

The 2009 Regular Session of the Alabama legislature came to an end Friday, May 15th. Over 1,600 bills were introduced and 436 passed the legislature. This article was written immediately after the conclusion of the session. The acts signed by the governor have act numbering while those without still await his signature.

Unlike recent years, when the senate often waited until the last five days to pass any bills, this year, under the leadership of President Pro-Tem Rodger Smitherman, the senate actually passed as many general bills as did the house of representatives during these first 25 days.

Bills Drafted by the Alabama Law Institute of Interest to Lawyers:

SB 142 (Act 2009-508)—Ad Valorem Tax Sale and Redemption Process

Sponsors: Senator Wendell Mitchell and Representative Mike Hill

This bill clarifies and codifies the current law by amending relevant code sections concerning the redemption of property from *ad valorem* tax sales. It also codifies case law on redemption and delineates the counties' responsibility with regard to holding and refunding an "overbid" by the tax sale purchaser who paid all taxes, fees and charges and any additional sums paid to the tax collector. The bill also:

1. Provides a procedure for redemption by the landowner from multiple tax sales.
2. Allows the owner who remains in possession after the sale to always redeem. (The owner has a statutory redemption period for three years from sale; there is an additional three-year redemption period by the owner from the purchaser after the original three-year statutory redemption period.)
3. Allows the tax status for Class 3 property to remain to be taxed as Class 3 residential property so long as the owner occupies the property.
4. States after three years from the date of the tax sale, the probate judge must receive proof that all *ad valorem* taxes have been paid before a tax deed is issued.
5. Provides a less complicated procedure for redeeming property sold at a tax sale.

This act becomes effective September 1, 2010.

SB 87 (Act 2009-621)—Uniform Limited Partnership Act

Sponsors: Senator Roger Bedford and Representative Cam Ward

This revision updates the 1983 Limited Partnership Act to reflect modern business practices. This new act provides:

1. *Perpetual Entity*. No automatic termination of a limited partnership unless the agreement so provides. A limited partner who leaves does not dissolve the entity.
2. *Entity Status*. A limited partner is clearly an entity.
3. *Convenience*. The new Lt. Partnership Act (Lt. P.) provides a single, self-contained source of statutory authority for issues pertaining to limited partnerships. The act is no longer dependent upon the general partnership law for rules that are not contained within it.
4. *LLLP Status*. Under this new act, limited partnerships may opt to become limited liability limited partnerships (LLLP), simply by so stating in the limited partnership agreement, and in the publicly-filed



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certificate. The primary reason for a limited partnership to elect LLLP status is to provide direct protection from liability for debts and obligations of the partnership to the general partner of the limited partnership.

5. *Liability Shield.* The current limited partnership law provides only a restricted liability shield for limited partners. The new act provides a full, status-based shield against limited partner liability for entity obligations. The shield applies whether or not the limited partnership is an LLLP.
6. *Express Default Statute.* The act provides default provisions between the partners and between partners and the partnership. Therefore, when the partnership agreement does not define the relationship, there is a fall-back default law.

The act also addresses issues such as allocating power between general partners and limited partners; and setting fiduciary duties owed by general partners to other general and limited partners. This act is effective January 1, 2010.

SB 90 (Act 2009-510)—Electronic Recording of Real Estate Records

Sponsors: Senators Del Marsh, Larry Dixon and Roger Bedford and Representatives Marc Keahey, Marcel Black and Cam Ward

As a result of the enactment of the Uniform Electronic Transactions Act passed by the Alabama legislature in 2001, it is now possible to have contracts in electronic form with electronic signatures of the parties. However, real estate transactions require another step not addressed by the e-sign law. This act essentially does three things:

1. Equates electronic documents and electronic signatures to original paper documents and manual signatures. Thus, any requirements for original paper documents or manual signatures are satisfied by an electronic document and signature. The process is essentially a scan-in of the document and electronic filing by e-mail.
2. Establishes that electronic filing and storage of electronic records is purely an opt-in option by

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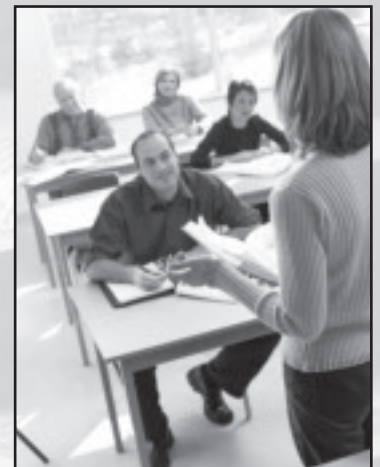
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probate offices in each of the 67 counties and does not mandate them. Those counties that elect to have electronic recording will be able to do so while also maintaining the procedure for walk-up filing of paper documents.

3. Establishes a board to set uniform standards for filing electronically in every probate office that elects to utilize electronic filing. This 13-person board consists of probate judges, lawyers and other officials who have an interest in the recording process.

This act is effective January 1, 2010.

HB 222 (Act 2009-513)—Business and Non-Profit Entities Code

Sponsors: Representatives Marcel Black and Ken Guin and Senators Rodger Smitherman, Roger Bedford and Zeb Little

This act is a reorganization of the business and non-profit laws much like the revision in 2007 of the *Election Code*. There is no substantive change except when there currently exist conflicts between entities. In that case, we have opted to take the most prevalent law.

The *Code* is organized on a “hub and spoke” model in Title 10. Article 1, constituting the “hub,” consists of provisions applicable to each of the various business entities. The remaining articles are the “spokes” of the act and are the individual entities, such as the Business Corporation Act. When possible, each entity will retain its current chapter designation in the “spoke.” For example, business corporation provisions, presently in Chapter 2, will be in Chapter 2 of the new act. This will make it easier to find for those familiar with the current law.

Corporation, Non-profit, Partnership, Lt. Partnership, LLP, LLC, and numerous other entity laws were passed over the past 10 to 50 years with little regard as to the relation of similar, different or even conflicting provisions in one law to another. Businesses, in particular small businesses, may have multiple entities for ownership of their property and running their business. This requires knowledge by the owner and their attorney of each type of law. Otherwise, these subtle differences become a trap for the unwary. This act should resolve these conflicts.

The act **will not become effective until January 1, 2011** to enable attorneys to become educated on the new reorganization. The revision **will not affect existing entities or business nor will they be required to make any changes** to their organizing documents.

SB 397 (Act 2009-633)—Landlord and Tenant Amendments

Sponsors: Senator Lowell Barron and Representatives Jeff McLaughlin, Laura Hall and Cam Ward

The Residential Landlord Tenant Act was passed in 2006. These are the first amendments to the act.

1. Clarifies: Building codes by counties and municipalities must be the same for rental and owner-occupied property.

2. New: A landlord may enter a unit to show the dwelling to prospective future tenants or buyers within four months of the end of the lease with the tenant present, provided the tenant has signed a separate agreement allowing entry.
3. Clarifies: A landlord may schedule repairs or pest control of a unit during certain times, provided the tenant has at least two days’ notice separate from the lease.
4. Clarifies: The filing of a post-judgment motion suspends the time for the filing of an appeal.
5. Clarifies: The right of a tenant to be restored to the premises after a successful appeal.
6. New: After an eviction judgment and no post-trial motion or appeal is made by the tenant, an execution on the eviction judgment for possession of the property may be served after seven days from the judgment.

This act will become effective August 1, 2009.

Other bills of interest to lawyers and their clients:

HB 1 (Act 2009-558)—Sex Offenders

Amends §15-20-26 to provide that sex offenders cannot live within 2,000 feet of any elementary or secondary school, or college or university, nor shall they loiter within 500 feet of a school bus stop.

HB 29 (Act 2009-503)—Cigarettes

Amends *Alabama Code* §8-19-12 to authorize agents with the Department of Revenue to seize any cigarettes that do not have state tax stamps on them.

HB 33 (Act 2009-145)—Senior Alert

Sets up the Missing Senior Citizen Alert Program by the Department of Public Safety.

HB 36 (Act 2009-638)—Elections

Allows for county election officials to provide for split shift poll workers on election day, provided their pay is also split. This amends §17-8-1.

HB 37 (Act 2009-567)—Probate Records

Authorizes the judge of probate to redact certain records available in the electronic format to remove the Social Security number and birth date of the individual.

HB 41 (Act 2009-295) Autism

Creates the Alabama Interagency Autism Coordinating Council to coordinate services to meet the needs of individuals with autism.

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HB 59 Expungement

Authorizes a person to petition the court to have their record of certain felony or misdemeanor offenses, violations or traffic violations expunged from the record in certain instances.

HB 69 (Act 2009-144)—Entertainment Incentives

Provides incentives to attract the entertainment industry and to provide for exemptions from certain sales, use and lodging taxes.

HB 71 (Act 2009-568)—Scalping Tickets

Allows for the resale of certain admission tickets at a price greater than the original price and the individuals selling the tickets do not have to have a business license under §40-12-167.

HB 142 (Act 2009-146)—Child Support

Amends *Alabama Code* Section 30-3-60 to include all orders for income withholding for spousal or child support and not just those collected by DHR under IVD (Social Security Act).

HB 146 (Act 2009-320)—DNA Testing

Provides for DNA testing for people who are arrested for felony offenses or sexual offenses, and the cost being a part of what is added to the court cost in all criminal and civil cases.

HB 147 (Act 2009-320)—Breast Cancer

Amends § 22-6-11 to provide Medicaid eligibility for women who have been screened or diagnosed with breast or cervical cancer.

HB 149 (Act 2009-646)—American Flag

Allows an individual to fly the American flag on their property irrespective of any restriction on the property.

HB 164 (Act 2009-570)—Landlord Tenant

Prohibits the provider of goods and services from requiring the landlord or real property owner to pay a delinquent bill of the tenant for goods or services provided to the tenant of the landlord if the account for the goods or services is in the name of the tenant and the provider will not have a lien on the real property.

HB 175 (Act 2009-546)—Liquor

Amends § 28-2A-1 to allow any municipality having a population of 1,000 or more to change its classification from dry to wet, or wet to dry, by petition of the voters. Further, revises how liquor licenses are to be issued.

HB 207 (Act 2009-656)—Domestic Violence

Establish domestic violence fatality review teams and confidentiality of certain information to prohibit the testimony in civil or disciplinary proceedings or records presented to the review team.

HB 216 (Act 2009-571)—Student Harassment

Established the Student Harassment Prevention Act and requires the State Board of Education to develop a model policy for local school boards.

HB 220 (Act 2009-502)—State Employees

Amends *Alabama Code* §36-26-26 to provide that no state agency may abolish a classified position through state layoffs to remove a merit employee and hire a non-merit employee.

HB 225 (Act 2009-572)—Firearms

Requires a law enforcement officer who has disarmed an individual of a firearm to return the firearm to the individual unless the firearm is used as evidence in a crime.

HB 297 (Act 2009-511)—Death Penalty

Amends § 15-18-83 to add additional people who may observe the death penalty being carried out, to include not more than six members of the immediate family of the deceased victim.

HB 316 (Act 2009-281)—Electronic Records

To allow for electronic filing of motor vehicle registrations.

HB 421 Clerk, Continuing Education

Establishes a Municipal Clerk and Magistrate Certification Program and a continuing education program administered by AOC.

HB 432 Pistol Permits

Provides that sheriff pistol permit records are not open to public disclosure except for the use of law enforcement.

HB 463 Learner's License

Amends *Alabama Code* §32-6-7.2 to provide that a person under the age of 18 who has a learner's license in another state can apply for a driver's license in Alabama.

HB 464 Driver's License

Creates a system for increasing the age at which a person is eligible to apply for a driver's license which

takes into account students in schools who have committed school infractions. They may have their right to apply for a learner's permit delayed according to the number of disciplinary points obtained.

HB 497 (Act 2009-223)—Tax Refunds

Adds a new section, § 40-18-110, to the *Code of Alabama* to provide that a fee charged by the U.S. Government when Alabama intercepts a federal income tax refund to pay unpaid Alabama tax liability be paid by the debtor out of the funds intercepted.

HB 518 (Act 2009-586)—Assault

Assault in the second degree includes a person who prevents a correctional officer in any city, county or state jail from performing their lawful duty and causes injury to any person.

HB 528—Possession of Explosives

Repeals §13A-7-44 and in its place creates a new crime of criminal possession of explosives.

HB 611—Code of Alabama

Requires that governmental officials and legislators who are given free sets of the *Code of Alabama* must request them rather than having them automatically sent to them. Notice must be sent within one month after the first legislative day of the first Regular Session of each legislative quadrennium.

HB 615 (Act 2009-592)—Autism Centers

Establishes geographic regions of the state for autism centers to provide nonresidential resource and training services for persons who have autism.

HB 713—Voter List

Gives AOC a copy of the statewide voter list to be used in the makeup of the master jury list.

HB 760—Support Orders

Amends §30-3-197 to revise the terms under which the Department of Human Resources may take administrative action to establish paternity or modify and enforce support orders.

SB 1 (Act 2009-500)—Insurance Discounts

Provides an insurance premium discount for insurance for homebuilders who build or rebuild property for better resistance of hurricanes and catastrophic windstorms.

SB 15 (Act 2009-616)—Eluding Law Enforcement

Amends §§ 32-5A-193 and 195, providing for a two-tier crime for eluding or fleeing a law enforcement officer who is attempting to enforce a traffic violation.

SB 23 (Act 2009-617)—Real Estate Brokers

Real estate brokers, reciprocal license and the requirement for their training and also the listing of their names on sale signs.

SB 28 (Act 2009-562)—Appellate Court

Requires that persons serving on the supreme court, court of civil and criminal appeals must have been licensed to practice law for 10 years; Circuit Judges must have practiced law for 5 years and a District Court Judge must have been a member of the Bar for 3 years.

SB 46 (Act 2009-399)—Small Estate Act

Revises the Small Estate Act, § 43-2-691, from \$3,000 to \$25,000 and further provides that this may be adjusted annually by the state finance director for changes in the consumer price index.

SB 47 (Act 2009-283)—Drugs

Amends §20-2-190 regarding the manufacture and sale of products, including ephedrine or pseudoephedrine.

SB 58 (Act 2009-619)—Sex Offender's Address

Increases the time from 145 to 180 days' notice of address prior to the release of an adult criminal sex offender. Sex offenders must provide the actual physical address where the person will be living. The person may not be released until they provide such information.

SB 60 (Act 2009-148)—Banks

Limits the use of bank information, including loan numbers and amounts, for solicitation for services of products without the specific consent of the lender.

SB 61—Missing Instruments

Amends §7-3-390 that a person who acquires ownership of a missing instrument is still entitled to enforce the instrument.

SB 89 (Act 2009-490)—Infection Data

Requires health care facilities to report patient infection data.

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SB 97—Truth in Sentencing

Delays the implementation of voluntary truth-in-lending sentencing standards from October 1, 2009 to October 1, 2011.

SB 98 (Act 2009-622)—Boxing Commission

Creates an Alabama Boxing Commission.

SB 120—Sex Offenses

Provides a person may be charged with solicitation of a child if they utilize a computer or online service to solicit a child under the age of 16.

SB 136 (Act 2009-143)—Metal Coils

Increases the penalties for motor carriers and drivers who fail to comply with federal regulations for securing metal coils, or who allow metal coils to fall on public roads. It would provide both civil and criminal penalties.

SB 137—Sex Offenders Residing Close to Colleges

Amends §15-20-26 to include colleges and universities in the definition of schools, thereby prohibiting adult sex offenders from residing within 2,000 feet of a college.

SB 151—Manufactured Homes

Creates a new titling procedure for manufactured homes and removes it from the current Uniform Certificate of Title Law.

SB 175—State Employees

Provides that state employees are entitled to receive payment for any accrued and unused annual leave in excess of 60 days, up to a maximum of 10 days per year.

SB 178 (Act 2009-149)—Codification of Acts

The annual re-codification of the prior year's statutes.

SB 205—Elections

Requires campaign contributions, expenditures and reports to be filed whether the candidate has or does not have opposition and amends §17-5-8.

SB 233—Residential Mortgage Fraud

Creates a crime of residential mortgage fraud against individuals who commit such a crime.

SB 234 (Act 2009-625)—Mini Code

Amends the mini code to require a creditor to have a license for each location in which they extend credit.

SB 242 (Act 2009-626)—Mortgage Foreclosures

Mortgages of active duty military killed in action overseas cannot be foreclosed against their surviving family for 180 days.

SB 255 (Act 2009-151)—Boating Accidents

Requires the filing of boat accident reports when the damage exceeds \$2,000, (it previously was \$50).

SB 297—State Employees

Identifying information of state employees is excluded from information available to the public.

SB 334 (Act 2009-564)—School Age

Amends Chapter 28 of Title 16 to increase the age of children required to attend school from 16 to 17.

SB 373 (Act 2009-461)—Deregulation

Ends regulation of telephone service by the Public Service Commission for basic residential telephone service.

SB 418 (Act 2009-418)—Competitive Bids

Removes from competitive bids city and county school boards of education.

SB 422 (Act 2009-498)—Subdivision Powers

Amends *Alabama Code* § 11-52-30 to provide that cities are not required to exercise subdivision powers over land outside their city limits but within their five-mile limit.

Annual Alabama Law Institute Meeting

The Alabama Law Institute Annual Meeting will be held Friday, July 17, 2009 in conjunction with the Alabama State Bar Annual Meeting in Point Clear. ▲▼▲