

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 4386

(SENATE AUTHORS: WESTLIN)

DATE
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Introduction and first reading
Referred to Judiciary and Public Safety

OFFICIAL STATUS

1.1 A bill for an act
 1.2 relating to marriage; modifying and updating provisions governing antenuptial
 1.3 and postnuptial agreements; requiring procedural and substantive fairness; amending
 1.4 Minnesota Statutes 2022, section 519.11.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2022, section 519.11, is amended to read:

1.7 **519.11 ANTENUPTIAL AND POSTNUPTIAL ~~CONTRACTS~~ AGREEMENTS.**

1.8 Subdivision 1. **Antenuptial ~~contract~~ agreement.** ~~A man and woman~~ (a) Two individuals
 1.9 of legal age may enter into an antenuptial ~~contract or settlement~~ agreement prior to the
 1.10 solemnization of marriage which shall be valid and enforceable if ~~(a) there is a full and fair~~
 1.11 ~~disclosure of the earnings and property of each party, and (b) the parties have had an~~
 1.12 ~~opportunity to consult with legal counsel of their own choice. An antenuptial contract or~~
 1.13 ~~settlement~~ the agreement meets the procedural and substantive fairness requirements under
 1.14 subdivisions 1b and 1c.

1.15 (b) An antenuptial agreement made in conformity with this section may:

1.16 (1) determine what rights each party has in the marital and nonmarital property, as those
 1.17 terms are defined in section 518.003, subdivision 3b, upon a dissolution of marriage, or
 1.18 legal separation or after its termination by death and;

1.19 (2) provide for spousal maintenance, as defined in section 518.003, subdivision 3a;

1.20 (3) determine the rights that each party has in the estate of the other as otherwise conferred
 1.21 upon them by chapter 524; and

~~(4) may bar each other of all rights in the respective estates not so secured to them by their agreement. This section shall not be construed to make invalid or unenforceable any antenuptial agreement or settlement made and executed in conformity with this section because the agreement or settlement covers or includes marital property, if the agreement or settlement would be valid and enforceable without regard to this section.~~

(c) The marriage itself is adequate consideration for an agreement made in conformity with this section.

(d) An agreement duly acknowledged and attested is prima facie proof of the matters acknowledged in the agreement.

(e) If an antenuptial agreement unambiguously permits severability, the court may sever any unenforceable provision and enforce the remaining provisions of the agreement.

~~Subd. 1a. **Postnuptial contract.** (a) Spouses who are legally married under the laws of this state may enter into a postnuptial contract or settlement which is valid and enforceable if it:~~

~~(1) complies with the requirements for antenuptial contracts or settlements in this section and in the law of this state, including, but not limited to, the requirement that it be procedurally and substantively fair and equitable both at the time of its execution and at the time of its enforcement; and~~

~~(2) complies with the requirements for postnuptial contracts or settlements in this section.~~

~~(b) A postnuptial contract or settlement that conforms with this section may determine all matters that may be determined by an antenuptial contract or settlement under the law of this state, except that a postnuptial contract or settlement may not determine the rights of any child of the spouses to child support from either spouse or rights of child custody or parenting time.~~

~~(c) A postnuptial contract or settlement is valid and enforceable only if at the time of its execution each spouse is represented by separate legal counsel.~~

~~(d) A postnuptial contract or settlement is presumed to be unenforceable if either party commences an action for a legal separation or dissolution within two years of the date of its execution, unless the spouse seeking to enforce the postnuptial contract or settlement can establish that the postnuptial contract or settlement is fair and equitable.~~

~~(e) Nothing in this section shall impair the validity or enforceability of a contract, agreement, or waiver which is entered into after marriage and which is described in chapter~~

~~524, article 2, part 2, further, a conveyance permitted by section 500.19 is not a postnuptial contract or settlement under this section.~~

Subd. 1b. **Procedural fairness.** (a) For purposes of this subdivision, "full and fair disclosure" means that each party has provided a reasonably accurate description of all material facts of their income and good faith estimates of the value of their property and discloses the basis for these disclosures. A party must not waive the full and fair disclosure requirement under paragraph (b), clause (1).

(b) An antenuptial agreement is procedurally fair if:

(1) there is full and fair disclosure of the current income and property of each party;

(2) each party has had a meaningful opportunity to consult with independent legal counsel of the party's choosing;

(3) the agreement is in writing, executed in the presence of two witnesses, and acknowledged by the parties before a person authorized to administer an oath under the laws of this state;

(4) the agreement is entered into voluntarily and free of duress; and

(5) the agreement is entered into and executed no less than seven days before the marriage.

(c) An agreement entered into and executed at least seven days before the date of marriage is presumed enforceable and the burden of proof is on the party seeking to set aside the agreement. An agreement that is entered into and executed less than seven days before the marriage is not presumed enforceable, and the proponent of the agreement has the burden of proof.

(d) A power of attorney does not satisfy the requirements of paragraph (b), clause (3).

Subd. 1c. **Substantive fairness.** (a) In determining if an agreement under this section is substantively fair, the court shall consider whether all or part of the agreement is substantively unfair as to be unconscionable to a party either by the agreement's terms or as the result of drastically changed circumstances originally not foreseen when the agreement was created, such that enforcement would no longer comport with the reasonable expectations of the parties at the time that the parties executed the agreement.

(b) The agreement need not approximate a division of marital or nonmarital property, or award of spousal maintenance, consistent with statutory law regarding property division or spousal maintenance. A deviation from statutory standards does not in itself make an agreement unconscionable.

4.1 Subd. 1d. **Postnuptial agreement.** (a) Spouses who are legally married under the laws
4.2 of this state may enter into a postnuptial agreement, which is valid and enforceable if the
4.3 agreement:

4.4 (1) complies with the requirements for antenuptial agreements in this section and in the
4.5 laws of this state, including but not limited to the requirement that the agreement be
4.6 procedurally and substantively fair except that subdivision 1b, paragraph (b), clause (5),
4.7 does not apply; and

4.8 (2) complies with the requirements for postnuptial agreements in this section.

4.9 (b) A postnuptial agreement that conforms with this section may determine all matters
4.10 that may be determined by an antenuptial agreement under the law of this state.

4.11 (c) A postnuptial agreement is valid and enforceable only if at the time of its execution
4.12 each spouse is represented by separate legal counsel.

4.13 (d) A postnuptial agreement is presumed to be unenforceable if either party commences
4.14 an action for a legal separation or dissolution within two years of the date of the agreement's
4.15 execution, unless the spouse seeking to enforce the postnuptial agreement can establish that
4.16 the postnuptial agreement is fair and equitable.

4.17 (e) Nothing in this section impairs the validity or enforceability of a contract, agreement,
4.18 or waiver that is entered into after marriage and that is described in sections 524.2-201 to
4.19 524.2-215. Further, a conveyance permitted by section 500.19 is not a postnuptial agreement
4.20 under this section.

4.21 ~~Subd. 2. **Writing; execution.** Antenuptial or postnuptial contracts or settlements shall~~
4.22 ~~be in writing, executed in the presence of two witnesses and acknowledged by the parties,~~
4.23 ~~executing the same before any officer or person authorized to administer an oath under the~~
4.24 ~~laws of this state. An antenuptial contract must be entered into and executed prior to the~~
4.25 ~~day of solemnization of marriage. A power of attorney may not be used to accomplish the~~
4.26 ~~purposes of this section.~~

4.27 ~~Subd. 2a. **Amendment or revocation.** An antenuptial contract or settlement agreement~~
4.28 ~~may be amended or revoked after the marriage of the parties only by a valid postnuptial~~
4.29 ~~contract or settlement which agreement that complies with this section and with the laws~~
4.30 ~~of this state. A postnuptial contract or settlement agreement may be amended or revoked~~
4.31 ~~only by a later, valid postnuptial contract or settlement which agreement that complies with~~
4.32 ~~this section and with the laws of this state.~~

5.1 Subd. 3. ~~Filing; recording.~~ An antenuptial or postnuptial contract or settlement which
5.2 by its terms conveys or determines what rights each has in the other's real property and sets
5.3 forth the legal description of the real estate granted or affected by the agreement may be
5.4 filed or recorded in every county where any real estate so described is situated, in the office
5.5 of the county recorder for the county or in any public office authorized to receive a deed,
5.6 assignment or other instrument affecting the real estate, for filing or recording.

5.7 Subd. 4. ~~Effect of recording.~~ Any antenuptial or postnuptial contract or settlement not
5.8 recorded in the office of the county recorder or other public office authorized to receive the
5.9 document, where the real property is located, shall be void as against any subsequent
5.10 purchaser in good faith and for a valuable consideration of the same real property, or any
5.11 part thereof, whose conveyance is first duly recorded, and as against any attachment levied
5.12 thereon or any judgment lawfully obtained at the suit of any party against the person in
5.13 whose name the title to the property appears of record prior to recording of the conveyance.

5.14 Subd. 5. ~~Evidence; burden of proof.~~ An antenuptial or postnuptial contract or settlement
5.15 duly acknowledged and attested shall be prima facie proof of the matters acknowledged
5.16 therein and as to those matters, the burden of proof shall be and rest upon the person
5.17 contesting the same.

5.18 Subd. 6. ~~Effective date~~ Application. This section shall ~~apply~~ applies to all antenuptial
5.19 contracts and settlements executed on or after August 1, 1979, and shall apply to all
5.20 postnuptial contracts and settlements executed on or after August 1, 1994 agreements
5.21 executed on or after August 1, 2023.

5.22 Subd. 7. **Effect of sections 519.01 to 519.101.** Nothing in sections 519.01 to 519.101,
5.23 shall be construed to affect antenuptial or postnuptial ~~contracts or settlements~~ agreements.

5.24 **EFFECTIVE DATE.** This section is effective August 1, 2023, and applies to agreements
5.25 executed on or after that date.