

House Bill 190

By: Representatives Hanson of the 80th, Quick of the 117th, Willard of the 51st, Oliver of the 82nd, and Kelley of the 16th

A BILL TO BE ENTITLED
AN ACT

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

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 PART I.
11 SECTION 1-1.

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

15 "ARTICLE 3

16 19-3-60.

17 (a) As used in this article, the term 'antenuptial agreement' means a contract entered into
18 prior to a marriage that determines property rights or contemplates a future settlement upon
19 one spouse as to a future resolution of issues, including, but not limited to, year's support,
20 spousal support, and equitable division of property.

21 (b) Marriage is a valuable consideration; and a spouse stands, as to property of the other
22 spouse settled upon a spouse by marriage contract, as do other purchasers for value,

23 provided that by the contract a spouse shall not incapacitate himself or herself from paying
 24 his or her existing just debts.

25 19-3-61.

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

29 19-3-62.

30 An antenuptial agreement shall be in writing, signed by both parties who agree to be bound,
 31 and attested by at least two witnesses, one of whom shall be a notary public. Antenuptial
 32 agreements shall be liberally construed to carry into effect the intention of the parties, and
 33 no want of form or technical expression shall invalidate such agreements.

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

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

42 19-3-63.

43 Every marriage contract in writing, made in contemplation of marriage, shall be liberally
 44 construed to carry into effect the intention of the parties, and no want of form or technical
 45 expression shall invalidate the same. ~~The contract must~~ Such marriage contract shall be
 46 in writing, signed by both parties who agree to be bound, and attested by at least two
 47 witnesses, one of whom shall be a notary public.

48 19-3-64.

49 A spouse may voluntarily execute an antenuptial agreement, ~~described in Code Section~~
 50 ~~19-3-62~~ or he or she may at any time during the marriage, either indirectly through trustees
 51 or directly to his or her spouse, convey any property to which he or she has title, subject
 52 to the rights of prior purchasers or creditors without notice.

53 19-3-65.

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

60 19-3-66.

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

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

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

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

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

72 ~~19-3-67.~~

73 ~~(a) Every marriage contract and every voluntary settlement made by one spouse with the~~
 74 ~~other, whether or not in execution of marriage articles, shall be recorded in the office of the~~
 75 ~~clerk of the superior court of the county of the residence of the spouse making the~~
 76 ~~settlement within three months after the execution thereof. If such a contract or settlement~~
 77 ~~is made in another state and the parties subsequently move into this state, the same shall~~
 78 ~~be recorded within three months from the move. If the settled property is in this state and~~
 79 ~~the parties reside in another state, the record shall be made in the county where the property~~
 80 ~~is located within the time specified above.~~

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

84 ~~19-3-68.~~

85 ~~(a) If the trustee or the spouse having possession of a marriage contract or settlement fails~~
 86 ~~or refuses to have the same recorded, the other spouse or any person acting on behalf of the~~

87 spouse may apply to the judge of the superior court at any time for an order compelling its
 88 recordation. The application of the spouse or other person, when entered on the minutes
 89 of the superior court, shall be a notice equivalent to the record of the marriage contract or
 90 trust deed.

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

94 PART II

95 SECTION 2-1.

96 Title 13 of the Official Code of Georgia Annotated, relating to contracts, is amended by
 97 revising Code Section 13-4-82, relating to intermarriage of parties, as follows:

98 "13-4-82.

99 Intermarriage of the parties generally releases a debt created prior to marriage. However,
 100 intermarriage of the parties ~~does~~ shall not release a debt arising from an antenuptial
 101 ~~contract agreement, as such term is defined in Code Section 19-3-60."~~

102 SECTION 2-2.

103 Said title is further amended by revising Code Section 13-5-30, relating to agreements
 104 required to be in writing, as follows:

105 "13-5-30.

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

109 (1) A promise by an executor, administrator, guardian, or trustee to answer damages out
 110 of his or her own estate;

111 (2) A promise to answer for the debt, default, or miscarriage of another;

112 (3) Any agreement made upon consideration of marriage, ~~except marriage articles as~~
 113 ~~provided in Article 3 of Chapter 3 of Title 19;~~

114 (4) Any contract for sale of lands, or any interest in, or concerning lands;

115 (5) Any agreement that is not to be performed within one year from the making thereof;

116 (6) Any promise to revive a debt barred by a statute of limitation; and

117 (7) Any commitment to lend money."

118

PART III

119

SECTION 3-1.

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