

2023 REGULAR SESSION

Committee Substitute

for

House Bill Number 2509

By Delegate Steele

[Introduced January 12, 2023; Referred to the

Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §48-1A-101, §48-1A-201, §48-1A-301, §48-1A-401, §48-1A-501, §48-1A-601,
3 §48-1A-701, §48-1A-801, §48-1A-901 and §48-1A-1001, all relating to the Uniform
4 Premarital Agreement Act; defining terms; setting forth requirements and content of
5 agreement; providing for the effect, amendment, revocation and enforcement of such
6 agreements; establishing statute of limitations, application and construction of article; and
7 setting forth short title.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. UNIFORM PREMARITAL AGREEMENT ACT.

§48-1A-101. Definitions.

1 As used in this article:

2 (a) "Premarital agreement" means an agreement between prospective spouses made in
3 contemplation of marriage and to be effective upon marriage and includes the definition of the term
4 prenuptial agreement as set forth in §48-1-203 of this code.

5 (b) "Property" means an interest, present or future, legal or equitable, vested or contingent,
6 in real or personal property including income and earnings.

§48-1A-201. Formalities.

1 A premarital agreement must be in writing and signed by both parties and contain an
2 acknowledgement that both parties have had an opportunity to consult with separate legal
3 counsel. It is enforceable without consideration.

§48-1A-301. Content.

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

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

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

7 (3) The disposition of property upon separation, marital dissolution, death or the
8 occurrence or nonoccurrence of any other event;

9 (4) The modification or elimination of spousal support;

10 (5) The making of a will, trust, or other arrangement to carry out the provisions of the
11 agreement;

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

13 (7) The choice of law governing the construction of the agreement; and

14 (8) Any other matter, including their personal rights and obligations, not in violation of
15 public policy or a statute imposing a criminal penalty.

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

§48-1A-401. Effect of marriage.

1 A premarital agreement becomes effective upon marriage.

§48-1A-501. Amendment; revocation.

1 After marriage, a premarital agreement may be amended or revoked only by a written
2 agreement signed by the parties. The amended agreement or the revocation is enforceable
3 without consideration.

§48-1A-601. Enforcement.

1 (a) A premarital agreement is not enforceable if the party against whom enforcement is
2 sought proves that:

3 (1) That party did not execute the agreement voluntarily; or

4 (2) The agreement was unconscionable when it was executed and, before execution of the
5 agreement, that party:

6 (A) Was not provided a fair and reasonable disclosure of the property or financial
7 obligations of the other party;

8 (B) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property
9 or financial obligations of the other party beyond the disclosure provided; and

10 (C) Did not have, or reasonably could not have had, an adequate knowledge of the
11 property or financial obligations of the other party.

12 (b) If a provision of a premarital agreement modifies or eliminates spousal support and that
13 modification or elimination causes one party to the agreement to be eligible for support under a
14 program of public assistance at the time of separation or marital dissolution, the family court,
15 notwithstanding the terms of the agreement, may require the other party to provide support to the
16 extent necessary to avoid that eligibility.

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

§48-1A-701. Enforcement; void marriage.

1 If a marriage is determined to be void, an agreement that would otherwise have been a
2 premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

§48-1A-801. Limitation of actions.

1 Any statute of limitations applicable to an action asserting a claim for relief under a
2 premarital agreement is tolled during the marriage of the parties to the agreement. However,
3 equitable defenses limiting the time for enforcement, including laches and estoppel, are available
4 to either party.

§48-1A-901. Application and construction.

1 This article shall be applied and construed to effectuate its general purpose to make
2 uniform the law with respect to the subject of this article among states enacting it.

§48-1A-1001. Short title.

1 This article may be cited as the "Uniform Premarital Agreement Act."

NOTE: The purpose of this bill is to enact the Uniform Premarital Agreement Act. This act allows parties to a marriage to contract prior to marriage with respect to property rights, actions to be taken upon dissolution of the marriage, rights to insurance proceeds upon death of either party, choice of controlling law and any other matters not in violation of criminal statutes or public policy. Child support cannot be adversely affected.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.