

2013 HOUSE JUDICIARY

HB 1128

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1128
Job 17227
January 15, 2013

Conference Committee

Cameron Hickle

Explanation or reason for introduction of bill/resolution:

Relating to the Uniform Premarital Agreement Act and the waiver of right to elect of a surviving spouse

Minutes:

Testimony 1, 2

Chairman Kim Koppelman: Opened HB 1128

Judge Gail Hagerty, District Court Judge in Bismarck and Uniform Law Commissioner: See attached testimony. Drafting a Uniform law takes at least 2 years and involves many drafting committee meetings and two readings of a Uniform Act at annual meetings. At this time every state allows for enforcement of premarital agreements. Standards regulating the agreement vary from state to state. The new Uniform Premarital and Marital Agreement Act brings clarity and consistency. The focus is on agreements which would modify or give up rights that a person would have at the time of divorce or death of a spouse. A marital agreement is an agreement between spouses who intend to stay married. It deals with the rights a spouse would have at the time of divorce or death of the other spouse. A premarital agreement is an agreement between people who intend to marry and deals with rights at the time of death or divorce. Judge Hagerty explained the sections of the bill to the committee. When dealing with parenting the overriding consideration is the best interest of the child parents can't bargain that away.

Rep. Lois Delmore: How common are these agreements in North Dakota? Do they frequently get updated and changed as things can change within the relationship of the people?

Judge Gail Hagerty: I don't know how common they are. I think we see fewer cases when there has been this type of agreement in place. In the trial court I see fewer cases where there are these types of agreements. If you have a

premarital agreement and you want to change it or update it then we call it a marital agreement and it is enforceable and the same safe guards are in place. Marital agreements can be altered or amended as the parties' desire.

Rep. Gary Paur: This repeals chapter 30.1-05 and replaces it. 30.1-05 is a very long chapter and all I can see in the bill that replaces that is section 3 page 4. It appears that a lot was taken out and replaced with very limited.

Judge Gail Hagerty: I don't have the Century Code right here. I think the intention is to repeal the old Premarital Agreements Act and I am not sure what 30.1-05-07 is about.

Rep. Gary Paur: That's the elective share of the surviving spouse.

Vice Chairman Larry Klemin: This new Uniform Act does not repeal all of 30.1-05 only section 7, 30.01-05-07. This is the chapter dealing with the elective share of the surviving spouse in a probate situation. 30.01.05-07 deals with the waiver of the right to elect and other rights. That subject is covered by the new Uniform Act.

Rep. Gary Paur: I'm sorry I misread that.

Vice Chairman Larry Klemin: The chapter 14-03.01 is the old Uniform Premarital Agreement Act which is being replaced by the new act.

Judge Gail Hagerty: If I could put on another hat for the moment. I am also president of the State Bar Association this year and I would like to say that on behalf of the State Bar Association supports enactment of this Uniform law.

Chairman Kim Koppelman: Under the definition section, you do define marital disillusion but you have this section that you touched on in 14-03.2-07 which is void marriage. You gave an example of bigamy are there others or what is the definition of a void marriage?

Judge Gail Hagerty: A void marriage is a marriage that can't legally take place.

Chairman Kim Koppelman: It seems to me there is public policy that when the Uniform Law Commission meets my understanding of your mission to try and craft legislation that will be adopted in many of the states to bring uniformity to things like banking. Some of these areas can get into areas where Legislatures

could differ on what they want the public policy of their state to be. To what degree does the Commission struggle with that?

Judge Gail Hagerty: I think we recognize that there is different public policy and we talk about that in the Act, as we want to respect the public policy of a state. So that is our intent to be respectful of the various states. While at the same time giving a frame work that people can use so if they are married here and later there is a death or divorce and in another state they have at least the guidelines of what due process would be required for formation of the agreement.

Chairman Kim Koppelman: Asked Judge Hagerty to touch on how uniform it must be to equal uniformity?

Judge Gail Hagerty: Acts are tweaked from state to state sometimes because of particular preferences a state might have. We have to have pretty much substantial conformity to the Uniform law in order to have it considered a Uniform Act. I believe the other Commissioners on your committee would agree with me that we want to have it as uniform as possible but we also want to have the Act enact able. The Uniform Law Commissioners are a group of 250 people, all lawyers, Legislatures, judges, practicing Attorneys. We meet once a year and we focus not only on drafting law that will be very good and helpful to the states but also that can be enacted.

Chairman Kim Koppelman: In your role as a Judge and also as Uniform Law Commissioner and also on the drafting committee you talked about your deliberations there. If you have a Uniform Law before you in the courtroom you may look back into Legislative history to see what the Legislature was thinking when they crafted a particular piece of legal language. If it's a Uniform Act do you also look back to what the Uniform Law Commissioners were thinking?

Judge Gail Hagerty: All the Uniform Acts have detailed sets of comments that go with them. So in doing research and in looking for guidance you would probably look at those comments. You may also look at how other states and other courts interpreted a Uniform provision. And those are things that wouldn't be controlling but certainly be helpful.

Chairman Kim Koppelman: Could you identify for the committee that we have several Commissions in the room, share with us so we all know who they are?

Judge Gail Hagerty: We have Rep. Larry Klemin, Rep. Bill Kretschmar, Jay Buringrud, myself. We have almost a quorum.

Chairman Kim Koppelman: Asked for further testimony, none. Closed the hearing.

Date: 1-15-13
 Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB1128**

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Hogan Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos					
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Kretschmar

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1128: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1128 was placed on the
Eleventh order on the calendar.

2013 SENATE JUDICIARY

HB 1128

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1128
3/27/2013
Job #20610

Conference Committee

Committee Clerk Signature 

Minutes:

Attached testimony

Relating to the Uniform Premarital Agreement Act & the waiver of right to elect of of a surviving spouse.

Senator David Hogue - Chairman

Judge Gail Hagerty - District Judge, Bismarck and Uniform Law Commissioner for ND - See written testimony.

The committee has questions on Section Two. Judge Hagerty explains the difference between a pre-marital agreement and a marital agreement. She goes on to explain what a marriage contract means. This bill does not change ND law.

Opposition - none

Neutral

Tom Frier - ND Family Alliance - His interest is to make sure this does not promote something other than marriage and does not make divorce easier.

Reverend Carel Two Eagle - Rev. Two Eagle has questions on parental support.

Judge Hagerty - Responds that the regular child support guidelines apply and explains some of those guidelines.

Close the hearing

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

HB1128
4/3/2013
Job #20818

Conference Committee

Committee Clerk Signature



Minutes:

Vote

Senator David Hogue - Chairman

Committee work

Senator Hogue explains the law relative to pre-marital agreement. He relays he has some difficulty with this Act on page 3, line 13 and 14. Senator Hogue proposes an amendment (1) that changes those lines to say just the opposite. He explains his amendment and the changes it makes. Senator Armstrong says he is concerned more with the best interest of the child and or child support. Senator Hogue replies that would be under unenforceable terms. He said he also likes that provision because it makes clear that the parties cannot make themselves destitute so they have no ability to pay child support. Parents cannot contract away their children's right to support. This bill does not make it easier to get divorced; it has nothing to do with that. Senator Armstrong says pre-marital agreements are done now but there isn't much guidance as to how there done, this doesn't stop people from getting divorce; it does increase litigation as to the settlement of divorce. The committee discusses challenging pre-marital agreements and courts making the decision if it is unconscionable or not. Senator Hogue wants to make it clear that the courts cannot set marital agreements aside.

Senator Armstrong moves the amendment, 13.0275.01001
Senator Sitte seconded

Verbal vote - all yes
Motion passes

Discussion

Senator Sitte would like to see this turned into a study and suggests a hog house bill turning it into a study.

Senator Sitte moves to amend a hog house and to make this a study
Senator Berry seconded

Discussion

Senator Hogue says he will not support this amendment because he would rather see that the legislative body take charge of policy and not continue to abdicate responsibility. Senator Armstrong agrees with that.

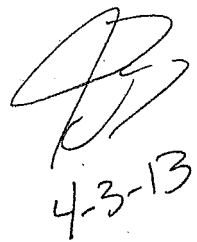
Vote on the Sitte amendment
2 yes, 5 no
Motion fails

Senator Armstrong moves a do pass as amended
Senator Lyson seconded

Vote - 4 yes, 3 no

Senator Armstrong will carry

April 2, 2013



Handwritten signature and date: 4-3-13

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1128

Page 1, line 2, after "Act" insert "and the abrogation of common law regarding premarital and marital agreements"

Page 2, line 31, replace "anticipated or pending" with "commenced"

Page 3, replace lines 13 and 14 with "Principles of law and equity may not:

1. Supplement an agreement executed in accordance with this chapter; or
2. Be used to alter a material term in an agreement executed in accordance with this chapter."

Re-number accordingly

Date: 4-3-13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1128**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0275.01601

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S Armstrong Seconded By S Sitte

Senators	Yes	No	Senator	Yes	No
Chariman David Hogue			Senator Carolyn Nelson		
Vice Chairman Margaret Sitte			Senator John Grabinger		
Senator Stanley Lyson					
Senator Spencer Berry					
Senator Kelly Armstrong					

Total (Yes) _____ No _____

Absent Verbal all yes

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 4-3-13
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1128**

Senate JUDICIARY Committee

Check here for Conference Committee Agg house

Legislative Council Amendment Number Turn into study - Sitte-verbal

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Sitte Seconded By S. Berry

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue		X	Senator Carolyn Nelson		X
Vice Chairman Margaret Sitte	X		Senator John Grabinger		X
Senator Stanley Lyson		X			
Senator Spencer Berry	X				
Senator Kelly Armstrong		X			

Total (Yes) 2 No 5

Absent _____
 Floor Assignment fails

If the vote is on an amendment, briefly indicate intent:

Date: 4-3-13
 Roll Call Vote #: 3

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 128**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0275.01001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Armstrong Seconded By S. Lyson

Senators	Yes	No	Senator	Yes	No
Chariman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte		X	Senator John Grabinger		X
Senator Stanley Lyson	X				
Senator Spencer Berry		X			
Senator Kelly Armstrong	X				

Total (Yes) 4 No 3

Absent _____

Floor Assignment S. Armstrong

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1128: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1128 was placed on the Sixth order on the calendar.

Page 1, line 2, after "Act" insert "and the abrogation of common law regarding premarital and marital agreements"

Page 2, line 31, replace "anticipated or pending" with "commenced"

Page 3, replace lines 13 and 14 with "Principles of law and equity may not:

1. Supplement an agreement executed in accordance with this chapter; or
2. Be used to alter a material term in an agreement executed in accordance with this chapter."

Renumber accordingly

2013 CONFERENCE COMMITTEE

HB 1128

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1128
JOB 21283
Date April 18, 2013

X Conference Committee



Minutes:



Representative K. Koppelman: Opened Conference Committee on HB 1128.

1:36 Senator Hogue: We have statutory law in place right now that regulates premarital and marital agreements. We also have common law. This is a uniform act that has definitions that are more helpful than what we have in existing code. Both Senate and House thought it was good to pass the bill but there were two exceptions. Explained page 3, Section 14-03.2-04, principle of law and equity. Gave a scenario. Explained page 2 at the bottom. They describe what this chapter does not apply to. We inserted the word commenced in place of anticipated. It doesn't apply when you can't get a marital agreement and have it be effective when you've already initiated the divorce action.

Representative K. Koppelman: Walk through some examples why.

7:44 Senator Armstrong: If you sign this agreement I won't go for custody that is the most real world practice.

Representative K. Koppelman: If there is a couple contemplating divorce they could do one of these. Under your amendments if they file first and then do the agreement it's not ok. What's the difference?

9:05 Senator Hogue: When a party has commenced a divorce action a post marital agreement is pointless.

11:29 Representative K. Koppelman: Section 2 of the bill, when it talks about item 3. Can the agreement do this to begin with?

12:52 Senator Armstrong: Family law in North Dakota, child support is codified and this cannot be negotiated. We also have the best interest of the child standard. The answer is yes.

14:20 Senator Hogue: Subsection 3 and 2A are both reaffirming common law that the two spouses cannot agree by contract to diminish the court's jurisdiction to decide what's in the best interest of the child. Gave an example.

15:22 Representative K. Koppelman: Your other amendments seem to deal with not considering common law. Does it do that?

Senator Hogue: It does, we have a general statutory provision in Title I that says to the extent whenever the legislature legislates in a specific area to the extent that it does it preempts any common law.

16:18 Representative K. Koppelman: What types of common law practice would be done away with this?

Senator Hogue: One would be to do away with the right of the court to impose their notions of fairness on an agreement that was arrived at between two parties who by definition had to be represented by counsel and had to have full and fair disclosure of their financial assets. There are courts that will not honor post-marital agreements.

Representative K. Koppelman: Would courts in North Dakota not recognize a post-marital agreement?

Senator Hogue: Under the common law there would be a split of authority. The court wouldn't recognize a post-marital agreement.

20:32 Representative Brabandt: Are you saying these people had begun an agreement but not completed it.

Senator Hogue: Under this Act they could still enter into in.

Representative Brabandt: But not under current law?

Senator Hogue: Some courts would say no, some otherwise.

21:22 Representative K. Koppelman: What you are saying there is court discretion. Is there anything in current statute allowing for any kind of post-marital agreement now?

22:42 Senator Hogue: We did and we had an email and we believe he was misinformed. We are not creating any new law but putting together in one statute a policy that defines what pre-marital agreements are and what a post-marital agreement is.

Representative K. Koppelman: We have prenuptial agreements but how does this change our current law in pre-nuptial agreements?

24:40 Senator Hogue: It describes Uniform premarital agreement act.

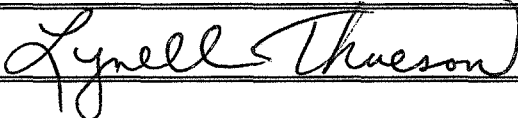
Representative K. Koppelman: There are those who don't like prenuptial agreements at all. Does this require further study? Meeting adjourned.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1128
JOB 21327
Date April 19, 2013

X Conference Committee



Minutes:



Representative K. Koppelman: Reopens Conference Committee on 1128. This is designed to create rights - people can contract to do things. Maybe this removes some of these rights.

2:09 Representative Brabandt: Should this be turned into a study?

Representative Koppelman: We could certainly do that.

2:39 Senator Hogue: By killing the bill or studying it, we are not adding a significant amount of law. If you kill the bill there will still be courts out there that will enforce those agreements.

Representative K. Koppelman: My concern is it narrows what a couple can contract to do. Another question other states have convenient marriages where they agree to do some things that maybe go beyond what the law prescribes for marriage. They could do counseling or whatever.

6:06 Senator Armstrong: In uniform law what is unenforceable under current law.

7:26 Senator Hogue: We received some of the same emails, this bill makes it easier to get a divorce and there will be more divorces. A compromise would be to look at restricting that definition of the marital agreement to fit within the lines of what I described the last time we met.

9:17 Representative K. Koppelman: I wouldn't be opposed to something that you are describing shortly after the marriage is complete. We have had bills that deals with divorce as it are easier to get a divorce than it is to get married. We've talked about that in North Dakota. Are we taking some of those rights away?

11:25 Senator Armstrong: As it is written I don't think that really does those things. You can still put infidelity clauses in a prenup. Under current law you can do it in a statute. The only things you can't do are things that are specifically delineated out in statute somewhere else.

Representative Koppelman: I'm looking at where it says a term in a premarital or marital agreement isn't enforceable to the extent that it modifies the grounds for a court. What is a void marriage?

13:25 Senator Hogue: We do view marriages as contracts. Void marriages would be like void contracts where people don't have the capacity to marry because of their age. That marriage is void. Gave another example.

Representative Koppelman: Asked what the committee wanted to do with the bill.

14:57 Senator Hogue: I support the bill because I think the amendment gives certainty to these parties that are out there contracting that their agreements they enter into are not going to be set aside by judges who have their own sense of fairness and want to rewrite these agreements. I think limiting it to a short time after the ceremony is valid.

16:14 Senator Grabinger: We heard the example when a couple had remarried. How is this different from a will? Couldn't that person make their will and spill that out?

Senator Armstrong: In a will you have to die, you could get divorced before you die.

Senator Grabinger: Wills can protect you against some things; they can't protect you against law regarding property distribution in a divorce.

Senator Hogue: So this premarital agreement doesn't hold up if one of the dies? There is a provision in the law called an elective share that spouses are entitled to when you're married.

Senator Grabinger: No it does.

18:07 Representative Brabandt: You said the wife gets a third. I thought it was a half?

Senator Hogue: It's a third. If you said you don't want your wife to get anything she would still be entitled to a third. If you die without a will there are different fact scenarios that play out to decide how much your wife would get depending whether or not you had children of a different marriage or she had children of a different marriage. Under one of these scenarios she would be entitled to half, but that's if she dies in testate.

Representative Koppelman: Asked Senator Hogue to prepare an amendment.

The committee stands in recess.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1128
JOB 21390
Date April 22, 2013

X Conference Committee

Carman Hickle

Explanation or reason for introduction of bill/resolution:

Relating to the Uniform Premarital Agreement Act and the waiver of right to elect of a surviving spouse.

Minutes:

Proposed amendment # 1

Rep. Kim Koppelman: Reopens Conference Committee on HB 1128. Sen. Nelson was in attendance for the committee meeting. She had been assigned and was absent with Sen. Grabinger replacing her until she was able to return.

Sen. Hogue: Handed out proposed amendment 13.0275.01003 and explained it.

Rep. Kim Koppelman: Some of the things we dealt with there were concerns about the provisions and I don't know if they problematic if we limit this to 120 days? I have one question, Sen. Hogue you said earlier that these agreements require you have an attorney and can't seem to find it. It says "The party has access to independent legal representation if: before signing a premarital agreement, the party has a reasonable time to: decide whether to retain a lawyer to provide independent legal representation and locate a lawyer, etc." is there something in the current law or in this act that requires representation? Or can people do these pro se contract?

Sen. Hogue: They can but there is no requirement that they must have a lawyer. Although I think the practice out there typically the party that is most interested in a premarital agreement is typically the wealthier of the two. That spouse's lawyer is going to insist because one way these are set aside is to say the other spouse didn't have access to legal counsel. So typically that spouse is going to pay for the other spouse to get a lawyer. But there is no requirement that says you shall have a lawyer to enter in to one of these. Just like there is no agreement have a lawyer for any other contract where you give up rights. One of the benefits to this act is crystallizes the argument so that person who voluntarily chooses not to engage a lawyer has specific notice in the agreement, you are advised you are giving up rights that you would otherwise have when you enter into this marriage and you ought to go see a lawyer.

Rep. Kim Koppelman: Is this an area where people are downloading pre-packaged agreements?

Sen. Armstrong: Yes.

Sen. Nelson: Page 3 line 17, I have a problem with the study. I think it's like this morning when we were discussing precincts and polling places we have the same thing with the definition here between marriage and matrimony. I think you are opening a huge can of worms for the Legislative Management study.

Rep. Kim Koppelman: It sounds pretty positive to me.

Sen. Nelson: There is discussion of marriage being a contract that if you were in Holland the marriage is made legal at the courthouse. If you want to have a ceremony of holy matrimony you go to the church. But it is a ceremony because you are already married because the legal marriage takes place at the courthouse. So when you are looking at the influence of marriage there is a lot of varieties of what marriage constitutes now. Is it a gay marriage, is it two lesbians, is it two men, is it an aunt and somebody else, is it the birth parents, is it surrogate parents, I think there is a lot of stuff there?

Rep. Kim Koppelman: You think all of that would come into the study?

Sen. Nelson: It looks wide open to me. You are looking at society, children, government spending, need for other agreements.

Rep. Kim Koppelman: Some of this idea has come from people who looked at this and felt uncomfortable with it but are willing to maybe compromise as the amendment attempts to do but they really want to see this looked at so it's not forgotten. As far as the whole issue of marriage, you are right it's a huge topic. Certainly one that our society is grappling with, those who would point out that what we would refer to as traditional marriage has some very positive societal benefits I think we forget about that sometimes. I understand your distinction between marriage and matrimony but historically I don't think there was a distinction for most of history. We are tending to make one now because we consider it nothing more than a legal contract. Which maybe is why some have a concern with the bill saying is this just a contract or is it something more?

Sen. Nelson: I was not here to vote so I have no record on the journal. I was in committee and I was perfectly happy with the existing law as it exists.

Rep. Kim Koppelman: The existing law as I understand it deals with pre-nuptial agreements. As I read the amendment it gets at an issue two people run off to Las Vegas to get married, it's a quick thing and they have been planning to do a pre-nuptial agreement but they didn't get it done and they come back and can't anymore. So the 120 days is a provision that provide for that sort of thing.

Sen. Hogue: Initially I did not propose the study but the more I think about it, I think the study is a good part of the amendment because if any of you follow the work of our U.S. Supreme Court you know they have two cases before them that they are expected to decide in June. That is going to reengineer our landscape and what constitutes gay marriage and specifically in one case whether California can have gay marriage. I think it is an appropriate time to study that.

Sen. Hogue: Made a motion the House accede to the Senate amendments as printed on page 1249 of the House Journal and 1099 and 1100 of the Senate Journal and that HB 1128 be further amended .01003

Sen. Armstrong: second the motion

Roll call vote Yes 5, no 1, absent 0.

April 22, 2013

VK
4/22/13

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1128

That the House accede to the Senate amendments as printed on page 1249 of the House Journal and pages 1099 and 1100 of the Senate Journal and that House Bill No. 1128 be further amended as follows:

Page 1, line 2, remove the second "and"

Page 1, line 4, after "spouse" insert "; and to provide for a legislative management study"

Page 3, line 17, after the second underscored period insert "A marital agreement created pursuant to this chapter must be signed within the first one hundred twenty days of the marriage."

Page 6, after line 12, insert:

"SECTION 3. MARRIAGE AND MARITAL AGREEMENTS - LEGISLATIVE MANAGEMENT STUDY. During the 2013-14 interim, the legislative management shall consider studying marriage, including the positive influence of marriage on society, children, and government spending, and the use of and the need for marital agreements in the state. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Judiciary

Bill/Resolution No. HB 1128 as (re) engrossed

Date: 4-18-13

Roll Call Vote #: _____

- Action Taken**
- HOUSE accede to Senate amendments
 - HOUSE accede to Senate amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) _____

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: _____ Seconded by: _____

Representatives					Senators				
	Yes	No	Present	Absent		Yes	No	Present	Absent
Rep. Koppelman	X				Sen. Hogue	X			
Rep. Brabandt	X				Sen. Armstrong	X			
Rep. Toman	X				Sen. Grabinger	X			

Vote Count Yes: _____ No: _____ Absent: _____

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Judiciary

Bill/Resolution No. HB 1128 as (re) engrossed

Date: 4-19-13

Roll Call Vote #:

- Action Taken**
- HOUSE accede to Senate amendments
 - HOUSE accede to Senate amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) --

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) was placed on the Seventh order of business on the calendar

Motion Made by: Seconded by:

Representatives			Yes	No		Senators			Yes	No
Rep. Koppelman		X				Sen. Hogue		X		
Rep. Brabandt		X				Sen. Armstrong		X		
Rep. Toman		X				Sen. Grabinger		X		

Vote Count Yes: No: Absent:

House Carrier Senate Carrier

LC Number . of amendment

LC Number . of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

2013 HOUSE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Judiciary

Bill/Resolution No. HB1128 as (re) engrossed

Date: 4-22-13

Roll Call Vote #: _____

Action Taken

- HOUSE accede to Senate amendments
- HOUSE accede to Senate amendments and further amend
- SENATE recede from Senate amendments
- SENATE recede from Senate amendments and amend as follows

House/Senate Amendments on HJ/SJ page(s) --

- Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: _____ Seconded by: _____

Representatives				Yes	No	Senators				Yes	No
Rep. Koppelman	/			X		Sen. Hogue	/			X	
Rep. Biabandt	/			X		Sen. Armstrong	/			X	
Rep. Vroman	/			X		Sen. Nelson	/				X

Vote Count Yes: 5 No: 1 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1128: Your conference committee (Sens. Hogue, Armstrong, Nelson and Reps. K. Koppelman, Brabandt, Toman) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ page 1249, adopt further amendments as follows, and place HB 1128 on the Seventh order:

That the House accede to the Senate amendments as printed on page 1249 of the House Journal and pages 1099 and 1100 of the Senate Journal and that House Bill No. 1128 be further amended as follows:

Page 1, line 2, remove the second "and"

Page 1, line 4, after "spouse" insert "; and to provide for a legislative management study"

Page 3, line 17, after the second underscored period insert "A marital agreement created pursuant to this chapter must be signed within the first one hundred twenty days of the marriage."

Page 6, after line 12, insert:

"SECTION 3. MARRIAGE AND MARITAL AGREEMENTS - LEGISLATIVE MANAGEMENT STUDY. During the 2013-14 interim, the legislative management shall consider studying marriage, including the positive influence of marriage on society, children, and government spending, and the use of and the need for marital agreements in the state. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

HB 1128 was placed on the Seventh order of business on the calendar.

2013 TESTIMONY

HB 1128

/

**Testimony on HB1128
before the House Judiciary Committee
by District Judge Gail Hagerty
January 15, 2013**

Chair Koppelman, Members of the Committee:

I am Gail Hagerty. I'm a district judge in Bismarck and a Uniform Law Commissioner for North Dakota. Drafting a uniform law is an undertaking which requires at least two years of drafting committee meetings and two readings of the proposed act at the annual meetings of the Uniform Law Commission. I was privileged to serve on the drafting committee for the Uniform Premarital and Marital Agreements Act. You will note that it's a relatively short uniform act!

At this time, every state allows for enforcement of premarital agreements. However, the standards for regulating those agreements varies greatly from state to state. The Uniform Premarital Agreement Act, which was drafted in 1983, has been enacted in 26 states, including North Dakota. However, states have modified it throughout the years. State law concerning marital agreements is less clear and consistent.

People are mobile. It's important that they know how premarital and marital agreements will be treated at the time of divorce or death. The agreements are powerful estate planning tools, and predictability is necessary.

The new Uniform Premarital and Marital Agreement Act brings clarity and consistency. The focus is on agreements which would modify or give up rights that a person would otherwise have at the time of divorce or death of a spouse.

Under this act, parties are free, within broad limits, to choose the financial terms of their marriage. Premarital agreements and marital agreements are treated with the same requirements. Parties must have due process in forming agreements, with minimal standards of substantive fairness.

Looking at the bill draft, Section 14-03.2-01 includes the definitions. The drafting committee spent many hours on the definition of marital agreement. A "marital agreement" is an agreement between spouses who intend to stay married. It deals with rights a spouse would have at the time of divorce or death of the other spouse. Those rights are set out in the definition of "marital right or obligation" which includes spousal support, rights to property, responsibility for liabilities, and awards of attorney fees.

A "premarital agreement" is an agreement between people who intend to marry and deals with rights at the time of divorce or death of a spouse.

Section 14-03.2-02 deals with the scope of the Act. It would apply to agreements signed after July 31, 2013. The Act does not apply to separation agreements, nor does it affect the rights of third parties when a spouse is involved in a transfer of property for which the other spouse's waiver of rights is required.

Section 14-03.2-03 deals with choice of law and conflict of laws issues. It is the normal language which would apply to a contract.

Section 14-03.2-04 makes it clear that other law of the state applies to supplement this chapter – that means that normal contract provisions would be applied.

Section 14-03.2-5 requires that the agreement be in a record and signed. The agreements are enforceable without consideration.

Section 14-03.2-6 indicates a premarital agreement is effective when the marriage takes place and a marital agreement is effective when it is signed.

Section 14-03.2-07 gives the Court the ability to enforce an agreement if a marriage is declared void and it is necessary to avoid an unfair result.

Section 14-03.2-08 deals with enforcement. Agreements are not enforceable if they are unconscionable or if full financial information was not provided before the agreement was signed. Enforcement will be refused if the agreement was entered involuntarily or as the result

of duress. Agreements would not be enforceable if the person challenging the agreement did not have access to independent legal representation and did not receive a notice of waiver of rights or a clear explanation of the effect of the agreement.

This section requires that if an agreement modifies or eliminates spousal support so that a person would become eligible for public assistance, the Court can modify the agreement to require the other party to provide support to the extent necessary to avoid eligibility.

Section 14-03.2-09 makes it clear that the agreements under this Act cannot adversely affect a child's right to support, restrict remedies available to victims of domestic violence, change the grounds for divorce, or penalize a person for starting an action for divorce or separation. The agreements are not enforceable if they deal with parenting.

The remaining sections are boilerplate.

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**Uniform Law Commission**

The National Conference of Commissioners on Uniform State Laws

Contact Us: 312.450.6600

Premarital and Marital Agreements Act Summary

Currently every state allows at least some divorce-focused premarital agreements to be enforced, though the standards for regulating those agreements vary greatly from state to state. The Uniform Premarital Agreement Act was promulgated in 1983, has been adopted by twenty-six jurisdictions. Although the UPAA brought consistency to the legal treatment of premarital agreements, uniformity has declined as states have amended the act in various ways throughout the years. State law addressing marital agreements has been far less settled and consistent. Some states have neither case law nor legislation, while the remaining states have created a wide range of approaches.

The Uniform Premarital and Marital Agreements Act (UPMAA) brings clarity and consistency across a range of agreements between spouses and those who are about to become spouses. The focus is on agreements that purport to modify or waive rights that would otherwise arise at the time of the dissolution of the marriage or the death of one of the spouses.

The general approach of this act is that parties should be free, within broad limits, to choose the financial terms of their marriage. This act chooses to treat premarital agreements and marital agreements under the same set of principles and requirements. The limits are those of due process in formation, on the one hand, and certain minimal standards of substantive fairness, on the other. Because a significant minority of states authorize some form of fairness review based on the parties' circumstances at the time the agreement is to be enforced, states can choose to insert an option refusing enforcement based on a finding of substantial hardship at the time of enforcement. And because some states put the burden of proof on the party seeking enforcement of some or all of these sorts of agreements, the act also presents alternative language to reflect that burden of proof. The Act also establishes the for terms waiving or modifying rights at divorce and for terms waiving or modifying rights at the death of the other spouse.

Section 3 clarifies the narrow application of the act. The UPMAA does not apply to separation agreements, nor does it affect the rights of third parties when a spouse is involved in a transfer of property in which the other spouse's waiver of rights is required.

Section 4 affirms that normal principles of choice of law and conflict of laws apply to premarital agreements and marital agreements. Following the Uniform Commercial Code, choice of law provisions are limited to jurisdictions with a "significant relationship to the agreement or either party."

Section 6 declares that both premarital agreements and marital agreements are enforceable without consideration. This may depart from the existing law for marital agreements in some states, but it reflects the modern approach that the concerns generally policed indirectly by a consideration requirement are better policed directly through procedural requirements and tests of unconscionability.

Section 9 establishes the enforcement standards. Under this Act, unconscionability and failure of disclosure are alternative grounds for making an agreement unenforceable, each of them adequate on its own. Additionally, enforcement will be refused if the agreement was entered involuntarily or as the result of duress, if the party challenging the agreement did not have access to independent legal representation, and if an unrepresented party did not receive a notice of waiver of rights or a clear explanation of the effect of the agreement. Section 10 addresses terms of an agreement that may unenforceable or binding as a matter of public policy.

Why States Should Adopt the Uniform Premarital and Marital Agreements Act (2012)

Nearly every state has laws addressing the creation and enforcement of divorce-focused premarital agreements, but the standards for regulating those agreements vary greatly from state to state. At the same time, state law regarding enforcement of agreements has been far less settled and consistent. Some states have neither case-law nor legislation addressing the creation or enforceability of marital agreements, while other states have enacted varied approaches to guide courts in addressing the issues involved. When applied to both premarital and marital agreements, these discordant standards have created conflicts within the law and further uncertainty about enforcement as couples move from state to state.

In today's mobile society, standardization of the rules that govern when such agreements are enforceable is needed. The **Uniform Premarital and Marital Agreements Act (UPMAA)** establishes procedural and substantive safeguards for marital agreements, and unifies those safeguards with those for premarital agreements. The UPMAA clarifies and modernizes largely divergent state laws and creates a harmonized and uniform approach to premarital and marital agreements.

Among its attributes, the UPMAA:

- Requires both premarital agreements and marital agreements to be in writing and declares them to be enforceable without consideration, thereby modernizing existing state law;
- Offers couples a flexible framework for premarital and marital agreements that promotes responsible planning and informed decision making, and encourages prospective spouses to consider in advance a wide spectrum of issues that may affect their marriage;
- Provides courts in every state a framework for determining an agreement's validity, regardless of where it was executed;
- Permits nonenforcement of agreements found to be unconscionable at the time of signing by providing that unconscionability and failure of disclosure are *alternative* grounds for refusing to enforce an agreement, each of them adequate on its own
- Bars enforcement of an agreement that was entered into involuntarily or as the result of duress or that limits remedies available to a party for domestic violence;
- Affirms traditional principles of choice of law and conflict of laws in determining the validity and meaning of premarital agreements and marital agreements.

**Testimony on HB1128
before the Senate Judiciary Committee
by District Judge Gail Hagerty
March 27, 2013**

Chair Hogue, Members of the Committee:

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- Affirms traditional principles of choice of law and conflict of laws in determining the validity and meaning of premarital and marital agreements.

13.0275.01001
Title.

Prepared by the Legislative Council staff for
Senator Hogue

April 2, 2013

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(1)

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1128

Page 1, line 2, after "Act" insert "and the abrogation of common law regarding premarital and marital agreements"

Page 2, line 31, replace "anticipated or pending" with "commenced"

Page 3, replace lines 13 and 14 with "Principles of law and equity may not:

1. Supplement an agreement executed in accordance with this chapter; or
2. Be used to alter a material term in an agreement executed in accordance with this chapter."

Renumber accordingly