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Senate Bill 809 (as introduced 4-9-24)
Sponsor: Senator Sue Shink
Committee: Civil Rights, Judiciary, and Public Safety

Date Completed: 10-22-24

INTRODUCTION

The bill would enact a version of the uniform premarital and marital agreement legislation (see **BACKGROUND**) to govern the applicability and enforceability of agreements between individuals intending to marry (premarital agreements) and contracts between spouses (marital agreements). It would allow parties to affirm, modify, or waive certain rights and obligations, such as the division of property or spousal support. Marital agreements would be effective upon signing and premarital agreements would be effective upon marriage. Agreements would be unenforceable if the agreement were made under duress, or if either party did not have access to independent legal representation, had inadequate financial disclosure, or if the terms were unconscionable or created substantial hardship, among other things. The bill also would prescribe protections for child support and custodial responsibilities.

The bill would take effect six months after its enactment.

FISCAL IMPACT

The bill would have no fiscal impact on the State or local government.

BACKGROUND

The Uniform Premarital and Marital Agreement Act (UPMAA) was initially created in 1983 and updated in 2012 by the Uniform Law Commission under the National Conference of Commissioners on Uniform State Laws. As of 2024, 29 states have enacted a version of the UPMAA.¹

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¹ "Premarital and Marial Agreements Act", Uniform Law Commission.
<https://www.uniformlaws.org/committees/community-home?CommunityKey=2e456584-938e-4008-ba0c-bb6a1a544400> Retrieved 10-22-24.

CONTENT

The bill would enact the "Uniform Premarital and Marital Agreement Act" to do the following:

- Prescribe the enforceability of premarital and marital agreements and specify that agreements would have to be signed in record by both parties.**
- Specify that an agreement would be unenforceable if it were signed under duress or provided that each party did not have appropriate informed consent.**
- Require that a party have access to independent legal representation, a notice of a waiver of rights, and adequate financial disclosure in an agreement.**
- Prohibit an agreement from being enforceable if it adversely affected custodial rights or penalized a party for seeking divorce.**
- Specify that premarital or marital agreements signed after the Act's effective date would generally be determined by the law of the jurisdiction designated in the agreement.**
- Specify that the Act would not apply to certain modifications to agreements that required court approval, such as separation agreements or a transfer of property when certain rights were waived.**

Definitions

"Premarital agreement" would mean an agreement between individuals who intend to marry that affirms, modifies, or waives a marital right or obligation during the marriage or at separation, marital dissolution, death of one of the spouses, or the occurrence or nonoccurrence of any other event. The term would include an amendment, signed before the individuals married, of a premarital agreement.

"Amendment" would mean a modification or revocation of a premarital or marital agreement. "Signed" would mean with present intent to authenticate a record to execute or authenticate a tangible symbol, or to attach to or logically associate with the record an electronic symbol, sound, or process. "Record" would mean information that is inscribed on a tangible medium or that is stored in an electronic or other medium that is retrievable in perceivable form.

"Marital agreement" would mean an agreement between spouses who intend to remain married that affirms, modifies, or waives a marital right or obligation during the marriage or at separation, marital dissolution, death of one of the spouses, or the occurrence or nonoccurrence of any other event. The term would include an amendment, signed after the spouses married, of a premarital agreement or marital agreement.

"Marital right or obligation" would mean any of the following rights or obligations arising between spouses because of their marital status:

- Spousal support.
- A right to property, including characterization, management, and ownership.
- Responsibility for a liability.
- A right to property and responsibilities for liabilities at separation, marital dissolution, or death of a spouse.
- Award and allocation of attorney fees and costs.

"Marital dissolution" would mean the ending of a marriage by court decree, including divorce dissolution, and annulment.

"Property" would mean anything that may be the subject of ownership, whether real or personal, tangible or intangible, legal or equitable, or any interest of that subject.

"Duress" would mean an incident involving a threat of illegal, humiliating, or unreasonable physical, financial, emotional, or social damage or injury. All the following would be relevant in a determination of duress:

- A threat of refusal to go forward with marriage if a premarital agreement were not signed.
- The timing of presentment of a premarital agreement in light of the public announcement of an engagement.
- The state of wedding plans and expenditures.
- The time until the planned wedding date.

"State" would mean a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any insular possession subject to the jurisdiction of the United States.

Act Applicability

Under the Act, the validity, enforceability, interpretation, and construction of a premarital agreement or marital agreement would have to be determined by either of the following:

- The law of the jurisdiction designated in the agreement if the jurisdiction had a significant relationship to the agreement or either party and the designated law was not contrary to a fundamental public policy of the State.
- Absent an effective designation described above, by the law of the State, including the choice-of-law rules of the State.

The Act would apply to premarital or marital agreements signed on or after the Act's effective date. The Act would not affect any right, obligation, or liability arising under a premarital or marital agreement signed before the Act's effective date.

Additionally, the Act would not apply to either of the following:

- An agreement between spouses that affirmed, modified, or waived a marital right or obligation and required court approval to become effective.
- An agreement between spouses who intended to obtain a marital dissolution or court-decreed separation that resolved their marital rights or obligations and was signed when a proceeding for marital dissolution or court-decreed separation was anticipated or pending.

The Act would not affect adversely the rights of a bona fide purchaser for value to the extent that the Act applied to a waiver of a marital right or obligation in a transfer or conveyance of property by a spouse to a third party.

Signing of Premarital or Marital Agreement and Enforceability

Specifically, unless otherwise provided by the Act, principles of law and equity would supplement the Act, including a court's authority under Sections 23(1) (Divorce) of the Revised Statutes and Section 401 (Award of Property Owned by Spouse to Party) of Public Act 42 of 1949 but only to the extent necessary to achieve the purposes of the statutes.²

² Generally a court has the authority to further award real and personal property if the awarded assets upon judgment or separate maintenance are determined insufficient and a circuit court has the authority

Imposition of a remedy under either statute would not invalidate the entire marital agreement unless the agreement otherwise failed to meet the Act's requirements.

A premarital or marital agreement would have to be in a record and signed by both parties and the agreement would have to be enforceable without consideration. A premarital agreement would be effective on marriage and a marital agreement would be effective on signing by both parties.

If a marriage were determined to be void, a premarital agreement or marital agreement would be enforceable to the extent necessary to avoid an inequitable result.

A statute of limitations applicable to an action asserting a claim for relief under a premarital agreement or marital agreement would have to be tolled during the marriage of the parties to the agreement, but equitable defenses limiting the time for enforcement, including laches and estoppel, would have to be available to either party.

In applying and construing the Act, consideration would have to be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

The Act would modify, limit, or supersede the electronic signatures in Global and National Commerce Act (E-SIGN Act) but would not modify, limit, or supersede certain consumer consent for disclosures under the E-SIGN Act, or authorize electronic delivery of any notices such as court orders, utility service notices, foreclosure and evictions, health and life insurance terminations, product recalls, or documents on certain transactions under the E-SIGN Act.

Determination of an Unenforceable Agreement

A premarital or marital agreement would be unenforceable if a party against whom enforcement were sought proved the following:

- The party's consent to the agreement was involuntary or the result of duress.
- The party did not have access to independent legal representation as described below.
- Unless the party had independent legal representation at the time the agreement was signed, the agreement did not include a notice of waiver of rights or an explanation in plain language of the marital rights or obligations being modified or waived by the agreement.
- Before signing the agreement, the party did not receive adequate financial disclosure as described below.

If a premarital agreement or marital agreement modified or eliminated spousal support and the modification or elimination caused a 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, on request of that party, could require the other party to provide support to the extent necessary to avoid that eligibility.

A court could refuse to enforce a term of a premarital or marital agreement if, in the context of the agreement taken as a whole, the term were unconscionable at the time of signing or enforcement of the term would result in substantial hardship for a party because of a material change in circumstances arising after the agreement was signed.

to award real or personal property owned by a spouse as equitable under all the circumstances of the case, if it appears from the evidence in the case that the party contributed to the acquisition, improvement, or accumulation of the property.

The court would have to decide a question of unconscionability or substantial hardship as a matter of law.

Access to Independent Legal Representation

A party would be considered to have had access to independent representation if before signing a premarital or marital agreement the party had reasonable time to decide whether to retain a lawyer to provide independent legal representation and locate a lawyer to provide independent legal representation, obtain the lawyer's advice, and consider the advice provided. Additionally, a party would have had access if the other party were represented by a lawyer and the party had the financial ability to retain a lawyer or the other party agreed to pay the reasonable fees and expenses of independent legal representation.

Notice of Waiver of Rights

A notice of waiver of rights for the enforceability of an agreement would require language, conspicuously displayed, substantially like the following, as applicable to the type of agreement: "If you sign this agreement you may be: a) giving up your right to be supported by the person you are marrying or to whom you are married; b) agreeing to pay bills and debts of the person you are marrying or to whom you are married; c) giving up your right to ownership or control of money and property if your marriage ends or the person to who you are married dies; and d) giving up your right to have your legal fees paid."

Adequate Financial Disclosure

A party would be considered to have had adequate financial disclosure if the party received a reasonably accurate description and good faith estimate of value of the property, liabilities, and income of the other party. Additionally, a party would have had to expressly waived, in a separate signed record, the right to financial disclosure beyond the disclosure provided, or have had adequate knowledge or a reasonable basis for having adequate knowledge of the description and estimate value of the other party's property, liabilities, and income.

Custodial Responsibility

A term in a premarital agreement or marital agreement would not be enforceable to the extent that it did the following:

- Adversely affected a child's right to support.
- Limited or restricted a remedy available to a victim of domestic violence under another State law.
- Purported to modify the grounds for a court-decreed separation or marital dissolution available under another State law.
- Penalized a party for initiating a legal proceeding leading to a court-decreed separation or marital dissolution.

A term in a premarital agreement or marital agreement that defined the rights or duties of the parties regarding custodial responsibility would not be binding on a court. "Custodial responsibility" would mean physical or legal custody, parenting time, access, visitation, or other custodial right or duty with respect to a child.