

By Senator Aronberg

27-312A-07

1 A bill to be entitled
2 An act relating to premarital agreements;
3 providing a short title; creating s. 61.079,
4 F.S.; defining the terms "premarital
5 agreements" and "property"; requiring that a
6 premarital agreement be in writing and signed
7 by both parties; providing that the agreement
8 is enforceable without consideration;
9 authorizing the parties to a premarital
10 agreement to contract with respect to certain
11 specified issues; providing that an agreement
12 becomes effective upon marriage; providing for
13 amendments to, revocation, and abandonment of
14 an agreement; providing for enforcement of an
15 agreement; providing for application of the
16 act; providing for severability; providing an
17 effective date.

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19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. This act may be cited as the "Uniform
22 Premarital Agreement Act."

23 Section 2. Section 61.079, Florida Statutes, is
24 created to read:

25 61.079 Premarital agreements.--

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

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

30 (b) "Property" includes, but is not limited to, an
31 interest, present or future, legal or equitable, vested or

1 contingent, in real or personal property, tangible or
2 intangible, including income and earnings, both active and
3 passive.

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

7 (3) CONTENT.--

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

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

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

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

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

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

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

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

28 8. Any other matter, including their personal rights
29 and obligations, not in violation of either the public policy
30 of this state or a law imposing a criminal penalty.
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1 (b) The right of a child to support may not be
2 adversely affected by a premarital agreement.

3 (4) EFFECT OF MARRIAGE.--A premarital agreement
4 becomes effective upon marriage of the parties.

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

10 (6) ENFORCEMENT.--

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

15 1. The party did not execute the agreement
16 voluntarily;

17 2. The agreement was the product of fraud, duress,
18 coercion, or overreaching; or

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

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

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

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

30 (b) If a provision of a premarital agreement modifies
31 or eliminates spousal support and that modification or

1 elimination causes one party to the agreement to be eligible
2 for support under a program of public assistance at the time
3 of separation or marital dissolution, a court, notwithstanding
4 the terms of the agreement, may require the other party to
5 provide support to the extent necessary to avoid that
6 eligibility.

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

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

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

18 Section 3. If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 invalidity does not affect other provisions or applications of
21 this act which can be given effect without the invalid
22 provision or application, and to this end the provisions of
23 this act are severable.

24 Section 4. This act shall take effect October 1, 2007,
25 and applies to any premarital agreement executed on or after
26 that date.

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SENATE SUMMARY

Requires that a premarital agreement be in writing and signed by both parties. Provides that the agreement is enforceable without consideration. Provides that parties to a premarital agreement may contract with respect to certain specified issues. Provides that an agreement becomes effective upon marriage. Provides for amendments to and revocation of an agreement. Provides for enforcement of an agreement.