



**House
Legislative
Analysis
Section**

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UNIFORM PREMARITAL AGREEMENT ACT

House Bill 5745
Sponsor: Rep. Gary L. Randall
Committee: Judiciary

Complete to 11-6-90

A SUMMARY OF HOUSE BILL 5745 AS INTRODUCED 9-21-90

The bill would create the Uniform Premarital Agreement Act, which would apply to premarital agreements executed on or after the bill's effective date. A premarital agreement would have to be in writing and signed by both parties. It could include provisions on any matter, including any personal right or obligation of a party, providing there was no conflict with public policy or criminal statutes. The right of a child to support could not be adversely affected. The bill would specifically authorize provisions on property rights, property dispositions, spousal support, wills and trusts, rights in death benefits and annuities, and the choice of law governing construction of the agreement.

A premarital agreement would become effective upon marriage of the parties. After marriage, it could be amended or revoked only by a written agreement signed by both parties. An agreement, along with any amendment or revocation, would be enforceable "without consideration," meaning, apparently, that something of value would not have to change hands for the agreement to be enforceable. However, an agreement would not be enforceable if the party against whom enforcement was sought proved that he or she did not execute the agreement (or an amendment or revocation) knowingly and voluntarily, or if the party proved that he or she was not provided a fair and reasonable disclosure of the property or financial obligations of the other party (in this case, there would have to have been no waiver of disclosure and no adequate knowledge of the financial information involved. If a marriage was determined to be void, an agreement would be enforceable only to the extent necessary to avoid an inequitable result.

A court could require a party to provide spousal support notwithstanding the terms of an agreement, if separation or divorce caused the other party to be eligible for public assistance.

Any statute of limitations applicable to asserting a claim for enforcement of a premarital agreement would be suspended during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, would be available to either party. ("Laches" means that a party had failed to assert rights in a timely fashion; "estoppel" implies that a party is barred from his or her own acts from claiming a right that otherwise would exist. The concepts can be combined, so that "estoppel by laches" suggests a failure to do something which should be done or to claim or enforce a right at a proper time.)

The bill would be construed to effectuate its general purpose and to make uniform the law with respect to premarital agreements among the states enacting the uniform law.

House Bill 5745 (11-6-90)