

House Study Bill 557 - Introduced

HOUSE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON SWAIM)

A BILL FOR

1 An Act relating to marital agreements, and including effective
2 date and applicability provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 249A.3, subsection 11, paragraph d, Code
2 Supplement 2009, is amended to read as follows:

3 *d.* Unless a surviving spouse is precluded from making an
4 election under the terms of a ~~premarital~~ marital agreement as
5 defined in section 596.1, the failure of a surviving spouse to
6 take an elective share pursuant to chapter 633, division V,
7 constitutes a transfer of assets for the purpose of determining
8 eligibility for medical assistance to the extent that the value
9 received by taking an elective share would have exceeded the
10 value of the inheritance received under the will.

11 Sec. 2. Section 596.1, Code 2009, is amended to read as
12 follows:

13 **596.1 Definitions.**

14 As used in this chapter:

15 1. "Marital agreement" means any of the following:

16 a. A premarital agreement.

17 b. An agreement between present spouses, but only relating
18 to post-death matters.

19 c. An amendment to a marital agreement.

20 2. "Party" means a person who has entered into a marital
21 agreement.

22 ~~1-~~ 3. "Premarital agreement" means an agreement between
23 prospective spouses made in contemplation of marriage and to be
24 effective upon marriage.

25 4. "Post-death matter" includes but is not limited to the
26 disposition of the parties' individually or jointly owned
27 assets upon the death of either or both parties; the making of
28 a will, trust, or other arrangements for the disposition of
29 property upon the death of either or both parties; ownership
30 rights in life insurance policies and retirement plans and the
31 disposition of the death benefits of any such policy or plan;
32 and the limitation or expansion of spousal elective shares
33 pursuant to chapter 633, division V.

34 ~~2-~~ 5. "Property" means an interest, present or future,
35 legal or equitable, vested or contingent, in real or personal

1 property, including income and earnings.

2 Sec. 3. Section 596.2, Code 2009, is amended to read as
3 follows:

4 **596.2 Construction and application.**

5 This chapter shall be construed and applied to effectuate
6 its general purpose ~~to make uniform the law with respect to~~
7 ~~premarital agreements.~~

8 Sec. 4. Section 596.3, Code 2009, is amended to read as
9 follows:

10 **596.3 Short title.**

11 This chapter may be cited as the "*Iowa Uniform Premarital*
12 *Marital Agreement Act*".

13 Sec. 5. Section 596.4, Code 2009, is amended to read as
14 follows:

15 **596.4 Formalities.**

16 1. A premarital marital agreement must be in writing and
17 must be signed by both prospective spouses. It parties.

18 2. A marital agreement between present spouses must be
19 signed by both parties prior to the filing of an action for
20 dissolution of marriage, for legal separation, or for separate
21 maintenance.

22 3. A marital agreement is enforceable without consideration
23 other than the marriage.

24 4. Both parties to the a marital agreement shall must
25 execute all documents necessary to enforce the agreement.

26 Sec. 6. Section 596.5, Code 2009, is amended to read as
27 follows:

28 **596.5 Content.**

29 1. Parties Subject to the limitations of a marital agreement
30 between present spouses only relating to post-death matters,
31 parties to a premarital marital agreement may contract with
32 respect to the following:

33 a. The rights and obligations of each of the parties in any
34 of the property of either or both of them whenever and wherever
35 acquired or located.

1 *b.* The right rights of possession, ownership, or control,
2 including but not limited to the rights to buy, sell, use,
3 transfer, make a gift of, exchange, abandon, lease, consume,
4 expend, assign, create a security interest in, mortgage,
5 encumber, dispose of, or otherwise manage and control property.

6 *c.* The disposition of property upon separation, dissolution
7 of the marriage, death, or the occurrence or nonoccurrence of
8 any other event.

9 *d.* The making of a will, trust, or other arrangement to
10 carry out the provisions of the marital agreement.

11 *e.* The ownership rights in ~~and disposition of the death~~
12 ~~benefit from~~ a life insurance policy and the establishment of
13 rights of beneficiaries to the benefits of such policy.

14 *f.* The rights and obligations in benefits available or to be
15 available under an employee benefit or retirement plan, except
16 to the extent federal law prevents a binding agreement with
17 respect to such rights and obligations.

18 ~~*f.*~~ *g.* The choice of law governing the construction of the
19 marital agreement.

20 ~~*g.*~~ *h.* Any other matter, including the personal rights and
21 obligations of the parties, not in violation of public policy
22 or a statute imposing a criminal penalty.

23 2. A marital agreement is not enforceable unless the
24 agreement contains a statement of the types of rights that
25 could be affected by the marital agreement in an all capital
26 letter typeface and font size as large as the largest typeface
27 and font contained in the document. The following statement or
28 a statement of like import, contained within the document shall
29 be acceptable for this purpose:

30 "BE ADVISED, BY SIGNING THIS DOCUMENT, YOU MAY BE GIVING
31 UP LEGAL RIGHTS, SUCH AS THE RIGHTS TO OWN OR OCCUPY YOUR
32 HOMESTEAD, RIGHTS TO A STATUTORY SHARE OF YOUR SPOUSE'S ASSETS
33 UPON DEATH, RIGHTS TO COURT DETERMINATIONS OF DISTRIBUTIONS OF
34 PROPERTY UPON DISSOLUTION OF MARRIAGE, AND OTHER RIGHTS YOU
35 MAY HAVE BY REASON OF MARRIAGE. YOU MAY ALSO BE EXPANDING OR

1 RESTRICTING THOSE TYPES OF RIGHTS OR EXPANDING OR RESTRICTING
2 THE COURT'S POWERS TO DETERMINE THESE ISSUES."

3 ~~2.~~ 3. The right of a spouse or child to support, whether
4 during the lifetime or after the death of a party, shall not be
5 adversely affected by a ~~premarital~~ marital agreement.

6 Sec. 7. Section 596.6, Code 2009, is amended to read as
7 follows:

8 **596.6 Effective date of agreement.**

9 1. A ~~premarital~~ marital agreement becomes effective upon
10 the marriage, if signed by both of the parties prior to the
11 marriage.

12 2. If a marital agreement is signed by the parties during
13 their marriage, the marital agreement becomes effective on the
14 effective date stated in the marital agreement. If no such
15 effective date is stated in the marital agreement, the marital
16 agreement becomes effective upon the latest date of signature
17 by the parties.

18 Sec. 8. Section 596.7, Code 2009, is amended to read as
19 follows:

20 **596.7 Revocation and amendment.**

21 1. Revocation. After marriage, a ~~premarital~~ marital
22 agreement may be revoked, in whole or in part, only as follows:

23 ~~1.~~ a. By a written agreement signed by both ~~spouses~~
24 parties. The revocation is enforceable without consideration.

25 ~~2.~~ b. ~~To revoke a premarital~~ By either party to the
26 marital agreement without the consent of the other
27 ~~spouse party, the person seeking revocation must prove one~~
28 ~~or more~~ if the party seeking revocation proves any of the
29 following:

30 ~~a.~~ (1) The person party seeking revocation did not execute
31 the marital agreement voluntarily.

32 ~~b.~~ (2) The marital agreement was unconscionable when it
33 was executed.

34 ~~c.~~ (3) Before the execution of the marital agreement the
35 person party seeking revocation was not provided a fair and

1 reasonable disclosure of the property or financial obligations
2 of the other spouse party; and the person party seeking
3 revocation did not have, or reasonably could not have had, an
4 adequate knowledge of the property or financial obligations of
5 the other spouse party; and such disclosure would have been
6 material to the decision of the party seeking revocation to
7 execute the marital agreement.

8 (4) Before the execution of the marital agreement the party
9 seeking revocation was not given a reasonable opportunity to
10 obtain independent legal representation with respect to the
11 marital agreement.

12 c. If the revocation of one or more provisions of the
13 marital agreement, or the application of the revocation of such
14 a provision to a party is upheld by the court, any revoked
15 provision shall be severed from the remainder of the marital
16 agreement, unless the marital agreement states otherwise, and
17 shall not affect the remaining provisions.

18 2. Amendment. A marital agreement may be amended by a
19 written agreement signed by both parties. An amendment is
20 subject to the enforcement provisions of section 596.8.

21 3. Limits on amendment and revocation. A marital
22 agreement cannot be amended or revoked by an agent, guardian,
23 conservator, or other legal representative of either party, or
24 after the death of either party, except as provided pursuant
25 to subsection 1, paragraph "b", relating to revocation without
26 the consent of the other party.

27 Sec. 9. Section 596.8, Code 2009, is amended to read as
28 follows:

29 **596.8 Enforcement.**

30 1. A ~~premarital~~ marital agreement is not enforceable if the
31 person or party against whom enforcement is sought proves any
32 of the following:

33 1. The person did not execute the agreement voluntarily.

34 2. The agreement was unconscionable when it was executed.

35 3. Before the execution of the agreement the person was

1 ~~not provided a fair and reasonable disclosure of the property~~
2 ~~or financial obligations of the other spouse; and the person~~
3 ~~did not have, or reasonably could not have had, an adequate~~
4 ~~knowledge of the property or financial obligations of the other~~
5 ~~spouse that such person or party could have revoked the marital~~
6 ~~agreement pursuant to section 596.7, subsection 1, paragraph~~
7 ~~"b", relating to revocation without consent of the other party.~~

8 2. If a provision one or more of the provisions of the
9 marital agreement or the application of the provision to a
10 party is found determined by the court to be unenforceable
11 pursuant to this section, the unenforceable provision shall be
12 severed from the remainder of the marital agreement, unless the
13 marital agreement states otherwise, and shall not affect the
14 remaining provisions, or application, of the agreement which
15 can be given effect without the unenforceable provision.

16 3. Other than the determination of the issue of
17 unconscionability, actions with respect to enforcement of a
18 marital agreement shall be decided by the court as a matter of
19 equity.

20 Sec. 10. Section 596.9, Code 2009, is amended to read as
21 follows:

22 **596.9 Unconscionability.**

23 In any action under this chapter to revoke or enforce a
24 ~~premarital~~ marital agreement the issue of unconscionability of
25 a ~~premarital~~ marital agreement shall be decided by the court
26 as a matter of law.

27 Sec. 11. Section 596.10, Code 2009, is amended to read as
28 follows:

29 **596.10 Enforcement — void marriage.**

30 If a marriage is determined to be void, an agreement that
31 would otherwise have been a ~~premarital~~ marital agreement
32 is enforceable only to the extent necessary to avoid an
33 inequitable result.

34 Sec. 12. Section 596.11, Code 2009, is amended to read as
35 follows:

1 marriage. A marital agreement between present spouses is
2 effective only to the extent it relates to disposition of
3 assets upon the death of the other party (post-death matters).
4 The bill provides for protection of the parties including
5 that the agreement must not be unconscionable at the time
6 it is entered into; the agreement must include a provision
7 that states the rights a party may be giving up; an agent is
8 prohibited from amending or revoking a marital agreement on
9 behalf of a party; and unconscionability is determined by the
10 court as a matter of law while all other matters are determined
11 in equity. The bill provides for revocation and amendment of
12 marital agreements, places limits on amendments and revocations
13 of marital agreements, provides for enforcement, and makes
14 conforming changes.

15 The bill provides that as it relates to premarital
16 agreements, the amended Code chapter takes effect on January 1,
17 1992, and applies to any premarital agreement executed on or
18 after that date, in accordance with the statutory provisions
19 in effect as of the date of the premarital agreement. The bill
20 directs that the Code chapter does not affect the validity
21 under Iowa law of any premarital agreement entered into prior
22 to January 1, 1992. Additionally, the bill provides that as
23 the Code chapter relates to amendments to premarital agreements
24 and to marital agreements entered into after marriage, the
25 amended Code chapter takes effect July 1, 2010, and applies to
26 any such amendments or agreements executed on or after that
27 date.