

The Senate Committee on Judiciary offered the following substitute to HB 190:

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 to  
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. Such marriage contract shall be in writing, signed by  
 46 both parties who agree to be bound, and ~~The contract must be~~ attested by at least two  
 47 witnesses, one of whom shall be a notary public.

48 19-3-64.

49 A spouse person may voluntarily execute an antenuptial agreement, ~~described in Code~~  
 50 ~~Section 19-3-62~~ or he or she may at any time during the marriage, either indirectly through  
 51 trustees or directly to his or her spouse, convey any property to which he or she has title,  
 52 subject 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. Marriage articles, as defined in  
 63 subsection (a) of Code Section 19-3-62, shall be executed only at the instance of the parties  
 64 to the contract and the

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

66 (1) The parties to the marriage; or

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

71 ~~19-3-67.~~

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

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

83 ~~19-3-68.~~

84 ~~(a) If the trustee or the spouse having possession of a marriage contract or settlement fails~~  
 85 ~~or refuses to have the same recorded, the other spouse or any person acting on behalf of the~~  
 86 ~~spouse may apply to the judge of the superior court at any time for an order compelling its~~

87 ~~recordation. The application of the spouse or other person, when entered on the minutes~~  
 88 ~~of the superior court, shall be a notice equivalent to the record of the marriage contract or~~  
 89 ~~trust deed.~~

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

93 **PART II**

94 **SECTION 2-1.**

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

97 "13-4-82.

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

101 **SECTION 2-2.**

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

104 "13-5-30.

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

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

117

PART III

118

**SECTION 3-1.**

119

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