

The House Committee on Judiciary offers the following substitute to HB 405:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 2 of Chapter 5 of Title 13 and Chapter 3 of Title 19 of the Official Code  
2 of Georgia Annotated, relating to the defense of the statute of frauds in contracts and  
3 marriage generally, respectively, so as to change provisions relating to agreements required  
4 to be in writing; to change provisions relating to marriage articles; to provide for a definition;  
5 to clarify provisions relating to antenuptial agreements; to repeal provisions relating to  
6 recording certain documents; to modernize terminology and repeal arcane concepts; to  
7 provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 2 of Chapter 5 of Title 13 of the Official Code of Georgia Annotated, relating to the  
11 defense of the statute of frauds in contracts, is amended by revising Code Section 13-5-30,  
12 relating to agreements required to be in writing, as follows:

13 "13-5-30.

14 To make the following obligations binding on the promisor, the promise must be in writing  
15 and signed by the party to be charged therewith or some person lawfully authorized by him  
16 or her:

- 17 (1) A promise by an executor, administrator, guardian, or trustee to answer damages out  
18 of his or her own estate;
- 19 (2) A promise to answer for the debt, default, or miscarriage of another;
- 20 (3) Any agreement made upon consideration of marriage, ~~except marriage articles as~~  
21 ~~provided in Article 3 of Chapter 3 of Title 19;~~
- 22 (4) Any contract for sale of lands, or any interest in, or concerning lands;
- 23 (5) Any agreement that is not to be performed within one year from the making thereof;
- 24 (6) Any promise to revive a debt barred by a statute of limitation; and
- 25 (7) Any commitment to lend money."

26 **SECTION 2.**

27 Chapter 3 of Title 19 of the Official Code of Georgia Annotated, relating to marriage  
 28 generally, is amended by revising Article 3, relating to marriage articles, contracts, and  
 29 settlements, as follows:

## 30 "ARTICLE 3

31 19-3-60.

32 (a) As used in this article, the term 'antenuptial agreement' means a contract entered into  
 33 prior to a marriage that contemplates a future settlement upon one spouse as to a future  
 34 resolution of issues, including, but not limited to, spousal support and equitable division  
 35 of property.

36 (b) Marriage is a valuable consideration; and a spouse stands, as to property of the other  
 37 spouse settled upon a spouse by marriage contract, as do other purchasers for value,  
 38 provided that by the contract a spouse shall not incapacitate himself or herself from paying  
 39 his or her existing just debts.

40 19-3-61.

41 ~~The minority of either party to marriage articles, as defined in subsection (a) of Code~~  
 42 ~~Section 19-3-62, an antenuptial agreement or to a marriage contract shall not invalidate it,~~  
 43 ~~so long as the party is of lawful age to contract marriage.~~

44 19-3-62.

45 An antenuptial agreement shall be in writing, signed by both parties who agree to be bound,  
 46 and attested by at least two witnesses, one of whom shall be a notary public.

47 ~~(a) As used in this article, the term 'marriage articles' means any antenuptial agreement~~  
 48 ~~between the parties to a marriage contemplating a future settlement upon one spouse.~~  
 49 ~~Marriage articles, whether by parol or in writing, may be executed and enforced by a court~~  
 50 ~~of equity at the instance of the spouse at any time during the life of the other spouse, so~~  
 51 ~~long as the rights of third persons, purchasers, or creditors, in good faith and without~~  
 52 ~~notice, are not affected thereby.~~

53 ~~(b) An agreement perfect in itself which needs no future conveyance to effect its purposes~~  
 54 ~~is an executed contract and does not come under the definition of marriage articles.~~

55 19-3-63.

56 Every marriage contract in writing, made in contemplation of marriage, shall be liberally  
 57 construed to carry into effect the intention of the parties and no want of form or technical

58 expression shall invalidate the same. ~~The contract must~~ Such marriage contract shall be  
 59 in writing, signed by both parties who agree to be bound, and attested by at least two  
 60 witnesses, one of whom shall be a notary public.

61 19-3-64.

62 A spouse may voluntarily execute an antenuptial agreement ~~described in Code Section~~  
 63 ~~19-3-62~~ or he or she may at any time during the marriage, either indirectly through trustees  
 64 or directly to his or her spouse, convey any property to which he or she has title, subject  
 65 to the rights of prior purchasers or creditors without notice.

66 19-3-65.

67 The judge of the superior court of the county of a spouse's domicile may at any time, upon  
 68 petition, exercise equitable powers in appointing, removing, or substituting trustees or in  
 69 granting any order for the protection of the trust estate, exercising a wise discretion as to  
 70 the terms on which the appointment shall be made or on which the order shall be granted.  
 71 ~~The proceeding in each case shall be transmitted to the clerk of the superior court, to be~~  
 72 ~~recorded in the book of the minutes of the court.~~

73 19-3-66.

74 (a) Marriage contracts and postnuptial settlements shall be enforced at the instance of all  
 75 persons in whose favor there are limitations of the estate.

76 (b) Antenuptial agreements may be enforced by a court of equity at the instance of:

77 (1) Marriage articles, as defined in subsection (a) of Code Section 19-3-62, shall be  
 78 executed only at the instance of the The parties to the marriage; contract and the

79 (2) A spouse at any time during the life of the other spouse, so long as the rights of third  
 80 persons, purchasers, or creditors, in good faith and without notice, are not affected; or

81 (3) The offspring of the marriage and their heirs at any time after the death of a spouse;  
 82 but, when executed at their instance provided, however, that when enforced at the  
 83 instance of such offspring and their heirs, the court may execute also enforce in favor of  
 84 other persons and volunteers.

85 ~~19-3-67.~~

86 ~~(a) Every marriage contract and every voluntary settlement made by one spouse with the~~  
 87 ~~other, whether or not in execution of marriage articles, shall be recorded in the office of the~~  
 88 ~~clerk of the superior court of the county of the residence of the spouse making the~~  
 89 ~~settlement within three months after the execution thereof. If such a contract or settlement~~  
 90 ~~is made in another state and the parties subsequently move into this state, the same shall~~

91 ~~be recorded within three months from the move. If the settled property is in this state and~~  
92 ~~the parties reside in another state, the record shall be made in the county where the property~~  
93 ~~is located within the time specified above.~~

94 ~~(b) A contract or settlement which is not recorded as provided in subsection (a) of this~~  
95 ~~Code section shall be of no force or effect against one who, bona fide and without notice,~~  
96 ~~becomes a purchaser, creditor, or surety before the actual recording of the same.~~

97 ~~19-3-68.~~

98 ~~(a) If the trustee or the spouse having possession of a marriage contract or settlement fails~~  
99 ~~or refuses to have the same recorded, the other spouse or any person acting on behalf of the~~  
100 ~~spouse may apply to the judge of the superior court at any time for an order compelling its~~  
101 ~~recordation. The application of the spouse or other person, when entered on the minutes~~  
102 ~~of the superior court, shall be a notice equivalent to the record of the marriage contract or~~  
103 ~~trust deed.~~

104 ~~(b) A trustee refusing after demand to record a marriage contract or settlement shall be~~  
105 ~~personally liable to his beneficiary for all damages sustained by reason of his failure to~~  
106 ~~record."~~

107 **SECTION 3.**

108 All laws and parts of laws in conflict with this Act are repealed.