

SENATE BILL No. 391

June 27, 1991, Introduced by Senators CHERRY, ARTHURHULTZ, FAXON and BERRYMAN and referred to the Committee on Family Law, Criminal Law, and Corrections.

A bill to regulate premarital and postmarital agreements.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Post-marital agreement" means an agreement between
3 spouses made after marriage.

4 (b) "Premarital agreement" means an agreement between pro-
5 spective spouses made in contemplation of marriage and to be
6 effective upon marriage.

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

10 Sec. 2. Parties in contemplation of marriage may enter a
11 premarital agreement. Parties who are married may enter a
12 postmarital agreement. A premarital or postmarital agreement
13 shall be in writing and signed by both parties. A premarital

1 agreement or postmarital agreement is enforceable without
2 consideration.

3 Sec. 3. Each party entering or amending a premarital or
4 postmarital agreement shall be represented by an attorney. The
5 same attorney shall not represent both of the parties in the
6 agreement under this act.

7 Sec. 4. A premarital or postmarital agreement may include
8 provisions with respect to 1 or more of the following:

9 (a) The rights and obligations of each of the parties in any
10 of the property of either or both of them whenever and wherever
11 acquired or located.

12 (b) The right to buy, sell, use, transfer, exchange, aban-
13 don, lease, consume, expend, assign, create a security interest
14 in, mortgage, encumber, dispose of, or otherwise manage and con-
15 trol property.

16 (c) The disposition of property upon separation, annulment,
17 divorce, death, or the occurrence or nonoccurrence of any other
18 event.

19 (d) The modification or elimination of present or future
20 spousal support.

21 (e) The making of a will, trust, or other legal or equitable
22 arrangement to carry out the provisions of the agreement.

23 (f) The ownership rights in and disposition of death bene-
24 fits, conversion provisions, or cash values from any life insur-
25 ance policy, annuity, or similar instrument.

26 (g) The choice of law governing the construction of the
27 agreement.

1 (h) Any other matter, including any personal right or
2 obligation of a party that is not in violation of public policy,
3 or a statute imposing a criminal penalty.

4 Sec. 5. Except as otherwise provided in the premarital or
5 postmarital agreement, a written waiver by a person of all of his
6 or her rights in the property or estate of the person's prospec-
7 tive spouse or spouse includes all of the following rights and
8 benefits:

9 (a) All rights to dower under sections 1 to 29 of chapter 66
10 of the Revised Statutes of 1846, being sections 558.1 to 558.29
11 of the Michigan Compiled Laws.

12 (b) All rights to a homestead allowance, family allowance,
13 election or exempt property in the property of the person's
14 spouse.

15 (c) A right to remain in the dwelling house of a decedent as
16 provided in section 288 of the revised probate code, Act No. 642
17 of the Public Acts of 1978, being section 700.288 of the Michigan
18 Compiled Laws.

19 (d) All benefits that would otherwise pass to him or her
20 from the person's spouse by intestate succession or because of
21 the provisions of a will executed prior to the date the waiver
22 was executed.

23 Sec. 6. A premarital or postmarital agreement may be
24 amended or revoked only by a written agreement signed by both of
25 the parties. An amendment to or revocation of a premarital or
26 postmarital agreement to which this act applies is enforceable
27 without consideration.

1 Sec. 7. A premarital or postmarital agreement or an
2 amendment to or revocation of a premarital or postmarital agree-
3 ment is not enforceable if the party against whom enforcement is
4 sought proves either of the following:

5 (a) That that party did not execute the agreement, amend-
6 ment, or revocation knowingly and voluntarily.

7 (b) That the agreement, amendment, or revocation was uncon-
8 scionable when it was executed and, before execution of the
9 agreement, amendment, or revocation, that party met all of the
10 following conditions:

11 (i) Was not provided a fair and reasonable disclosure of the
12 property or financial obligations of the other party.

13 (ii) Did not voluntarily and expressly waive, in writing,
14 any right to disclosure of the property or financial obligations
15 of the other party beyond the disclosure provided.

16 (iii) Did not have, or reasonably could not have had, an
17 adequate knowledge of the property or financial obligations of
18 the other party.

19 Sec. 8. The court shall make determinations regarding the
20 alleged unconscionability of a premarital or postmarital agree-
21 ment as a matter of law.

22 Sec. 9. A court in its discretion may modify a premarital
23 and postmarital agreement entered into under this act if a change
24 of circumstances makes the enforcement of that agreement
25 inequitable.

1 Sec. 10 The right of a child to support shall not be
2 adversely affected by a premarital or postmarital agreement
3 entered into under this act.

4 Sec. 11. If a provision of a premarital or postmarital
5 agreement modifies or eliminates spousal support and that modifi-
6 cation or elimination causes 1 party to the agreement to be eli-
7 gible for support under a program of public assistance at the
8 time of separation, annulment, or divorce, a court, notwithstand-
9 ing the terms of the agreement, may require the other party to
10 provide support as otherwise provided by law to the extent neces-
11 sary to avoid that eligibility.

12 Sec. 12. If a marriage is determined to be void, an agree-
13 ment that would otherwise have been a premarital or postmarital
14 agreement is enforceable only to the extent necessary to avoid an
15 inequitable result.

16 Sec. 13. Any statute of limitations applicable to an action
17 asserting a claim for enforcement of an agreement under this act
18 is tolled during the marriage of the parties to the agreement.
19 Equitable defenses limiting the time for enforcement, including
20 laches and estoppel, are available to either party.

21 Sec. 14. This act applies to a premarital or postmarital
22 agreement executed on or after the effective date of this act.