unencumbered funds generated  
16 by this chapter shall revert to the General Fund of the State  
17 Treasury at the end of the fiscal year. Any such unspent and  
18 unencumbered funds shall be returned to the respective  
19 judicial circuits from which they were generated. The district  
20 attorney shall use the funds exclusively for the purposes of  
21 establishing, maintaining, or funding, or any combination  
22 thereof, of domestic violence shelters. The funds shall be  
23 used for the establishment or maintenance of a domestic  
24 violence shelter within 12 months of the end of the fiscal  
25 year during which they were collected. If funds collected  
26 pursuant to this chapter have not been expended for the  
27 purposes of establishing or maintaining a domestic violence

1 shelter within the time period designated in this section,  
2 those funds shall revert to the office for distribution to  
3 certified domestic violence facilities according to the  
4 formula established by the office pursuant to Section 30-6-7  
5 and this chapter."

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

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

13 Section 5. This act shall become effective on July  
14 1, 2015.