

HOUSE BILL 233

By Leatherwood

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. Tennessee Code Annotated, Title 36, Chapter 3, Part 1, is amended by deleting §§ 36-3-103 – 36-3-112.

SECTION 2. Tennessee Code Annotated, Title 36, Chapter 3, Part 3, is amended by deleting §§ 36-3-301 – 36-3-308.

SECTION 3. Tennessee Code Annotated, Section 8-6-109(b), is amended by adding the following language as a new subdivision:

() To defend any action against a local official or any political subdivision of the state for adherence to the duties, responsibilities, or limitations imposed on such official or political subdivision pursuant to the issuance or failure to issue a marriage license pursuant to § 36-3-104(a)(1), as it existed prior to the effective date of this act, and alleged to be in violation of either the Constitution of the United States or the Constitution of Tennessee. In the event that the attorney general and reporter determines that the best interest of the state, or that of the local official or political subdivision, requires private counsel, the local official or chief legal officer of the political subdivision shall be notified and the local official or political subdivision shall have the right to file for reimbursement of defense costs, subject to the limits of § 29-20-113, in accordance with chapter 42 of this title in the same manner as state employees.

SECTION 4. Tennessee Code Annotated, Section 16-10-101, is amended by adding the language "; provided, however, in cases involving the definition of common law marriage,

where the people of Tennessee have spoken on the definition of marriage by referendum interpreting the Constitution of Tennessee, the circuit court's jurisdiction shall be limited to those principles of common law consistent with the import of those votes by the people" following the language "upon another tribunal".

SECTION 5. Tennessee Code Annotated, Section 16-11-102, is amended by deleting subsection (a) and substituting instead the following:

(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 shall be limited to the principles of common law; and no demurrer for want of jurisdiction of the cause of action shall be sustained in the chancery court, except in the cases excepted.

SECTION 6. 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 7. This act takes effect upon becoming a law, the public welfare requiring it.

Amendment No. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 562

House Bill No. 233*

by deleting all language after the caption and substituting:

WHEREAS, on June 25, 2015, the United States Supreme Court published an opinion in the matter of *Obergefell v. Hodges*, 576 U.S. 644 (2015), relative to the constitutional questions at issue under the various marriage-related laws of Ohio, Tennessee, Michigan, and Kentucky for which the petitioners sought injunctive relief; and

WHEREAS, the *Obergefell* opinion employed a Fourteenth Amendment substantive due process and equal protection fundamental rights analysis to the constitutional issues raised in the consolidated appeal of four judgments entered by the United States Court of Appeals for the Sixth Circuit; and

WHEREAS, the *Obergefell* opinion sets forth two holdings, the first of which addressed laws for the licensure of marriage (hereinafter "licensure statutes") in Kentucky, Michigan, and Ohio, and the second of which addressed laws denying recognition of marriage licenses issued in other states to same-sex couples, including those statutes in Tennessee that were challenged as part of the consolidated appeal in *Obergefell*; and

WHEREAS, the first holding in the *Obergefell* opinion was that the state marriage licensing statutes at issue were "invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples", *Obergefell*, at 675; and

WHEREAS, the second holding in the *Obergefell* opinion regarding the non-recognition laws at issue was that "there is no lawful basis for a state to refuse to recognize a lawful same-sex marriage performed in another state on the ground of its same-sex character," *Obergefell*, at 681; and



0242683103



013226

WHEREAS, as a result of the holdings in the *Obergefell* opinion, the plaintiffs in the Tennessee case, *Tanco, et al v. Haslam, et al*, asked the federal district court to hold Article XI, Section 18, of the Tennessee Constitution and Tennessee Code Annotated, § 36-3-113 invalid under the Fourteenth Amendment to the United States Constitution and to permanently enjoin the defendants from enforcing Article XI, Section 18, of the Tennessee Constitution and Tennessee Code Annotated, § 36- 3-113; and

WHEREAS, the federal district court rejected the *Tanco* plaintiffs' proposed order, stating in the court's Memorandum and Order in Support of Final Order and Permanent Injunction that the court could not "rewrite the scope of the lawsuit" in order to address the constitutionality and enforceability of Tennessee's licensure statutes and the effect of Article XI, Section 18, of the Tennessee Constitution and Tennessee Code Annotated, § 36-3-113 on the licensure statutes; and

WHEREAS, on August 24, 2015, the federal district court entered a Final Order and Permanent Injunction against the State of Tennessee in which the court held Article XI, Section 18, of the Tennessee Constitution and Tennessee Code Annotated, § 36-3-113 to be invalid under the Fourteenth Amendment to the United States Constitution "to the extent" that they exclude same-sex couples from recognition of their civil marriage on the same terms and conditions as opposite-sex couples, when the marriage was lawfully entered into outside of Tennessee; and

WHEREAS, by that same Final Order and Permanent Injunction, the federal district court permanently enjoined the defendants from enforcing Article XI, Section 18, of the Tennessee Constitution and Tennessee Code Annotated, § 36-3-113 against the plaintiffs who had married in other states; and

WHEREAS, Tennessee Code Annotated, § 36-3-104(a) expressly limits the issuance of licenses for government-licensed marriages to male and female contracting parties; and

WHEREAS, no state official or constitutional officer has been enjoined from enforcing the provisions of Tennessee Code Annotated, § 36-3-104(a) or the provisions of Tennessee

Code Annotated, § 36-3-113 and Article XI, Section 18 of the Constitution to which it is subject; and

WHEREAS, the continuing enforceability of Article XI, Section 18 of the Tennessee Constitution with respect to the license statutes has created great uncertainty on behalf of a number of Christian ministers, preachers, and pastors with respect to the nature of the marital relationship they attest to having solemnized under the license statutes and marriage recordation forms issued by the executive branch and the civil and criminal liabilities they may incur as a result of non-conformity in the execution and recording of those forms; and

WHEREAS, the due process provisions of the Fourteenth Amendment to the United States Constitution are proscriptive in nature, providing that no state shall make or enforce any law which shall ... deprive any person of life, liberty, or property, without due process of law; and

WHEREAS, in *Ex Parte Commonwealth of Virginia*, 100 U.S. 339 (1880), the United States Supreme Court declared the following in regard to the Fourteenth Amendment to the United States Constitution:

It is not said the *judicial power* of the general government shall extend to enforcing the prohibitions and to protecting the rights and immunities guaranteed. It is not said that branch of the government shall be authorized to declare void any action of a State in violation of the prohibitions. It is the power of Congress which has been enlarged. Congress is authorized to *enforce* the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective; and

WHEREAS, nothing in the Fourteenth Amendment to the United States Constitution is prescriptive in nature so as to require a state to affirmatively enact any law; and

WHEREAS, nothing in the Fourteenth Amendment to the United States Constitution, the *Obergefell* opinion, or the federal judicial power compels a state legislature to enact a law, especially a law that the people of the state have constitutionally forbidden state officials to enact; and

WHEREAS, no court has issued or could lawfully issue a writ of mandamus to the legislature of the State of Tennessee requiring it to enact a statutory licensure scheme by which the right to marry under *Obergefell* can be given efficacy or by which any particular official is required directly and by virtue of that writ alone to issue a form of license by which that right to marry can be given efficacy; and

WHEREAS, the General Assembly desires to fulfill the constitutional duties imposed on it in regard to marital relationships solemnized within the state under those provisions of Article XI, Section 18 of the Tennessee Constitution not enjoined by the order of any court of competent jurisdiction, to fulfill its duty to protect the common law rights retained by the people of Tennessee pursuant to the powers retained by the states under the Tenth Amendment as a separate sovereign, and to address the aforesaid uncertainties of ministers, preachers, and pastors by clarifying the operation of historic common law marriage in Tennessee; and

WHEREAS, in furtherance of its stated desires, the General Assembly recognizes that in *Marbury v. Madison*, 5 U.S. 137, 174 (1803), the United States Supreme Court said "[i]t cannot be presumed that any clause in the constitution is intended to be without effect"; and

WHEREAS, the Ninth Amendment to the United States Constitution guarantees the people of Tennessee that the enumeration of certain rights in the Constitution "shall not be construed to deny or disparage others retained by the people"; and

WHEREAS, a source of those other rights is the common law; and

WHEREAS, the United States Supreme Court has repeatedly looked to the common law for its interpretation of rights enumerated in the Bill of Rights and for incorporating rights in the Bill of Rights into the provisions of the Fourteenth Amendment's due process clause; and

WHEREAS, rights at common law are private rights and, as such, it is not only the duty of civil government not to violate them, but affirmatively to secure them; and

WHEREAS, pursuant to the Tenth Amendment to the United States Constitution, the General Assembly, as representatives of the people, has the power, not abrogated by the

Fourteenth Amendment, to secure to the people those rights they possessed prior to ratification of the United States Constitution; and

WHEREAS, the rights the people had prior to ratification of the United States Constitution were the rights of persons at common law; and

WHEREAS, the United States Supreme Court stated that Sir William Blackstone's "Commentaries on the Laws of England not only provided a definitive summary of the common law but was also a primary legal authority for 18th- and 19th-century American lawyers", *Washington v. Glucksberg*, 521 U.S. 702, 712 (1997), and that Blackstone's works "constituted the preeminent authority on English law for the founding generation," *District of Columbia v. Heller*, 554 U.S. 570, 593 (2008), quoting *Alden v. Maine*, 527 U.S. 706, 715, (1999); and

WHEREAS, according to Blackstone's *Commentaries on the Law of England*, at common law there were rights and duties in private economic relations reflecting the rights due to persons as members of society, and standing in various relations to each other, and among these was the marital "contract" recognizing the reciprocal rights and duties of husband and wife; and

WHEREAS, the "historical institution and legal contract solemnizing the relationship of one (1) man and one (1) woman" as referenced in Article XI, Section 18 of the Tennessee Constitution existed prior to any positive enactment of any legislative body; and

WHEREAS, the United States Supreme Court in *Meister v. Moore*, 96 U.S. 76, 78 (1877), addressed the recognition or existence of the common law rights and duties of marriage and stated "[t]hat informal marriage by contract *per verba de praesenti* ... constitutes a marriage at common law there can be no doubt, in view of the adjudications made in this country, from its earliest settlement to the present day. Marriage is everywhere regarded as a civil contract. Statutes in many of the States, it is true, regulate the mode of entering into the contract, but they do not confer the right"; and

WHEREAS, the United States Supreme Court in *Meister v. Moore*, 96 U.S. 76, 79 (1877), described the relationship between common law and state marriage statutes as follows:

"[a] statute may declare that no marriages shall be valid unless they are solemnized in a prescribed manner; but such an enactment is a very different thing from a law requiring all marriages to be entered into in the presence of a magistrate or a clergyman, or that it be preceded by a license, or publication of banns, or be attested by witnesses. Such formal provisions may be construed as merely directory, instead of being treated as destructive of a common-law right to form the marriage relation by words of present assent"; and

WHEREAS, the *Meister* decision recognized and emphasized an antecedent source of obligations upon officials, which legislators and judges declare but do not generate, that has deep roots in the common law; and

WHEREAS, consistent with *Meister*, common law recognizes that there are laws or rules of action founded in those relations of justice that exist in the nature of things and are antecedent to any enactment of positive law; and

WHEREAS, by Article XI, Section 18 of the Tennessee Constitution, the common law understanding of marriage in Tennessee was affirmed as the basis of the marital relationship in Tennessee; and

WHEREAS, in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 77 (1938), the Supreme Court said, "Congress has no power to declare substantive rules of common law applicable in a State whether they be local in their nature or 'general,' be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts"; and

WHEREAS, the Supreme Court in *Obergefell* addressed itself to "civil marriage" and "enacted law" and did not rule on common law marriage or bring its status within the purview of the Fourteenth Amendment because, by virtue of Section 5 of the Fourteenth Amendment, such a ruling would have been tantamount to saying that Congress has the power to declare substantive rules of common law applicable in a state in contravention of the Supreme Court's *Erie Railroad* decision; and

WHEREAS, making all marital relationships a matter of federal policy "would constitute [the Supreme] court a perpetual censor upon all legislation of the States, on the civil rights of their own citizens, with authority to nullify such as it did not approve as consistent with those rights, as they existed at the time of the adoption of [the Fourteenth] amendment," a position the United States Supreme Court rejected in the *Slaughter-House Cases*, 83 U.S. 36, 76 (1873); and

WHEREAS, in the *Slaughter-House Cases*, 83 U.S. at 78, the Court rejected the inclusion of fundamental rights as national citizenship rights under the Fourteenth Amendment's privileges and immunities clauses for reasons that would apply equally to subjecting common law marriage to the court's substantive due process standards under the Fourteenth Amendment, namely, consequences that "are so serious, so far-reaching and pervading, so great a departure from the structure and spirit of our institutions" that would "fetter and degrade the State governments by subjecting them to the control of Congress, in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character" and that would "radically change[] the whole theory of the relations of the State and Federal governments to each other and of both these governments to the people"; and

WHEREAS, the Supreme Court has never repudiated the reasoning that supported the holding in the *Slaughter-House Cases* nor repudiated its holding; and

WHEREAS, in 2011, a unanimous Supreme Court in *Bond v. United States*, 564 U.S. 211(2011) extolled the numerous virtues of the system of dual sovereigns created by our Constitution and on which the holding in the *Slaughter-House Cases* rested; and

WHEREAS, the Supreme Court in *Obergefell* addressed the legislative licensure of civil marriage and did not pretend to have the authority to eradicate, alter, or modify the pre-legal and thus natural institution of marriage between a man and a woman acknowledged in human civilization throughout time and not conceivably subject to elimination by a constitutional amendment contingently appearing in our nation in the nineteenth century and which in no way

purported to deny human realities universally acknowledged and practiced throughout history;
and

WHEREAS, because the Supreme Court in *Obergefell* limited its holding about civil marriage for same-sex couples to what it called "enacted law and public policy", the *Obergefell* Court did not consider, and was not asked or required to consider, the nature of the marital relationship recognized by the common law, *Meister v. Moore*, and the Tennessee Constitution;
and

WHEREAS, the people of the State of Tennessee retain the right to enter into common-law or natural marriage, for the existence of such rights does not depend upon the written charters and judicial opinions in which they are declared, but they are part of the unwritten law, discovered and not commanded by judicial and political officials; and

WHEREAS, no power to regulate the marital relationship between one man and one woman was delegated to the United States by the Constitution, nor prohibited by the Constitution to the states, such power was reserved to the states or to the people by the Tenth Amendment to the United States Constitution; and

WHEREAS, the people of Tennessee have directed the legislature to recognize as a marital relationship, the "historical institution and legal contract solemnizing the relationship between one (1) man and one (1) woman"; and

WHEREAS, the General Assembly has a duty to specify and protect those "other rights" reserved by the Ninth Amendment to the United States Constitution to the people of Tennessee, including the right of a man and a woman to enter into a marital relationship defined in terms of one man and one woman as at common law, and, pursuant to the Tenth Amendment, has the power to discharge its duty; and

WHEREAS, the Ninth Amendment establishes that the enumeration of certain rights set forth in the United States Constitution "shall not be construed to deny or disparage others retained by the people" such as the antecedent right of a man and a woman to enter into a marital contract at common law; and

WHEREAS, the United States Supreme Court has not adjudicated the provisions of the Ninth Amendment and has not opined on the relationship between the Ninth and Fourteenth amendments; and

WHEREAS, this General Assembly earnestly affirms the disagreement expressed by a majority of the 109th General Assembly in House Joint Resolution 529 regarding "the constitutional analysis in *Obergefell v. Hodges* and the judicial imposition of a marriage license law that is contrary to the express will of this body and the vote of the people of Tennessee"; now, therefore,

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 Tennessee 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 Tennessee 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) One (1) man and one (1) woman may 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 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 which shall contain:

(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 containing 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 the requirements of 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 the requirements of § 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 Tennessee, 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 Tennessee.

(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 may 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 existed 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 no official, having accepted the record, is liable to a claim or cause of action if it is later proved that no marital contract existed. 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 no lawful marital contract had 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 the clerk of court in this state must be filed and registered with the office of vital records if the record has

been completed and submitted to the clerk of court 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:

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 no demurrer for want of jurisdiction of the cause of action shall 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 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. 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 16. This act takes effect upon becoming a law, the public welfare requiring it.