

1 HB331
2 173038-2
3 By Representative Jones
4 RFD: Judiciary
5 First Read: 25-FEB-16

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8 SYNOPSIS: Existing case law recognizes common law
9 marriages in this state if the parties have
10 capacity, the present intent to enter into a
11 permanent marriage, and there is public recognition
12 of the marriage.

13 This bill would provide two methods of
14 proving the existence of a common law marriage.

15 This bill would codify the elements required
16 by case law to establish the existence of a common
17 law marriage-capacity and would specify that the
18 parties could prove the existence of a common law
19 marriage by proving the existence of each element
20 by clear and convincing evidence.

21 This bill would also provide that the
22 parties to a common law marriage could prove the
23 marriage by filing a properly executed declaration
24 of common law marriage in the probate office. This
25 bill would establish the required contents of the
26 declaration. This bill would provide that a

1 properly executed declaration is prima facie
2 evidence of the marriage of the parties.

3 The bill would create a rebuttable
4 presumption that the parties entered into an
5 agreement to be married if both parties have
6 asserted that they are married in certain
7 enumerated legal documents, such as income tax
8 forms.

9 This bill would prohibit a person under the
10 age of 19 years from entering into a common law
11 marriage which differs from existing case law.

12 This bill would specify that a declaration
13 of common law marriage can only be filed by
14 residents of Alabama in the probate office of their
15 county of residence, and both parties must be
16 present to file the document and show proof of
17 their age and identity.

18
19 A BILL

20 TO BE ENTITLED

21 AN ACT

22
23 Relating to common law marriage; to provide a
24 procedure for proving a common law marriage; to provide for
25 proof of a common law marriage by filing a declaration of
26 common law marriage; to provide for the content of the
27 declaration; to create a rebuttable presumption that the

1 parties entered into an agreement to be married if both
2 parties have asserted that they are married in certain
3 enumerated legal documents, such as income tax forms; to
4 prohibit a person under the age of 19 years from entering into
5 a common law marriage which differs from existing case law;
6 and to specify that a declaration of common law marriage can
7 only be filed by residents of Alabama in the probate office of
8 their county of residence, and both parties must be present to
9 file the document and show proof of their age and identity.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. (a) The common law marriage between two
12 individuals may be proved in either of the following ways:

13 (1) By evidence that a declaration of common law
14 marriage has been signed and recorded as provided by this act.

15 (2) By clear and convincing evidence of the
16 existence of all of the following elements of a common law
17 marriage:

18 a. Capacity.

19 b. Present, mutual agreement to permanently enter
20 the marriage relationship to the exclusion of all other
21 relationships.

22 c. Public recognition of the relationship as a
23 marriage, public assumption of marital duties, and
24 cohabitation.

25 (b) An individual who has knowingly assumed the
26 position in a judicial proceeding that he or she entered into
27 a common law marriage with another person may not assume a

1 position inconsistent with his or her prior position which
2 prejudices the party to whom he or she asserted that he or she
3 had entered into a common law marriage.

4 (c) In a proceeding in which a marriage is proved as
5 provided by subsection (a) (2), it is rebuttably presumed that
6 the parties entered into an agreement to be married if both
7 parties signed any of the following:

8 (1) A federal or state income tax form stating that
9 they are married.

10 (2) A health insurance document claiming they are
11 married.

12 (3) Any other legal document under oath claiming
13 they are married.

14 (d) A person under 19 years of age may not do either
15 of the following:

16 (1) Be a party to a common law marriage.

17 (2) Execute a declaration of common law marriage
18 pursuant to Section 2.

19 (e) A person may not be a party to a common law
20 marriage or execute a declaration of common law marriage if
21 the person is presently married to a person who is not the
22 other party to the purported common law marriage or the
23 purported declaration of common law marriage, as applicable.

24 Section 2. (a) A Declaration of Common Law Marriage
25 must be signed on a form prescribed by the Alabama
26 Administrative Office of Courts. Each party to the declaration
27 shall provide the information required in the form.

1 (b) The declaration form shall contain all of the
2 following information stated in substantially the same form:

3 (1) A heading entitled "Declaration and Registration
4 of Common Law Marriage, _____ County, Alabama."

5 (2) Spaces for each party's full name, including the
6 name on each party's current birth certificate, current
7 address, date of birth, place of birth, including city,
8 county, and state.

9 (3) A space for indicating the type of document
10 tendered by each party as proof of age and identity.

11 (4) A certification that: "The other party is not
12 related to me as:

13 "a. An ancestor or descendant, by blood or adoption.

14 "b. A brother or sister, of the whole or half-blood
15 or by adoption.

16 "c. A stepchild or stepparent, while the marriage
17 creating the relationship exists.

18 "d. An aunt, uncle, nephew, or niece of the whole or
19 half-blood."

20 (5) A certification that both parties are currently
21 residents of the State of Alabama and a space for the parties
22 to list their current address.

23 (6) A space for the date on or about which the
24 parties are asserting is the date they entered into a common
25 law marriage.

26 (7) A printed declaration and oath reading:

1 "I SOLEMNLY SWEAR (OR AFFIRM) THAT WE, THE
2 UNDERSIGNED, ARE MARRIED TO EACH OTHER BY VIRTUE OF THE
3 FOLLOWING FACTS: ON OR ABOUT _____ (DATE) WE MET ALL
4 OF THE FOLLOWING ELEMENTS OF A COMMON LAW MARRIAGE: a.
5 CAPACITY; b. PRESENT, MUTUAL AGREEMENT TO PERMANENTLY ENTER
6 THE MARRIAGE RELATIONSHIP TO THE EXCLUSION OF ALL OTHER
7 RELATIONSHIPS; AND c. PUBLIC RECOGNITION OF THE RELATIONSHIP
8 AS A MARRIAGE, PUBLIC ASSUMPTION OF MARITAL DUTIES, AND
9 COHABITATION. THIS DECLARATION IS TRUE AND THE INFORMATION IN
10 IT WHICH I HAVE GIVEN IS CORRECT."

11 (8) Spaces immediately below the printed declaration
12 and oath for the parties' signatures.

13 (9) A certificate of a notary public, stated in
14 substantially the same form as follows:

15 Personally appeared before me
16 _____, who provided proof of
17 his or her identity by presenting to me one of the documents
18 listed below as indicated by the checked box:

- 19 [] Certified Birth Certificate;
20 [] ID or identification cards that comply with the
21 REAL ID Act of 2005; or
22 [] National Government Passport.

23 And having first been duly sworn, did hereby swear
24 or affirm that all of the statements contained in the above
25 and foregoing Declaration of Common Law Marriage are true and
26 correct.

1 Sworn to and subscribed before me on this the ____
2 day of _____, 20__.

3 _____

4 Notary Public

5 My Commission Expires on: _____

6 Seal

7 Personally appeared before me

8 _____, who provided proof of

9 his or her identity by presenting to me one of the documents

10 listed below as indicated by the checked box:

11 [] Certified Birth Certificate;

12 [] ID or identification cards that comply with the

13 REAL ID Act of 2005; or

14 [] National Government Passport.

15 And having first been duly sworn, did hereby swear

16 or affirm that all of the statements contained in the above

17 and foregoing Declaration of Common Law Marriage are true and

18 correct.

19 Sworn to and subscribed before me on this the ____

20 day of _____, 20__.

21 _____

22 Notary Public

1 My Commission Expires on: _____

2 Seal

3 Section 3. (a) The notary public shall require proof
4 of the identity and age of each party to the declaration of
5 common law marriage to be established by one of the following
6 documents:

7 (1) A certified birth certificate.

8 (2) A Star ID or identification card that complies
9 with the REAL ID Act of 2005.

10 (3) A passport issued by a national government.

11 (b) Any person who knowingly provides false,
12 fraudulent, or otherwise inaccurate proof of the person's
13 identity or age under this section is guilty of a Class A
14 misdemeanor.

15 Section 4. (a) Both parties seeking to record a
16 declaration of common law marriage must personally appear
17 together before the clerk in the office of the judge of
18 probate and present to the clerk the executed declaration of
19 common law marriage and the proof of verification of the age
20 and identity of each party. Upon the receipt of the executed
21 declaration of common law marriage and verification of the age
22 and identity of the parties, the clerk in the office of the
23 judge of probate in the county where both parties reside shall
24 record the declaration of common law marriage, return to the
25 parties the original of the declaration and the proof of the
26 age and the identity of the parties, and send a copy of the

1 declaration of common law marriage to the Office of Vital
2 Statistics.

3 (b) A fee for the recording of the declaration of
4 common law marriage shall be charged by the judge of probate
5 in the county in which the license is recorded. The fees
6 charged shall be the same amount as the fees that are charged
7 for the issuance and recording of a marriage license in that
8 county and shall be disbursed in the same manner.

9 (c) An executed declaration of common law marriage
10 recorded as provided in this act is prima facie evidence of
11 the marriage of the parties.

12 Section 5. This act shall become effective on
13 January 1, 2017.