

H. B. 2290

(By Delegate Boggs)

[Introduced January 12, 2011; referred to the
Committee on the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §48-1A-101, §48-1A-201, §48-1A-301, §48-1A-401, §48-1A-501, §48-1A-601, §48-1A-701, §48-1A-801, §48-1A-901 and §48-1A-1001, all to read as follows:

1 **ARTICLE 1A. UNIFORM PREMARITAL AGREEMENT ACT.**

2 **§48-1A-101. Definitions.**

3 As used in this article:

4 (a) "Premarital agreement" means an agreement between
5 prospective spouses made in contemplation of marriage and to be
6 effective upon marriage and includes the definition of prenuptial
7 agreement as set forth in section 203, article 1 of this chapter.

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

11 **§48-1A-201. Formalities.**

12 A premarital agreement must be in writing and signed by both
13 parties. It is enforceable without consideration.

14 **§48-1A-301. Content.**

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

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

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

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

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

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

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

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

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

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

16 **§48-1A-401. Effect of marriage.**

17 A premarital agreement becomes effective upon marriage.

18 **§48-1A-501. Amendment; revocation.**

19 After marriage, a premarital agreement may be amended or
20 revoked only by a written agreement signed by the parties. The
21 amended agreement or the revocation is enforceable without
22 consideration.

23 **§48-1A-601. Enforcement.**

1 (a) A premarital agreement is not enforceable if the party
2 against whom enforcement is 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,
5 before execution of the agreement, that party:

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

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

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

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

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

23 **§48-1A-701. Enforcement; void marriage.**

24 If a marriage is determined to be void, an agreement that

1 would otherwise have been a premarital agreement is enforceable
2 only to the extent necessary to avoid an inequitable result.

3 **§48-1A-801. Limitation of actions.**

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

9 **§48-1A-901. Application and construction.**

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

13 **§48-1A-1001. Short title.**

14 This article may be cited as the "Uniform Premarital Agreement
15 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.

This article is new; therefore, it has been completely underscored.