

# SENATE BILL NO. 809

April 09, 2024, Introduced by Senators SHINK, SANTANA, BAYER, WOJNO and MCMORROW and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

A bill to enact the uniform premarital and marital agreements act; and to determine how and when a premarital or marital agreement is enforced.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act may be cited as the "uniform premarital and  
2 marital agreements act".

3           Sec. 2. In this act:

4           (1) "Amendment" means a modification or revocation of a  
5 premarital agreement or marital agreement.

6           (2) "Duress" means an incident involving a threat of illegal,

1 humiliating, or unreasonable physical, financial, emotional, or  
2 social damage or injury. All of the following factors are relevant  
3 in a determination of duress for purposes of this subdivision:

4 (i) A threat of refusal to go forward with a marriage if a  
5 premarital agreement is not signed.

6 (ii) The timing of presentment of a premarital agreement in  
7 light of the public announcement of an engagement.

8 (iii) The state of wedding plans and expenditures.

9 (iv) The time until the planned wedding date.

10 (3) "Marital agreement" means an agreement between spouses who  
11 intend to remain married that affirms, modifies, or waives a  
12 marital right or obligation during the marriage or at separation,  
13 marital dissolution, death of one of the spouses, or the occurrence  
14 or nonoccurrence of any other event. The term includes an  
15 amendment, signed after the spouses marry, of a premarital  
16 agreement or marital agreement.

17 (4) "Marital dissolution" means the ending of a marriage by  
18 court decree. The term includes divorce, dissolution, and  
19 annulment.

20 (5) "Marital right or obligation" means any of the following  
21 rights or obligations arising between spouses because of their  
22 marital status:

23 (A) Spousal support;

24 (B) A right to property, including characterization,  
25 management, and ownership;

26 (C) Responsibility for a liability;

27 (D) A right to property and responsibility for liabilities at  
28 separation, marital dissolution, or death of a spouse; or

29 (E) Award and allocation of attorney fees and costs.

1           (6) "Premarital agreement" means an agreement between  
2 individuals who intend to marry that affirms, modifies, or waives a  
3 marital right or obligation during the marriage or at separation,  
4 marital dissolution, death of one of the spouses, or the occurrence  
5 or nonoccurrence of any other event. The term includes an  
6 amendment, signed before the individuals marry, of a premarital  
7 agreement.

8           (7) "Property" means anything that may be the subject of  
9 ownership, whether real or personal, tangible or intangible, legal  
10 or equitable, or any interest therein.

11           (8) "Record" means information that is inscribed on a tangible  
12 medium or that is stored in an electronic or other medium and is  
13 retrievable in perceivable form.

14           (9) "Sign" means with present intent to authenticate or adopt  
15 a record:

16           (A) to execute or adopt a tangible symbol; or

17           (B) to attach to or logically associate with the record an  
18 electronic symbol, sound, or process.

19           (10) "State" means a state of the United States, the District  
20 of Columbia, Puerto Rico, the United States Virgin Islands, or any  
21 territory or insular possession subject to the jurisdiction of the  
22 United States.

23           Sec. 3. (a) This act applies to a premarital agreement or  
24 marital agreement signed on or after the effective date of this  
25 act.

26           (b) This act does not affect any right, obligation, or  
27 liability arising under a premarital agreement or marital agreement  
28 signed before the effective date of this act.

29           (c) This act does not apply to:

1 (1) an agreement between spouses that affirms, modifies, or  
2 waives a marital right or obligation and requires court approval to  
3 become effective; or

4 (2) an agreement between spouses who intend to obtain a  
5 marital dissolution or court-decreed separation that resolves their  
6 marital rights or obligations and is signed when a proceeding for  
7 marital dissolution or court-decreed separation is anticipated or  
8 pending.

9 (d) This act does not affect adversely the rights of a bona  
10 fide purchaser for value to the extent that this act applies to a  
11 waiver of a marital right or obligation in a transfer or conveyance  
12 of property by a spouse to a third party.

13 Sec. 4. The validity, enforceability, interpretation, and  
14 construction of a premarital agreement or marital agreement are  
15 determined:

16 (1) by the law of the jurisdiction designated in the agreement  
17 if the jurisdiction has a significant relationship to the agreement  
18 or either party and the designated law is not contrary to a  
19 fundamental public policy of this state; or

20 (2) absent an effective designation described in paragraph  
21 (1), by the law of this state, including the choice-of-law rules of  
22 this state.

23 Sec. 5. Unless displaced by a provision of this act,  
24 principles of law and equity supplement this act, including a  
25 court's authority under sections 23(1) and 401 of 1846 RS 84, MCL  
26 552.23 and 552.401, but only to the extent necessary to achieve the  
27 purposes of the statutes. Imposition of a remedy under either  
28 statute does not invalidate the entire marital agreement unless the  
29 agreement otherwise fails to meet the requirements of this act.

1           Sec. 6. A premarital agreement or marital agreement must be in  
2 a record and signed by both parties. The agreement is enforceable  
3 without consideration.

4           Sec. 7. A premarital agreement is effective on marriage. A  
5 marital agreement is effective on signing by both parties.

6           Sec. 8. If a marriage is determined to be void, a premarital  
7 agreement or marital agreement is enforceable to the extent  
8 necessary to avoid an inequitable result.

9           Sec. 9. (a) A premarital agreement or marital agreement is  
10 unenforceable if a party against whom enforcement is sought proves:

11           (1) the party's consent to the agreement was involuntary or  
12 the result of duress;

13           (2) the party did not have access to independent legal  
14 representation under subsection (b);

15           (3) unless the party had independent legal representation at  
16 the time the agreement was signed, the agreement did not include a  
17 notice of waiver of rights under subsection (c) or an explanation  
18 in plain language of the marital rights or obligations being  
19 modified or waived by the agreement; or

20           (4) before signing the agreement, the party did not receive  
21 adequate financial disclosure under subsection (d).

22           (b) A party has access to independent legal representation if:

23           (1) before signing a premarital or marital agreement, the  
24 party has a reasonable time to:

25           (A) decide whether to retain a lawyer to provide independent  
26 legal representation; and

27           (B) locate a lawyer to provide independent legal  
28 representation, obtain the lawyer's advice, and consider the advice  
29 provided; and

1           (2) the other party is represented by a lawyer and the party  
2 has the financial ability to retain a lawyer or the other party  
3 agrees to pay the reasonable fees and expenses of independent legal  
4 representation.

5           (c) A notice of waiver of rights under this section requires  
6 language, conspicuously displayed, substantially similar to the  
7 following, as applicable to the premarital agreement or marital  
8 agreement:

9           "If you sign this agreement, you may be:

10           Giving up your right to be supported by the person you are  
11 marrying or to whom you are married.

12           Giving up your right to ownership or control of money and  
13 property.

14           Agreeing to pay bills and debts of the person you are marrying  
15 or to whom you are married.

16           Giving up your right to money and property if your marriage  
17 ends or the person to whom you are married dies.

18           Giving up your right to have your legal fees paid."

19           (d) A party has adequate financial disclosure under this  
20 section if the party:

21           (1) receives a reasonably accurate description and good-faith  
22 estimate of value of the property, liabilities, and income of the  
23 other party;

24           (2) expressly waives, in a separate signed record, the right  
25 to financial disclosure beyond the disclosure provided; or

26           (3) has adequate knowledge or a reasonable basis for having  
27 adequate knowledge of the information described in paragraph (1).

28           (e) If a premarital agreement or marital agreement modifies or  
29 eliminates spousal support and the modification or elimination

1 causes a party to the agreement to be eligible for support under a  
2 program of public assistance at the time of separation or marital  
3 dissolution, a court, on request of that party, may require the  
4 other party to provide support to the extent necessary to avoid  
5 that eligibility.

6 (f) A court may refuse to enforce a term of a premarital  
7 agreement or marital agreement if, in the context of the agreement  
8 taken as a whole:

9 (1) the term was unconscionable at the time of signing; or

10 (2) enforcement of the term would result in substantial  
11 hardship for a party because of a material change in circumstances  
12 arising after the agreement was signed].

13 (g) The court shall decide a question of unconscionability or  
14 substantial hardship under subsection (f) as a matter of law.

15 Sec. 10. (a) In this section, "custodial responsibility" means  
16 physical or legal custody, parenting time, access, visitation, or  
17 other custodial right or duty with respect to a child.

18 (b) A term in a premarital agreement or marital agreement is  
19 not enforceable to the extent that it:

20 (1) adversely affects a child's right to support;

21 (2) limits or restricts a remedy available to a victim of  
22 domestic violence under law of this state other than this act;

23 (3) purports to modify the grounds for a court-decreed  
24 separation or marital dissolution available under law of this state  
25 other than this act; or

26 (4) penalizes a party for initiating a legal proceeding  
27 leading to a court-decreed separation or marital dissolution.

28 (c) A term in a premarital agreement or marital agreement that  
29 defines the rights or duties of the parties regarding custodial

1 responsibility is not binding on the court.

2       Sec. 11. A statute of limitations applicable to an action  
3 asserting a claim for relief under a premarital agreement or  
4 marital agreement is tolled during the marriage of the parties to  
5 the agreement, but equitable defenses limiting the time for  
6 enforcement, including laches and estoppel, are available to either  
7 party.

8       Sec. 12. In applying and construing this uniform act,  
9 consideration must be given to the need to promote uniformity of  
10 the law with respect to its subject matter among states that enact  
11 it.

12       Sec. 13. This act modifies, limits, or supersedes the  
13 electronic signatures in global and national commerce act, 15 USC  
14 section 7001 et seq., but does not modify, limit, or supersede  
15 section 101(c) of that act, 15 USC section 7001(c), or authorize  
16 electronic delivery of any of the notices described in section  
17 103(b) of that act, 15 USC section 7003(b).

18       Sec. 14. This act takes effect 6 months after the effective  
19 date of this act.