

## LEGISLATIVE BILL 202

Approved by the Governor February 15, 1994

Introduced by Landis, 46

AN ACT relating to marriage; to amend section 30-2316, Reissue Revised Statutes of Nebraska, 1943; to adopt the Uniform Premarital Agreement Act; to provide severability; to provide when the act takes effect; to harmonize provisions; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 11 of this act shall be known and may be cited as the Uniform Premarital Agreement Act.

Sec. 2. As used in the Uniform Premarital Agreement Act:

(1) Premarital agreement means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(2) Property means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

Sec. 3. A premarital agreement must be in writing and signed by both parties.

Sec. 4. (1) Parties to a premarital agreement may contract with respect to:

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

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

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

(d) The modification or elimination of spousal support;

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

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

(g) The choice of law governing the construction of the agreement;

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

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

Sec. 5. A premarital agreement becomes effective upon marriage.

Sec. 6. (1) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(a) That party did not execute the agreement voluntarily; or

(b) The agreement was unconscionable when it was executed and, before execution of the agreement, that party:

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

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

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

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

(3) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

Sec. 7. If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

Sec. 8. Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses

limiting the time for enforcement, including laches and estoppel, are available to either party.

Sec. 9. The Uniform Premarital Agreement Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

Sec. 10. If any provision of the Uniform Premarital Agreement Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

Sec. 11. The Uniform Premarital Agreement Act takes effect on the effective date of this act and applies to any premarital agreement executed on or after that date.

Sec. 12. That section 30-2316, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

30-2316. (a) The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance, or any of them, may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the party waiving after fair disclosure: surviving spouse.

(b) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

(1) he or she did not execute the waiver voluntarily;

(2) the waiver was unconscionable when it was executed and, before execution of the waiver, he or she:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the decedent.

(c) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(d) Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation, divorce, or annulment, or dissolution of a marriage is a waiver of all rights to elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which that would otherwise pass to him or her from the other by intestate succession or by virtue of the provisions of any will executed before the waiver or property settlement.

Sec. 13. That original section 30-2316, Reissue Revised Statutes of Nebraska, 1943, is repealed.