

Bill No. SB 624

Barcode 034898

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Geller) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 61.079, Florida Statutes, is created to read:

61.079 Premarital agreements.--

(1) SHORT TITLE.--This section may be cited as the "Uniform Premarital Agreement Act" and this section applies only to proceedings under the Florida Family Law Rules of Procedure.

(2) DEFINITIONS.--As used in this section, the term:

(a) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(b) "Property" includes, but is not limited to, an interest, present or future, legal or equitable, vested or contingent, in real or personal property, tangible or

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1 intangible, including income and earnings, both active and
2 passive.

3 (3) FORMALITIES.--A premarital agreement must be in
4 writing and signed by both parties. It is enforceable without
5 consideration other than the marriage itself.

6 (4) CONTENT.--

7 (a) Parties to a premarital agreement may contract
8 with respect to:

9 1. The rights and obligations of each of the parties
10 in any of the property of either or both of them whenever and
11 wherever acquired or located;

12 2. The right to buy, sell, use, transfer, exchange,
13 abandon, lease, consume, expend, assign, create a security
14 interest in, mortgage, encumber, dispose of, or otherwise
15 manage and control property;

16 3. The disposition of property upon separation,
17 marital dissolution, death, or the occurrence or nonoccurrence
18 of any other event;

19 4. The establishment, modification, waiver, or
20 elimination of spousal support;

21 5. The making of a will, trust, or other arrangement
22 to carry out the provisions of the agreement;

23 6. The ownership rights in and disposition of the
24 death benefit from a life insurance policy;

25 7. The choice of law governing the construction of the
26 agreement; and

27 8. Any other matter, including their personal rights
28 and obligations, not in violation of either the public policy
29 of this state or a law imposing a criminal penalty.

30 (b) The right of a child to support may not be
31 adversely affected by a premarital agreement.

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1 (5) EFFECT OF MARRIAGE.--A premarital agreement
2 becomes effective upon marriage of the parties.

3 (6) AMENDMENT; REVOCATION OR ABANDONMENT.--After
4 marriage, a premarital agreement may be amended, revoked, or
5 abandoned only by a written agreement signed by the parties.
6 The amended agreement, revocation, or abandonment is
7 enforceable without consideration.

8 (7) ENFORCEMENT.--

9 (a) A premarital agreement is not enforceable in an
10 action proceeding under the Florida Family Law Rules of
11 Procedure if the party against whom enforcement is sought
12 proves that:

13 1. The party did not execute the agreement
14 voluntarily;

15 2. The agreement was the product of fraud, duress,
16 coercion, or overreaching; or

17 3. The agreement was unconscionable when it was
18 executed and, before execution of the agreement, that party:

19 a. Was not provided a fair and reasonable disclosure
20 of the property or financial obligations of the other party;

21 b. Did not voluntarily and expressly waive, in
22 writing, any right to disclosure of the property or financial
23 obligations of the other party beyond the disclosure provided;
24 and

25 c. Did not have, or reasonably could not have had, an
26 adequate knowledge of the property or financial obligations of
27 the other party.

28 (b) If a provision of a premarital agreement modifies
29 or eliminates spousal support and that modification or
30 elimination causes one party to the agreement to be eligible
31 for support under a program of public assistance at the time

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1 of separation or marital dissolution, a court, notwithstanding
2 the terms of the agreement, may require the other party to
3 provide support to the extent necessary to avoid that
4 eligibility.

5 (c) An issue of unconscionability of a premarital
6 agreement shall be decided by the court as a matter of law.

7 (8) ENFORCEMENT; VOID MARRIAGE.--If a marriage is
8 determined to be void, an agreement that would otherwise have
9 been a premarital agreement is enforceable unless otherwise
10 provided in the agreement.

11 (9) LIMITATION OF ACTIONS.--Any statute of limitations
12 applicable to an action asserting a claim for relief under a
13 premarital agreement is tolled during the marriage of the
14 parties to the agreement. However, equitable defenses limiting
15 the time for enforcement, including laches and estoppel, are
16 available to either party.

17 (10) This section does not alter the construction,
18 interpretation, or required formalities of, or the rights or
19 obligations under, agreements between spouses under s. 732.701
20 or s. 732.702.

21 Section 2. If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 invalidity does not affect other provisions or applications of
24 this act which can be given effect without the invalid
25 provision or application, and to this end the provisions of
26 this act are severable.

27 Section 3. This act shall take effect October 1, 2007,
28 and applies to any premarital agreement executed on or after
29 that date.

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 1, lines 3 and 4, delete those lines

4

5 and insert:

6 creating s. 61.079, F.S.; providing a short

7 title; defining the terms "premarital

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