

By: Senator(s) McDaniel

To: Judiciary, Division A

SENATE BILL NO. 2826

1 AN ACT ENTITLED THE "MISSISSIPPI MARITAL CONTRACT AT COMMON
2 LAW RECORDING ACT"; TO PROVIDE FOR A "RECORD OF MARITAL CONTRACT
3 AT COMMON LAW" EVIDENCING A MARITAL CONTRACT; TO PROVIDE FOR THE
4 RECORDING OF THE MARITAL CONTRACT WITH THE CIRCUIT CLERK; TO
5 PROVIDE THAT A SECOND MARRIAGE BEFORE DISSOLUTION OR RECISSION OF
6 FIRST MARRIAGE IS PROHIBITED; TO PROVIDE FOR THE CONTEST OF RECORD
7 OF MARITAL CONTRACT AT COMMON LAW; TO PROVIDE FOR THE USE OF
8 RECORD OF MARITAL CONTRACT AT COMMON LAW; TO PROVIDE FOR THE
9 RECORDATION OF MARITAL CONTRACTS AT COMMON LAW WITH THE BUREAU OF
10 VITAL RECORDS; TO AMEND SECTIONS 93-1-1 THROUGH 93-1-25,
11 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT THE MISSISSIPPI MARITAL
12 CONTRACT AT COMMON LAW ACT SUPERSEDES EXISTING MISSISSIPPI
13 STATUTES RELATING TO MARRIAGE; AND FOR RELATED PURPOSES.

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

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

17 **SECTION 2.** The Legislature finds that:

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



24 (b) The Ninth Amendment to the United States
25 constitution guarantees to the people of this state the rights
26 held by the people at common law, and the right of a man and a
27 woman to enter into a marital relationship as defined at common
28 law in terms of husband and wife will not be denied or disparaged
29 by a construction of any enumerated rights in the constitution;

30 (c) The Fourteenth Amendment to the United States
31 constitution did not abrogate the provisions of the ninth
32 amendment or the possession of private rights at common law by the
33 people;

34 (d) The due process clause of the Fifth and Fourteenth
35 Amendments to the United States constitution guarantees that no
36 person shall be deprived of life, liberty, or property without due
37 process of law;

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

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

47 (g) The powers of the federal judicial branch were not
48 expanded by the provisions of the fourteenth amendment and do not



49 include the creation and enforcement of rights not expressly
50 enumerated in the Constitution or that constrict the powers of the
51 states to secure their common law rights unless the manner in
52 which they do so violates the amendment's privileges and
53 immunities clause or denies persons procedural due process or the
54 equal protection of the law;

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

60 (i) The Mississippi Constitution controls the powers of
61 the Legislature and the executive branch, and so long as its
62 provisions do not contravene the powers delegated expressly or by
63 necessary implication to the federal government by the United
64 States constitution, the provisions of the Mississippi
65 Constitution are binding on the legislative and executive branches
66 and are enforceable;

67 (j) The Mississippi Constitution recognizes the
68 validity of a marital contract at common law between one (1) man
69 and one (1) woman;

70 (k) The United States Supreme Court has not held that a
71 state cannot recognize as valid and enforceable a common law
72 marital relationship; and



73 (1) The United States Supreme Court has stated that it
74 has no constitutional authority to declare what the common law of
75 a state is or should be.

76 **SECTION 3.** (1) If one (1) man and one (1) woman have both
77 attained the age of majority and have a marital contract at common
78 law, then the man and the woman shall file with the office of the
79 county clerk in the county in which one (1) of the parties to the
80 marital contract resides a document entitled "Mississippi Record
81 of Marital Contract at Common Law." The document must state:

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

86 (b) The man's and the woman's dates of birth and
87 current address;

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

91 (d) That the marriage is not being contracted with a
92 lineal ancestor or descendant, the lineal ancestor or descendant
93 of either parent the child of a grandparent, the lineal
94 descendants of husband or wife, as the case may be, or the husband
95 or wife of a parent or lineal descendant;

96 (e) That at the time the declaration of marriage and
97 statement of intent to enter into a marital contract at common law



98 was made, neither the husband nor the wife was drunk or of unsound
99 mind or acting under force or duress;

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

106 (g) That each party understands that making a false
107 statement in the document is punishable as perjury.

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

111 (3) Both the husband and wife must be present at the time
112 the record of the marital contract at common law is filed with the
113 circuit clerk, and the husband and wife must each provide the
114 circuit clerk with a form of government-issued photo
115 identification prior to the clerk filing the record of marital
116 contract at common law.

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

120 (5) If either party is incarcerated or otherwise unable to
121 be present in person to provide the information required by



122 subsection (1) of this section the party may submit a record of
123 marital contract at common law that contains:

124 (a) The information required by subsection (1) of this
125 section;

126 (b) A copy of the person's government-issued photo
127 identification;

128 (c) A statement as to the cause or reason for the
129 person's inability to comply with subsection (3) of this section;
130 and

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

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

141 (7) The Department of Health, Bureau of Vital Statistics,
142 shall develop a record of marital contract at common law form
143 consistent with this part. The Department of Health, Bureau of
144 Vital Statistics, shall post the form on its website for use by
145 the general public and shall distribute copies of the form to each
146 circuit clerk's office in this state.



147 **SECTION 4.** (1) The circuit clerk is authorized to record a
148 record of marital contract at common law that complies with this
149 act. The circuit clerk shall forward the record of marital
150 contract at common law to the Department of Health, Bureau of
151 Vital Statistics, to be filed and registered with such office.

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

160 (3) A circuit clerk is prohibited from recording a record of
161 marital contract at common law that does not conform with this
162 act.

163 (4) A cause of action for civil or criminal liability shall
164 not be brought against a circuit clerk who in good faith complies
165 with this section.

166 **SECTION 5.** A party cannot enter into a valid marital
167 contract at common law before the dissolution of a prior marriage
168 recognized under the law of this state. A record of marital
169 contract at common law involving a person previously married in a
170 lawful civil or common law marriage must not be received for
171 recording in the Department of Health, Bureau of Vital Statistics,



172 unless a record of the dissolution of the prior marriage or
173 marital contract at common law has been recorded in the Department
174 of Health, Bureau of Vital Statistics.

175 **SECTION 6.** (1) An interested person has the right to
176 contest the recording of a record of marital contract at common
177 law filed after the effective date of this act.

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

181 (3) The petition must be accompanied by a cost bond in the
182 sum of at least Fifty Dollars (\$50.00).

183 (4) All court costs must be adjudged against the losing
184 party.

185 **SECTION 7.** If a court of competent jurisdiction enters a
186 final judgment holding that any statute, benefit, right, or
187 privilege that a party to a marital contract, or the party's
188 heirs, descendants, assigns, or others in privity with the party,
189 would have by virtue of the marital contract, is invalid,
190 unconstitutional or unenforceable, then the invalidity,
191 unconstitutionality or unenforceability of the statute or benefit
192 does not affect any other statute, benefit, right or privilege to
193 which a person may be entitled. The invalidity,
194 unconstitutionality or unenforceability of a statute, benefit,
195 right or privilege pertaining to a marital contract does not
196 impair the validity of the marital contract itself. The benefits,



197 rights, and privileges referred to in this part include, but are
198 not limited to, those relating to and referring to the
199 relationships of husband and wife, paternity, and parent and child
200 exist as they existed at common law.

201 **SECTION 8.** (1) For the purposes of any law in which proof
202 of marriage is necessary in order for a husband or wife to
203 register for, claim, or receive a benefits right, or privilege
204 accorded a spouse under a provision of state or federal law or
205 rules, regulations, and executive orders made pursuant to state or
206 federal law, the record of marital contract at common law recorded
207 with the circuit clerk and on record with the Department of
208 Health, Bureau of Vital Statistics, is prima facie evidence of a
209 common law marital contract, and an official, having accepted the
210 record, is not liable to a claim or cause of action if it is later
211 proved that a marital contract did not exist. A record of marital
212 contract at common law is not conclusive proof of a marital
213 contract.

214 (2) A person who stands in a third-party relationship to one
215 or more of the parties to a marital contract at common law is not
216 required to recognize a common law marital contract for any
217 purpose unless the common law marital contract has been recorded
218 pursuant to this section. Recording of the record of marital
219 contract at common law pursuant to this part is prima facie
220 evidence of a marital contract but does not preclude the third



221 party from bringing an action for a declaration that a common law
222 marital contract does exist.

223 (3) A third party described in subsection (2) of this
224 section is not liable for damages to the parties to a common law
225 marital contract, or to other third parties in relation to the
226 common law marital contract, if the third party relies on the
227 record of marital contract at common law filed pursuant to this
228 part, absent a showing of bad faith by the third party or proof by
229 a preponderance of the evidence that the third party knew that a
230 lawful marital contract had not been formed.

231 **SECTION 9.** (1) A record of marital contract at common law
232 submitted to a circuit clerk in this state must be filed and
233 registered with the Department of Health, Bureau of Vital
234 Statistics, if the record has been completed and submitted to the
235 circuit clerk in accordance with this section.

236 (2) The circuit clerk where the record of marital contract
237 at common law is presented for recording shall forward to the
238 Department of Health, Bureau of Vital Statistics, on or before the
239 tenth day of each calendar month, all records of marital contract
240 at common law presented to the clerk for recording, filing and
241 registering during the preceding calendar month.

242 (3) The Department of Health, Bureau of Vital Statistics,
243 upon request by one (1) of the parties to the record of marital
244 contract at common law, shall provide to that party a certified



245 copy of the record, indicating the date the record was recorded,
246 filed and registered.

247 (4) The Department of Health, Bureau of Vital Statistics,
248 may charge a fee sufficient to cover the administrative costs
249 related to records of marital contracts at common law submitted
250 for recording.

251 **SECTION 10.** The circuit clerk shall collect and forward to
252 the Commissioner of Revenue a fee of Twenty Dollars (\$20.00) for
253 each record of marital contract at common law filed and each
254 marriage license issued.

255 **SECTION 11.** Section 93-1-1, Mississippi Code of 1972, is
256 amended as follows:

257 93-1-1. (1) The son shall not marry his grandmother, his
258 mother, or his stepmother; the brother his sister; the father his
259 daughter, or his legally adopted daughter, or his granddaughter;
260 the son shall not marry the daughter of his father begotten of his
261 stepmother, or his aunt, being his father's or mother's sister,
262 nor shall the children of brother or sister, or brothers and
263 sisters intermarry being first cousins by blood. The father shall
264 not marry his son's widow; a man shall not marry his wife's
265 daughter, or his wife's daughter's daughter, or his wife's son's
266 daughter, or the daughter of his brother or sister; and the like
267 prohibition shall extend to females in the same degrees. All
268 marriages prohibited by this subsection are incestuous and void.



269 (2) Any marriage between persons of the same gender is
270 prohibited and null and void from the beginning. Any marriage
271 between persons of the same gender that is valid in another
272 jurisdiction does not constitute a legal or valid marriage in
273 Mississippi.

274 (3) Marriage licenses and records of marriage contracts at
275 common law under the "Mississippi Marital Contract at Common Law
276 Recording Act" supersede the provisions of this section.

277 **SECTION 12.** Section 93-1-3, Mississippi Code of 1972, is
278 amended as follows:

279 93-1-3. Any attempt to evade Section 93-1-1 by marrying out
280 of this state and returning to it shall be within the prohibitions
281 of said section.

282 Marriage licenses and records of marriage contracts at common
283 law under the "Mississippi Marital Contract at Common Law
284 Recording Act" supersede the provisions of this section.

285 **SECTION 13.** Section 93-1-5, Mississippi Code of 1972, is
286 amended as follows:

287 93-1-5. (1) Every male who is at least seventeen (17) years
288 old and every female who is at least fifteen (15) years old shall
289 be capable in law of contracting marriage. However, males and
290 females under the age of twenty-one (21) years must furnish the
291 circuit clerk satisfactory evidence of consent to the marriage by
292 the parents or guardians of the parties. It shall be unlawful for



293 the circuit court clerk to issue a marriage license until the
294 following conditions precedent have been complied with:

295 (a) Application for the license is to be made in
296 writing to the clerk of the circuit court of any county in the
297 State of Mississippi. The application shall be sworn to by both
298 applicants and shall include:

299 (i) The names, ages and addresses of the parties
300 applying;

301 (ii) The names and addresses of the parents of the
302 applicants, and, for applicants under the age of twenty-one (21),
303 if no parents, then names and addresses of the guardian or next of
304 kin;

305 (iii) The signatures of witnesses; and

306 (iv) Any other data that may be required by law or
307 the State Board of Health.

308 (b) Proof of age shall be presented to the circuit
309 court clerk in the form of either a birth certificate, baptismal
310 record, armed service discharge, armed service identification
311 card, life insurance policy, insurance certificate, school record,
312 driver's license, tribal identification card or other official
313 document evidencing age. The document substantiating age and date
314 of birth shall be examined by the circuit court clerk before whom
315 application is made, and the circuit court clerk shall retain in
316 his file with the application the document or a certified or
317 photostatic copy of the document.



318 (c) Applicants under the age of twenty-one (21) must
319 submit affidavits showing the age of both applying parties made by
320 either the father, mother, guardian or next of kin of each of the
321 contracting parties and filed with the clerk of the circuit court
322 along with the application.

323 (d) If the male applicant is under seventeen (17) years
324 of age or the female is under fifteen (15) years of age, and
325 satisfactory proof is furnished to the judge of any circuit,
326 chancery or county court that sufficient reasons exist and that
327 the parties desire to be married to each other and that the
328 parents or other person in loco parentis of the person or persons
329 so under age consent to the marriage, then the judge of any such
330 court in the county where either of the parties resides may waive
331 the minimum age requirement and by written instrument authorize
332 the clerk of the court to issue the marriage license to the
333 parties if they are otherwise qualified by law. Authorization
334 shall be a part of the confidential files of the clerk of the
335 court, subject to inspection only by written permission of the
336 judge.

337 (e) In no event shall a license be issued by the
338 circuit court clerk when it appears to the circuit court clerk
339 that the applicants are, or either of them is:

340 (i) Intoxicated; or

341 (ii) Suffering from a mental illness or an
342 intellectual disability to the extent that the clerk believes that



343 the person does not understand the nature and consequences of the
344 application for a marriage license.

345 (2) Any circuit clerk shall be liable under his official
346 bond because of noncompliance with the provisions of this section.

347 (3) Any circuit court clerk who issues a marriage license
348 without complying with the provisions of this section shall be
349 guilty of a misdemeanor and, upon conviction, shall be punished by
350 a fine of not less than Fifty Dollars (\$50.00) and not more than
351 Five Hundred Dollars (\$500.00).

352 (4) Marriage licenses and records of marriage contracts at
353 common law under the "Mississippi Marital Contract at Common Law
354 Recording Act" supersede the provisions of this section.

355 **SECTION 14.** Section 93-1-9, Mississippi Code of 1972, is
356 amended as follows:

357 93-1-9. The failure to comply with the provisions of
358 Sections 93-1-5 and 93-1-7 shall not affect the validity of any
359 marriage duly solemnized, followed by cohabitation.

360 Marriage licenses and records of marriage contracts at common
361 law under the "Mississippi Marital Contract at Common Law
362 Recording Act" supersede the provisions of this section.

363 **SECTION 15.** Section 93-1-11, Mississippi Code of 1972, is
364 amended as follows:

365 93-1-11. (1) It shall be unlawful for any clerk to issue a
366 marriage license between the hours of 6 p.m. and 8 a.m. When a



367 clerk shall issue a license he shall certify on said license the
368 time when it was issued.

369 (2) Any clerk violating the provisions of this section shall
370 be guilty of a misdemeanor, and shall be fined not more than Five
371 Hundred Dollars (\$500.00).

372 (3) Marriage licenses and records of marriage contracts at
373 common law under the "Mississippi Marital Contract at Common Law
374 Recording Act" supersede the provisions of this section.

375 **SECTION 16.** Section 93-1-13, Mississippi Code of 1972, is
376 amended as follows:

377 93-1-13. A marriage shall not be contracted or solemnized
378 unless a license therefor shall first have been duly issued. No
379 irregularity in the issuance of or omission in the license shall
380 invalidate any marriage, nor shall this section be construed so as
381 to invalidate any marriage that is good at common law.

382 Marriage licenses and records of marriage contracts at common
383 law under the "Mississippi Marital Contract at Common Law
384 Recording Act" supersede the provisions of this section.

385 **SECTION 17.** Section 93-1-15, Mississippi Code of 1972, is
386 amended as follows:

387 93-1-15. (1) No marriage contracted after April 5, 1956,
388 shall be valid unless the contracting parties shall have obtained
389 a marriage license as otherwise required by law, and unless also
390 the marriage, after such license shall have been duly issued
391 therefor, shall have been performed by or before any person,



392 religious society, institution, or organization authorized by
393 Sections 93-1-17 and 93-1-19 to solemnize marriages. Failure in
394 any case to comply with both prerequisites aforesaid, which shall
395 also be construed as mandatory and not merely directory, shall
396 render the purported marriage absolutely void and any children
397 born as a result thereof illegitimate.

398 (2) Nothing contained in this section shall be construed to
399 affect the validity of any marriage, either ceremonial or common
400 law, contracted prior to April 5, 1956.

401 (3) Marriage licenses and records of marriage contracts at
402 common law under the "Mississippi Marital Contract at Common Law
403 Recording Act" supersede the provisions of this section.

404 **SECTION 18.** Section 93-1-17, Mississippi Code of 1972, is
405 amended as follows:

406 93-1-17. Any minister of the gospel ordained according to
407 the rules of his church or society, in good standing; any Rabbi or
408 other spiritual leader of any other religious body authorized
409 under the rules of such religious body to solemnize rites of
410 matrimony and being in good standing; any judge of the Supreme
411 Court, Court of Appeals, circuit court, chancery court or county
412 court may solemnize the rites of matrimony between any persons
413 anywhere within this state who shall produce a license granted as
414 herein directed. Justice court judges and members of the boards
415 of supervisors may likewise solemnize the rites of matrimony
416 within their respective counties. Any marriages performed by a



417 mayor of a municipality prior to March 14, 1994, are valid
418 provided such marriages satisfy the requirements of Section
419 93-1-18.

420 Marriage licenses and records of marriage contracts at common
421 law under the "Mississippi Marital Contract at Common Law
422 Recording Act" supersede the provisions of this section.

423 **SECTION 19.** Section 93-1-18, Mississippi Code of 1972, is
424 amended as follows:

425 93-1-18. Any marriages performed by a mayor of a
426 municipality prior to March 14, 1994, are validated unless they
427 have been invalidated by a court of competent jurisdiction,
428 provided that all other requirements of law have been met and the
429 marriages would have been valid if performed by an official
430 authorized by law to solemnize the rites of matrimony.

431 Marriage licenses and records of marriage contracts at common
432 law under the "Mississippi Marital Contract at Common Law
433 Recording Act" supersede the provisions of this section.

434 **SECTION 20.** Section 93-1-19, Mississippi Code of 1972, is
435 amended as follows:

436 93-1-19. It shall be lawful for a pastor of any religious
437 society in this state to join together in marriage such persons of
438 the society to whom a marriage license has been issued, according
439 to the rules and customs established by the society. The clerk or
440 keeper of the minutes, proceedings, or other books of the
441 religious society wherein such marriage shall be had and



442 solemnized, shall make a true and faithful register of all
443 marriages solemnized in the society, in a book kept by him or her
444 for that purpose, and return a certificate of the same to the
445 clerk of the circuit court of the county, to be by him or her
446 recorded, under the penalty prescribed in Section 93-1-21.

447 Marriage licenses and records of marriage contracts at common
448 law under the "Mississippi Marital Contract at Common Law
449 Recording Act" supersede the provisions of this section.

450 **SECTION 21.** Section 93-1-23, Mississippi Code of 1972, is
451 amended as follows:

452 93-1-23. The clerk of the circuit court in each county shall
453 be the legal custodian of the records and papers relating to
454 marriage licenses and certificates of marriage formerly kept by
455 the clerk of the probate court of each county.

456 Marriage licenses and records of marriage contracts at common
457 law under the "Mississippi Marital Contract at Common Law
458 Recording Act" supersede the provisions of this section.

459 **SECTION 22.** Section 93-1-25, Mississippi Code of 1972, is
460 amended as follows:

461 93-1-25. (1) It shall be unlawful for any person to solicit
462 or cause to be solicited within any courthouse, premises or
463 grounds or lots on which the courthouse may be located in any
464 county within the State of Mississippi, for himself or for and on
465 behalf of any minister or other person, the performance of a
466 marriage ceremony.



467 (2) Any person violating this section shall be guilty of a
468 misdemeanor and shall be punished by a fine not exceeding
469 Twenty-five Dollars (\$25.00) for the first conviction, and for any
470 second or subsequent conviction, by a fine not exceeding One
471 Hundred Dollars (\$100.00), or by imprisonment in the county jail
472 not exceeding thirty (30) days, or by both such fine and
473 imprisonment.

474 (3) Marriage licenses and records of marriage contracts at
475 common law under the "Mississippi Marital Contract at Common Law
476 Recording Act" supersede the provisions of this section.

477 **SECTION 23.** This act shall take effect and be in force from
478 and after July 1, 2023.

