

Committee Substitute for
Committee Substitute for Senate Bill No. 624

An act relating to premarital agreements; creating s. 61.079, F.S.; providing a short title; defining the terms “premarital agreements” and “property”; requiring that a premarital agreement be in writing and signed by both parties; providing that the agreement is enforceable without consideration; authorizing the parties to a premarital agreement to contract with respect to certain specified issues; providing that an agreement becomes effective upon marriage; providing for amendments to, revocation, and abandonment of an agreement; providing for enforcement of an agreement; providing for application of the act; providing for severability; providing an effective date.

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

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

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

(4) CONTENT.—

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

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

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

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

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

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

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

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

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

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

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

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

(7) ENFORCEMENT.—

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

1. The party did not execute the agreement voluntarily;

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

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

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

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

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

(b) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the

agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

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

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

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

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

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

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

Approved by the Governor June 19, 2007.

Filed in Office Secretary of State June 19, 2007.