

HOUSE BILL 1386

By Ragan

AN ACT to amend Tennessee Code Annotated, Title 8;  
Title 10; Title 16; Title 36; Title 39; Title 67 and  
Title 68, relative to marriage.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act is known and may be cited as the "Marital Contract at Common Law Recording Act."

SECTION 2. Tennessee Code Annotated, Title 36, Chapter 3, is amended by adding the following as a new part:

**36-3-201. Findings.**

The general assembly finds that:

(1) The existence of a marital relationship between one (1) man and one (1) woman in this state is not dependent on enacted positive law, and the positive law cannot abolish the existence and creation of such a marital relationship but only regulate the mode by which a man and a woman enter into the marital relationship;

(2) The ninth amendment to the United States constitution guarantees to the people of this state the rights held by the people at common law, and the right of a man and a woman to enter into a marital relationship as defined at common law in terms of husband and wife will not be denied or disparaged by a construction of any enumerated rights in the constitution;

(3) The fourteenth amendment to the United States constitution did not abrogate the provisions of the ninth amendment or the possession of private rights at common law by the people;

(4) The due process clause of the fifth and fourteenth amendments to the United States constitution guarantees that no person shall be deprived of life, liberty, or property without due process of law;

(5) By virtue of the ninth amendment, the due process clause of the fifth and fourteenth amendments shall not be construed to disparage or deny to the people their rights at common law;

(6) The common law right to liberty is only protected procedurally by the due process and equal protection clauses of the fifth and fourteenth amendments because the right itself was not enumerated and is among the others retained by the people under the ninth amendment;

(7) The powers of the federal judicial branch were not expanded by the provisions of the fourteenth amendment and do not include the creation and enforcement of rights not expressly enumerated in the constitution or that constrict the powers of the states to secure their common law rights unless the manner in which they do so violates the amendment's privileges and immunities clause or denies persons procedural due process or the equal protection of the law;

(8) Under the United States constitution, no power to regulate the common law marital relationship was delegated to the federal government by the constitution, nor prohibited by it to the states, and, therefore, that power was reserved to the states, or to the people by the tenth amendment;

(9) The Tennessee constitution controls the powers of the general assembly and the executive branch, and so long as its provisions do not contravene the powers delegated expressly or by necessary implication to the federal government by the United States constitution, the provisions of the

Tennessee constitution are binding on the legislative and executive branches and are enforceable;

(10) Article XI, Section 18 of the Tennessee constitution recognizes the validity of a marital contract at common law between one (1) man and one (1) woman;

(11) The United States supreme court has not held that a state cannot recognize as valid and enforceable a common law marital relationship; and

(12) The United States supreme court has stated that it has no constitutional authority to declare what the common law of a state is or should be.

**36-3-202. Record evidencing marital contract at common law.**

(a) If one (1) man and one (1) woman have both attained the age of majority and have a marital contract at common law, then the man and the woman shall file with the office of the county clerk in the county in which one (1) of the parties to the marital contract resides a document entitled "Record of Marital Contract at Common Law." The document must state:

(1) That the man and woman have declared to each other acceptance of the other as wife and husband, respectively, and affirm the man's and the woman's mutual intention to enter into a marital contract at common law;

(2) The man's and the woman's dates of birth and current address;

(3) The county and, if applicable, the city in which the declaration of marriage and statement of intent to enter into a marital contract at common law was made;

(4) That the marriage is not being contracted with a lineal ancestor or descendant, the lineal ancestor or descendant of either parent, the child of a

grandparent, the lineal descendants of husband or wife, as the case may be, or the husband or wife of a parent or lineal descendant;

(5) That at the time the declaration of marriage and statement of intent to enter into a marital contract at common law was made, neither the husband nor the wife was drunk or of unsound mind or acting under force or duress;

(6) That the record of marital contract at common law is not being executed prior to the dissolution of any marriage solemnized prior to the effective date of this act; and if the marriage is dissolved based on the party to a previous marriage having been absent five (5) years and not known to be living, the name of the other party to such previous marriage; and

(7) That each party understands that making a false statement in the document is punishable as perjury, pursuant to § 39-16-702.

(b) The document must be sworn to by the husband and the wife, with the names of the husband and wife printed below the respective signatures.

(c) Both the husband and wife must be present at the time the record of the marital contract at common law is filed with the county clerk, and the husband and wife must each provide the county clerk with a form of government-issued photo identification prior to the clerk filing the record of marital contract at common law.

(d) The record of marital contract at common law may be filed at any time after the declaration of marriage and statement of intent has been made.

(e) If either party is incarcerated or otherwise unable to be present in person to provide the information required by subsection (a), the party may submit a record of marital contract at common law that contains:

(1) The information required by subsection (a);

(2) A copy of the person's government-issued photo identification;

(3) A statement as to the cause or reason for the person's inability to comply with subsection (c); and

(4) A notarized statement of a witness to the unavailable party's declaration of acceptance of the other party as husband or wife and statement of intent to enter into a marital contract at common law, and contain the witness's full legal name, age, and current address.

(f) Failure to record a record of marital contract at common law is not determinative of whether a marital contract at common law exists. The existence and validity of a marital contract at common law is not dependent upon the act of submitting notice or of the state receiving and recording the notice.

(g) The office of vital records shall develop a record of marital contract at common law form consistent with this part. The office of vital records shall post the form on its website for use by the general public and shall distribute copies of the form to each county clerk's office in this state.

**36-3-203. Recording.**

(a) The county clerk is authorized to record a record of marital contract at common law that complies with § 36-3-202. The county clerk shall forward the record of marital contract at common law to the office of vital records to be filed and registered with such office.

(b) If a record of marital contract at common law is executed outside of this state, then the marital contract at common law, the parties thereto, the parties' property, and the parties' children have the same status as if the marital contract at common law was made in this state if one (1) of the parties to the marital contract at common law was, at the time of the declaration of marriage and statement of intent to enter into a marital contract at common law, a resident of this state.

(c) A county clerk is prohibited from recording a record of marital contract at common law that does not conform with § 36-3-202.

(d) A cause of action for civil or criminal liability shall not be brought against a county clerk who in good faith complies with this section.

**36-3-204. Second marriage before dissolution or rescission of first prohibited.**

A party cannot enter into a valid marital contract at common law before the dissolution of a prior marriage recognized under the law of this state. A record of marital contract at common law involving a person previously married in a lawful civil or common law marriage must not be received for recording in the office of vital records unless a record of the dissolution of the prior marriage or marital contract at common law has been recorded in the office of vital records.

**36-3-205. Contest of record of marital contract at common law.**

(a) An interested person has the right to contest the recording of a record of marital contract at common law filed after the effective date of this act.

(b) Venue for the petition of contest is proper in the county where the record of marital contract at common law that is the subject of the contest was filed.

(c) The petition must be accompanied by a cost bond in the sum of at least fifty dollars (\$50.00).

(d) All court costs must be adjudged against the losing party.

**36-3-206. Severability of contract.**

If a court of competent jurisdiction enters a final judgment holding that any statute, benefit, right, or privilege that a party to a marital contract, or the party's heirs, descendants, assigns, or others in privity with the party, would have by virtue of the marital contract, is invalid, unconstitutional, or unenforceable, then the invalidity, unconstitutionality, or unenforceability of the statute or benefit does not affect any other

statute, benefit, right, or privilege to which a person may be entitled. The invalidity, unconstitutionality, or unenforceability of a statute, benefit, right, or privilege pertaining to a marital contract does not impair the validity of the marital contract itself. The benefits, rights, and privileges referred to in this part include, but are not limited to, those relating to and referring to the relationships of husband and wife, paternity, and parent and child as they exist at common law.

**36-3-207. Use of record of marital contract at common law.**

(a) For the purposes of any law in which proof of marriage is necessary in order for a husband or wife to register for, claim, or receive a benefit, right, or privilege accorded a spouse under a provision of state or federal law or rules, regulations, and executive orders made pursuant to state or federal law, the record of marital contract at common law recorded with the county clerk and on record with the office of vital records is prima facie evidence of a common law marital contract, and an official, having accepted the record, is not liable to a claim or cause of action if it is later proved that a marital contract did not exist. A record of marital contract at common law is not conclusive proof of a marital contract.

(b) A person who stands in a third-party relationship to one (1) or more of the parties to a marital contract at common law is not required to recognize a common law marital contract for any purpose unless the common law marital contract has been recorded pursuant to this part. Recording of the record of marital contract at common law pursuant to this part is prima facie evidence of a marital contract but does not preclude the third party from bringing an action pursuant to title 29, chapter 14, for a declaration that a common law marital contract does exist.

(c) A third party described in subsection (b) is not liable for damages to the parties to a common law marital contract, or to other third parties in relation to the

common law marital contract, if the third party relies on the record of marital contract at common law filed pursuant to this part, absent a showing of bad faith by the third party or proof by a preponderance of the evidence that the third party knew that a lawful marital contract had not been formed.

SECTION 3. Tennessee Code Annotated, Title 68, Chapter 3, Part 4, is amended by adding the following as a new section:

**68-3-403. Recordation of marital contracts at common law.**

(a) A record of marital contract at common law submitted to a county clerk in this state must be filed and registered with the office of vital records if the record has been completed and submitted to the county clerk in accordance with title 36, chapter 3, part 2, and this section.

(b) The county clerk where the record of marital contract at common law is presented for recording shall forward to the office of vital records, on or before the tenth day of each calendar month, all records of marital contract at common law presented to the clerk for recording, filing, and registering during the preceding calendar month.

(c) The office of vital records, upon request by one (1) of the parties to the record of marital contract at common law, shall provide to that party a certified copy of the record, indicating the date the record was recorded, filed, and registered.

(d) The office of vital records may charge a fee sufficient to cover the administrative costs related to records of marital contracts at common law submitted for recording.

SECTION 4. Tennessee Code Annotated, Section 68-3-205(d)(2)(A), is amended by deleting the language "or other custodian" and substituting the language ", office of vital records, or other custodian".



SECTION 5. Tennessee Code Annotated, Section 36-5-1301(a), is amended by deleting the language "recreational licenses, or marriage licenses" and substituting the language "recreational licenses, records of marital contracts at common law, or marriage licenses".

SECTION 6. Tennessee Code Annotated, Section 10-7-413(b), is amended by adding the language "records of marital contracts at common law," following the language "deed books,".

SECTION 7. Tennessee Code Annotated, Section 67-4-505, is amended by deleting the language "marriage licenses shall be" and substituting "marriage licenses and records of marriage contracts at common law is".

SECTION 8. Tennessee Code Annotated, Section 67-4-411, is amended by deleting subsection (a) and substituting:

(a) In addition to the privilege tax on records of marital contracts at common law and marriage licenses under § 67-4-505, the county clerk shall collect and forward to the commissioner of revenue a tax of fifteen dollars (\$15.00) for each record of marital contract at common law filed and each marriage license issued.

SECTION 9. Tennessee Code Annotated, Section 16-10-101, is amended by adding the language "; provided, however, in cases involving the definition of common law marriage, the circuit court's jurisdiction is limited to those principles of common law consistent with Article XI, Section 18 of the Tennessee constitution" following the language "upon another tribunal".

SECTION 10. Tennessee Code Annotated, Section 16-11-102, is amended by deleting subsection (a) and substituting:

(a) The chancery court has concurrent jurisdiction, with the circuit court, of all civil causes of action, triable in the circuit court, except for unliquidated damages for injuries to person or character, and except for unliquidated damages for injuries to

property not resulting from a breach of oral or written contract and except for cases involving the definition of marriage at common law, in which case the court's jurisdiction is limited to the principles of common law consistent with Article XI, Section 18 of the Tennessee constitution; and a demurrer for want of jurisdiction of the cause of action shall not be sustained in the chancery court, except in the cases excepted.

SECTION 11. Tennessee Code Annotated, Section 36-3-103(a), is amended by deleting the language "Before being joined in marriage," and substituting instead "Before being joined in a marriage solemnized pursuant to this part,".

SECTION 12. Tennessee Code Annotated, Section 36-3-303(a), is amended by deleting the language "who solemnizes the rite of matrimony" and substituting instead "who solemnizes the rite of matrimony pursuant to part 1 of this chapter".

SECTION 13. Tennessee Code Annotated, Section 36-3-303(b), is amended by deleting the language "solemnizing marriage as set forth in this part" and substituting instead "solemnizing marriage authorized pursuant to part 1 of this chapter and as set forth in this part".

SECTION 14. Tennessee Code Annotated, Section 36-3-304, is amended by deleting the language "on each license" and substituting instead "on each license issued pursuant to part 1 of this chapter".

SECTION 15. Tennessee Code Annotated, Section 8-21-701, is amended by deleting subdivision (1) and substituting instead the following:

(1) For issuance of a marriage license or recording of a marital contract at  
common law                      \$10.00

SECTION 16. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 17. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 18. This act takes effect upon becoming a law, the public welfare requiring it.