

**SUBSTITUTE FOR
SENATE BILL NO. 160**

A bill to enact the uniform premarital and marital agreements act; and to determine how and when a premarital or marital agreement is enforced.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "uniform premarital and
2 marital agreements act".

3 Sec. 2. In this act:

4 (1) "Amendment" means a modification or revocation of a
5 premarital agreement or marital agreement.

6 (2) "Duress" means an incident involving a threat of illegal,
7 humiliating, or unreasonable physical, financial, emotional, or
8 social damage or injury. All of the following factors are relevant
9 in a determination of duress for purposes of this subdivision:

1 (i) A threat of refusal to go forward with a marriage if a
2 premarital agreement is not signed.

3 (ii) The timing of presentment of a premarital agreement in
4 light of the public announcement of an engagement.

5 (iii) The state of wedding plans and expenditures.

6 (iv) The time until the planned wedding date.

7 (3) "Marital agreement" means an agreement between spouses who
8 intend to remain married that affirms, modifies, or waives a
9 marital right or obligation during the marriage or at separation,
10 marital dissolution, death of one of the spouses, or the occurrence
11 or nonoccurrence of any other event. The term includes an
12 amendment, signed after the spouses marry, of a premarital
13 agreement or marital agreement.

14 (4) "Marital dissolution" means the ending of a marriage by
15 court decree. The term includes divorce, dissolution, and
16 annulment.

17 (5) "Marital right or obligation" means any of the following
18 rights or obligations arising between spouses because of their
19 marital status:

20 (A) Spousal support;

21 (B) A right to property, including characterization,
22 management, and ownership;

23 (C) Responsibility for a liability;

24 (D) A right to property and responsibility for liabilities at
25 separation, marital dissolution, or death of a spouse; or

26 (E) Award and allocation of attorney fees and costs.

27 (6) "Premarital agreement" means an agreement between
28 individuals who intend to marry that affirms, modifies, or waives a
29 marital right or obligation during the marriage or at separation,

1 marital dissolution, death of one of the spouses, or the occurrence
2 or nonoccurrence of any other event. The term includes an
3 amendment, signed before the individuals marry, of a premarital
4 agreement.

5 (7) "Property" means anything that may be the subject of
6 ownership, whether real or personal, tangible or intangible, legal
7 or equitable, or any interest therein.

8 (8) "Record" means information that is inscribed on a tangible
9 medium or that is stored in an electronic or other medium and is
10 retrievable in perceivable form.

11 (9) "Sign" means with present intent to authenticate or adopt
12 a record:

13 (A) to execute or adopt a tangible symbol; or

14 (B) to attach to or logically associate with the record an
15 electronic symbol, sound, or process.

16 (10) "State" means a state of the United States, the District
17 of Columbia, Puerto Rico, the United States Virgin Islands, or any
18 territory or insular possession subject to the jurisdiction of the
19 United States.

20 Sec. 3. (a) This act applies to a premarital agreement or
21 marital agreement signed on or after the effective date of this
22 act.

23 (b) This act does not affect any right, obligation, or
24 liability arising under a premarital agreement or marital agreement
25 signed before the effective date of this act.

26 (c) This act does not apply to:

27 (1) an agreement between spouses that affirms, modifies, or
28 waives a marital right or obligation and requires court approval to
29 become effective; or

1 (2) an agreement between spouses who intend to obtain a
2 marital dissolution or court-decreed separation that resolves their
3 marital rights or obligations and is signed when a proceeding for
4 marital dissolution or court-decreed separation is anticipated or
5 pending.

6 (d) This act does not affect the interests of a bona fide
7 purchaser for value in a transfer or conveyance of property by
8 either or both spouses to a third party.

9 Sec. 4. The validity, enforceability, interpretation, and
10 construction of a premarital agreement or marital agreement are
11 determined:

12 (1) by the law of the jurisdiction designated in the agreement
13 if the jurisdiction has a significant relationship to the agreement
14 or either party and the designated law is not contrary to a
15 fundamental public policy of this state; or

16 (2) absent an effective designation described in paragraph
17 (1), by the law of this state, including the choice-of-law rules of
18 this state.

19 Sec. 5. Unless displaced by a provision of this act,
20 principles of law and equity supplement this act, including a
21 court's authority under sections 23(1) and 401 of 1846 RS 84, MCL
22 552.23 and 552.401, but only to the extent necessary to achieve the
23 purposes of the statutes. Imposition of a remedy under either
24 statute does not invalidate the entire marital agreement unless the
25 agreement otherwise fails to meet the requirements of this act.

26 Sec. 6. A premarital agreement or marital agreement must be in
27 a record and signed by both parties. The agreement is enforceable
28 without consideration.

29 Sec. 7. A premarital agreement is effective on marriage. A

1 marital agreement is effective on signing by both parties.

2 Sec. 8. If a marriage is determined to be void, a premarital
3 agreement or marital agreement is enforceable to the extent
4 necessary to avoid an inequitable result.

5 Sec. 9. (a) A premarital agreement or marital agreement is
6 unenforceable if a party against whom enforcement is sought proves:

7 (1) the party's consent to the agreement was involuntary or
8 the result of duress;

9 (2) the party did not have access to independent legal
10 representation under subsection (b);

11 (3) unless the party had independent legal representation at
12 the time the agreement was signed, the agreement did not include a
13 notice of waiver of rights under subsection (c) or an explanation
14 in plain language of the marital rights or obligations being
15 modified or waived by the agreement; or

16 (4) before signing the agreement, the party did not receive
17 adequate financial disclosure under subsection (d).

18 (b) A party has access to independent legal representation if:

19 (1) before signing a premarital or marital agreement, the
20 party has a reasonable time to:

21 (A) decide whether to retain a lawyer to provide independent
22 legal representation; and

23 (B) locate a lawyer to provide independent legal
24 representation, obtain the lawyer's advice, and consider the advice
25 provided; and

26 (2) the other party is represented by a lawyer and the party
27 has the financial ability to retain a lawyer or the other party
28 agrees to pay the reasonable fees and expenses of independent legal
29 representation.

1 (c) A notice of waiver of rights under this section requires
2 language, conspicuously displayed, substantially similar to the
3 following, as applicable to the premarital agreement or marital
4 agreement:

5 "If you sign this agreement, you may be:

6 Giving up your right to be supported by the person you are
7 marrying or to whom you are married.

8 Giving up your right to ownership or control of money and
9 property.

10 Agreeing to pay bills and debts of the person you are marrying
11 or to whom you are married.

12 Giving up your right to money and property if your marriage
13 ends or the person to whom you are married dies.

14 Giving up your right to have your legal fees paid."

15 (d) A party has adequate financial disclosure under this
16 section if the party:

17 (1) receives a reasonably accurate description and good-faith
18 estimate of value of the property, liabilities, and income of the
19 other party;

20 (2) expressly waives, in a separate signed record, the right
21 to financial disclosure beyond the disclosure provided; or

22 (3) has adequate knowledge or a reasonable basis for having
23 adequate knowledge of the information described in paragraph (1).

24 (e) If a premarital agreement or marital agreement modifies or
25 eliminates spousal support and the modification or elimination
26 causes a party to the agreement to be eligible for support under a
27 program of public assistance at the time of separation or marital
28 dissolution, a court, on request of that party, may require the
29 other party to provide support to the extent necessary to avoid

1 that eligibility.

2 (f) A court may refuse to enforce a term of a premarital
3 agreement or marital agreement if, in the context of the agreement
4 taken as a whole:

5 (1) the term was unconscionable at the time of signing; or

6 (2) enforcement of the term would result in substantial
7 hardship for a party because of a material change in circumstances
8 arising after the agreement was signed].

9 (g) The court shall decide a question of unconscionability or
10 substantial hardship under subsection (f) as a matter of law.

11 Sec. 10. (a) In this section, "custodial responsibility" means
12 physical or legal custody, parenting time, access, visitation, or
13 other custodial right or duty with respect to a child.

14 (b) A term in a premarital agreement or marital agreement is
15 not enforceable to the extent that it:

16 (1) adversely affects a child's right to support;

17 (2) limits or restricts a remedy available to a victim of
18 domestic violence under law of this state other than this act;

19 (3) purports to modify the grounds for a court-decreed
20 separation or marital dissolution available under law of this state
21 other than this act; or

22 (4) penalizes a party for initiating a legal proceeding
23 leading to a court-decreed separation or marital dissolution.

24 (c) A term in a premarital agreement or marital agreement that
25 defines the rights or duties of the parties regarding custodial
26 responsibility is not binding on the court.

27 Sec. 11. A statute of limitations applicable to an action
28 asserting a claim for relief under a premarital agreement or
29 marital agreement is tolled during the marriage of the parties to

1 the agreement, but equitable defenses limiting the time for
2 enforcement, including laches and estoppel, are available to either
3 party.

4 Sec. 12. In applying and construing this uniform act,
5 consideration must be given to the need to promote uniformity of
6 the law with respect to its subject matter among states that enact
7 it.

8 Sec. 13. This act modifies, limits, or supersedes the
9 electronic signatures in global and national commerce act, 15 USC
10 section 7001 et seq., but does not modify, limit, or supersede
11 section 101(c) of that act, 15 USC section 7001(c), or authorize
12 electronic delivery of any of the notices described in section
13 103(b) of that act, 15 USC section 7003(b).

14 Sec. 14. This act takes effect 6 months after the effective
15 date of this act.