

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

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

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

20 61.079 Premarital agreements.--

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

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

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

28 (b) "Property" includes, but is not limited to, an

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29 interest, present or future, legal or equitable, vested or
30 contingent, in real or personal property, tangible or
31 intangible, including income and earnings, both active and
32 passive.

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

36 (4) CONTENT.--

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

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

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

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

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

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

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

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

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

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

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

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

69 (7) ENFORCEMENT.--

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

73 1. The party did not execute the agreement voluntarily;

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

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

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

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

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

85 the other party.

86 (b) If a provision of a premarital agreement modifies or
87 eliminates spousal support and that modification or elimination
88 causes one party to the agreement to be eligible for support
89 under a program of public assistance at the time of separation
90 or marital dissolution, a court, notwithstanding the terms of
91 the agreement, may require the other party to provide support to
92 the extent necessary to avoid that eligibility.

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

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

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

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

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

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113 application, and to this end the provisions of this act are
114 severable.

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