

By the Committees on Children, Families, and Elder Affairs;
Judiciary; and Senator Aronberg

586-2393-07

1 A bill to be entitled

2 An act relating to premarital agreements;

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

4 title; 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. Section 61.079, Florida Statutes, is

22 created to read:

23 61.079 Premarital agreements.--

24 (1) SHORT TITLE.--This section may be cited as the

25 "Uniform Premarital Agreement Act" and this section applies

26 only to proceedings under the Florida Family Law Rules of

27 Procedure.

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

29 (a) "Premarital agreement" means an agreement between

30 prospective spouses made in contemplation of marriage and to

31 be effective upon marriage.

1 (b) "Property" includes, but is not limited to, an
2 interest, present or future, legal or equitable, vested or
3 contingent, in real or personal property, tangible or
4 intangible, including income and earnings, both active and
5 passive.

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

9 (4) CONTENT.--

10 (a) Parties to a premarital agreement may contract
11 with respect to:

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

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

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

22 4. The establishment, modification, waiver, or
23 elimination of spousal support;

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

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

28 7. The choice of law governing the construction of the
29 agreement; and

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

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

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

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

13 (7) ENFORCEMENT.--

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

18 1. The party did not execute the agreement
19 voluntarily;

20 2. The agreement was the product of fraud, duress,
21 coercion, or overreaching; or

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

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

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

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1 c. Did not have, or reasonably could not have had, an
2 adequate knowledge of the property or financial obligations of
3 the other party.

4 (b) If a provision of a premarital agreement modifies
5 or eliminates spousal support and that modification or
6 elimination causes one party to the agreement to be eligible
7 for support under a program of public assistance at the time
8 of separation or marital dissolution, a court, notwithstanding
9 the terms of the agreement, may require the other party to
10 provide support to the extent necessary to avoid that
11 eligibility.

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

14 (8) ENFORCEMENT; VOID MARRIAGE.--If a marriage is
15 determined to be void, an agreement that would otherwise have
16 been a premarital agreement is enforceable only to the extent
17 necessary to avoid an inequitable result.

18 (9) LIMITATION OF ACTIONS.--Any statute of limitations
19 applicable to an action asserting a claim for relief under a
20 premarital agreement is tolled during the marriage of the
21 parties to the agreement. However, equitable defenses limiting
22 the time for enforcement, including laches and estoppel, are
23 available to either party.

24 (10) APPLICATION TO PROBATE CODE.--This section does
25 not alter the construction, interpretation, or required
26 formalities of, or the rights or obligations under, agreements
27 between spouses under s. 732.701 or s. 732.702.

28 Section 2. If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 invalidity does not affect other provisions or applications of
31 this act which can be given effect without the invalid

1 provision or application, and to this end the provisions of
2 this act are severable.

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

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7 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
8 COMMITTEE SUBSTITUTE FOR
9 CS for Senate Bill 624

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10 The committee substitute makes the bill consistent with the
11 Uniform Premarital Agreement Act by providing that if a
12 marriage is determined to be void, an agreement that otherwise
13 would have been a premarital agreement is enforceable, but
14 only to the extent necessary to avoid an inequitable result.

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