

ENFORCEABILITY OF PRENUPTIAL AGREEMENTS

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House Bill 4751 as introduced
Sponsor: Rep. Klint Kesto
Committee: Law and Justice
Complete to 9-11-17

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4751 would amend Section 8 of Public Act 216 of 1981, concerning a contract relating to property made between persons in contemplation of marriage. This contract is also known as a prenuptial agreement. Generally speaking, the bill would render a prenuptial agreement unenforceable if certain factors can be proven, such as duress or unconscionable terms.

Section 8 of Public Act 216 of 1981 currently states that a contract relating to property made between persons in contemplation of marriage is enforceable after the marriage takes place. The bill would amend this section by adding specific circumstances when such a contract is unenforceable.

For a prenuptial agreement to be unenforceable, a party against whom enforcement is sought must prove either of the following:

- The parties' consent to the contract was the result of fraud, duress, or mistake;
OR
- Before signing the contract, the party did not receive adequate financial disclosure. A party has adequate financial disclosure under this subdivision if one of the following applies:
 - The party receives a reasonably accurate description and good-faith estimate of value of the property, liabilities, and income of the other party.
 - The party expressly waives the right to financial disclosure beyond the disclosure provided.
 - The party has adequate knowledge or a reasonable basis for having adequate knowledge of the estimate of value of the property, liabilities, and income of the other party.

The bill would also give deference to courts to refuse to enforce a term of the contract or the entire contract if either of the following applies:

- The term was unconscionable (or extremely unfair such that no reasonable party would agree) at the time the contract was signed.
- Enforcement of the term would be unconscionable for a party at the time of enforcement because of a material (meaning important; having influence or effect) change in circumstances arising after the contract was signed that was not reasonably foreseeable at the time the contract was signed.

The court's decision on whether a term or the entire contract is unconscionable would be decided as a matter of law. This means that the court would not investigate the facts of the case, but rather decide the issue through principles described in the applicable statutes.

As it reads, the bill would only apply this section retroactively to prenuptial agreements made before the bill's amendments to this section were enacted.

This amendatory act would take effect 90 days after the date of enactment.

MCL 557.28

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how provisions of the bill affected court caseloads and related administrative costs.

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