

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 722

H.P. 538 House of Representatives, March 11, 1987
Reference to the Committee on Judiciary suggested and
ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative HANLEY of Paris.
Cosponsored by Representative ANTHONY of South Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

AN ACT to Establish the Uniform Premarital
Agreement Act.

Be it enacted by the People of the State of Maine as
follows:

19 MRSA c. 2 is enacted to read:

CHAPTER 2

UNIFORM PREMARITAL AGREEMENT ACT

§141. Short title

This chapter shall be known and may be cited as
the "Uniform Premarital Agreement Act."

§142. Definitions

1 As used in this Act, unless the context indicates
2 otherwise, the following terms have the following
3 meanings.

4 1. Premarital agreement. "Premarital agreement"
5 means an agreement between prospective spouses made
6 in contemplation of marriage and to be effective upon
7 marriage.

8 2. Property. "Property" means an interest,
9 present or future, legal or equitable, vested or con-
10 tingent, in real or personal property, including in-
11 come and earnings.

12 §143. Formalities

13 A premarital agreement must be in writing and
14 signed by both parties. It is enforceable without
15 consideration.

16 §144. Content

17 Parties to a premarital agreement may contract
18 with respect to:

19 1. Rights and obligations of each of the par-
20 ties. The rights and obligations of each of the par-
21 ties in any of the property of either or both of them
22 whenever and wherever acquired or located;

23 2. Right to buy, sell, use property. The right
24 to buy, sell, use, transfer, exchange abandon, lease,
25 consume, expend, assign, create a security interest
26 in, mortgage, encumber, dispose of or otherwise man-
27 age and control property;

28 3. Disposition of property. The disposition of
29 property upon separation, marital dissolution, death
30 or the occurrence or nonoccurrence of any other
31 event;

32 4. Spousal support. The modification or elimi-
33 nation of spousal support;

34 5. Making of will. The making of a will, trust
35 or other arrangement to carry out the provisions of
36 the agreement;

1 6. Death benefit. The ownership rights in and
2 disposition of the death benefit from a life insur-
3 ance policy;

4 7. Choice of law. The choice of law governing
5 the construction of the agreement; and

6 8. Other matter. Any other matter, including
7 their personal rights and obligations, not in viola-
8 tion of public policy or a law imposing a criminal
9 penalty.

10 The right of a child to support may not be ad-
11 versely affected by a premarital agreement.

12 §145. Effect of marriage

13 A premarital agreement becomes effective upon
14 marriage.

15 §146. Amendment; revocation

16 After marriage, a premarital agreement may be
17 amended or revoked only by a written agreement signed
18 by the parties. The amended agreement or the revoca-
19 tion is enforceable without consideration.

20 §147. Enforcement

21 1. Not enforceable. A premarital agreement is
22 not enforceable if the party against whom enforcement
23 is sought proves that:

24 A. That party did not execute the agreement vol-
25 untarily; or

26 B. The agreement was unconscionable when it was
27 executed and, before execution of the agreement,
28 that party:

29 (1) Was not provided a fair and reasonable
30 disclosure of the property or financial ob-
31 ligations of the other party;

32 (2) Did not voluntarily and expressly
33 waive, in writing, any right to disclosure
34 of the property or financial obligations of

1 the other party beyond the disclosure pro-
2 vided; and

3 (3) Did not have, or reasonably could not
4 have had, an adequate knowledge of the prop-
5 erty or financial obligations of the other
6 party.

7 2. Support required. If a provision of a
8 premarital agreement modifies or eliminates spousal
9 support and that modification or elimination causes
10 one party to the agreement to be eligible for support
11 under a program of public assistance at the time or
12 separation of marital dissolution, a court, notwith-
13 standing the terms of the agreement, may require the
14 other party to provide support to the extent neces-
15 sary to avoid that eligibility.

16 3. Unconscionability. An issue of
17 unconscionability of a premarital agreement shall be
18 decided by the court as a matter of law.

19 §148. Enforcement; void marriage

20 If a marriage is determined to be void, an agree-
21 ment that would otherwise have been a premarital
22 agreement is enforceable only to the extent necessary
23 to avoid an inequitable result.

24 §149. Limitation of actions

25 Any statute of limitations applicable to an ac-
26 tion asserting a claim for relief under a premarital
27 agreement is tolled during the marriage of the par-
28 ties to the agreement. Equitable defenses limiting
29 the time for enforcement, including laches and estop-
30 pel, are available to either party.

31 §150. Application and construction

32 This Act shall be applied and construed to effec-
33 tuate its general purpose to make uniform the law
34 with respect to the subject of this Act among states
35 enacting it.

1

STATEMENT OF FACT

2 The number of marriages between persons previous-
3 ly married and the number of marriages between per-
4 sons each of whom is intending to continue to pursue
5 a career is steadily increasing. For these and other
6 reasons, it is becoming more and more common for per-
7 sons contemplating marriage to seek to resolve by
8 agreement certain issues presented by the forthcoming
9 marriage. Despite a lengthy legal history for these
10 premarital agreements, there is a substantial uncer-
11 tainty as to the enforceability of all, or a portion,
12 of the provisions of these agreements and a signifi-
13 cant lack of uniformity of treatment of these agree-
14 ments among the states. The problems caused by this
15 uncertainty and nonuniformity are greatly exacerbated
16 by the mobility of our population. Nevertheless,
17 this uncertainty and nonuniformity seem reflective
18 not so much of basic policy differences between the
19 states but rather a result of spasmodic, reflexive
20 response to varying factual circumstances at differ-
21 ent times. Accordingly, uniform legislation conform-
22 ing to modern social policy which provides both cer-
23 tainty and sufficient flexibility to accommodate dif-
24 ferent circumstances would appear to be both a sig-
25 nificant improvement and a goal realistically capable
26 of achievement.

27 This bill is intended to be relatively limited in
28 scope. The Maine Revised Statutes, Title 19, section
29 142, defines a "premarital agreement" as an agreement
30 between prospective spouses made in contemplation of
31 marriage and to be effective upon marriage. Title
32 19, section 143, requires that a premarital agreement
33 be in writing and signed by both parties. Title 19,
34 section 145, provides that a premarital agreement be-
35 comes effective upon the marriage of the parties.
36 These sections establish significant parameters. The
37 bill does not deal with agreements between persons
38 who live together but who do not contemplate marriage
39 or who do not marry. Nor does the bill provide for
40 postnuptial or separation agreements or with oral
41 agreements.

42 On the other hand, agreements which are embraced
43 by the Act are permitted to deal with a wide variety

1 of matters and Title 19, section 144, provides an il-
2 lustrative list of those matters, including spousal
3 support, which may properly be dealt with in a
4 premarital agreement.

5 Title 19, section 147, is the key operative sec-
6 tion of the Act and sets forth the conditions under
7 which a premarital agreement is not enforceable. An
8 agreement is not enforceable if the party against
9 whom enforcement is sought proves that (a) he did not
10 execute the agreement voluntarily or that (b) the
11 agreement was unconscionable when it was executed and
12 before execution of the agreement, he (1) was not
13 provided a fair and reasonable disclosure of the
14 property or financial obligations of the other party,
15 (2) did not voluntarily and expressly waive, in writ-
16 ing, any right to disclosure of the property or fi-
17 nancial obligations of the other party beyond the
18 disclosure provided, and (3) did not have, or reason-
19 ably could not have had an adequate knowledge of the
20 property and financial obligations of the other par-
21 ty.

22 Even if these conditions are not proven, if a
23 provision of a premarital agreement modifies or elim-
24 inates spousal support, and that modification or
25 elimination would cause a party to be eligible for
26 support under a program of public assistance at the
27 time of separation, marital dissolution, or death, a
28 court is authorized to order the other party to pro-
29 vide support to the extent necessary to avoid that
30 eligibility.

31 These sections form the heart of the Act; the re-
32 maining sections deal with more tangential issues.
33 Title 19, section 146, prescribes the manner in which
34 a premarital agreement may be amended or revoked.
35 Title 19, section 148, provides for very limited en-
36 forcement where a marriage is subsequently determined
37 to be void. Title 19, section 149, tolls any statute
38 of limitations applicable to an action asserting a
39 claim for relief under a premarital agreement during
40 the parties' marriage.