

Introduced by Senator Kuehl

January 11, 2001

An act to amend Sections 1612 and 1615 of, ~~and to add Section 1618 to,~~ the Family Code, relating to premarital agreements.

LEGISLATIVE COUNSEL'S DIGEST

SB 78, as amended, Kuehl. Premarital agreements.

Existing law provides that a premarital agreement is not enforceable if the party against whom enforcement is sought proves either that he or she did not execute the agreement voluntarily or that the agreement was unconscionable at the time it was executed, as specified.

This bill would set forth specified findings that the court is required to make in order to find that the agreement was executed voluntarily.

Existing law provides that ~~the right of a child to support may not be adversely affected by a premarital agreement~~ *parties to a premarital agreement may contract with respect to any matter not in violation of public policy or a statute imposing a criminal penalty.*

This bill would ~~additionally provide that the right of a spouse to support may not be adversely affected by a premarital agreement.~~ Moreover, the bill would provide that, in the making of any agreement in contemplation of marriage, prospective spouses are subject to the same fiduciary obligations and have the same fiduciary and confidential relationship to one another as spouses in a marital relationship and that ~~this fiduciary and confidential relationship imposes a duty of the highest good faith and fair dealing on each prospective spouse~~ *provide that a premarital agreement regarding spousal support, including, but not limited to, a waiver of it, is not enforceable unless the party against*

whom enforcement is sought was represented by independent counsel, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1612 of the Family Code is amended to
2 read:

3 1612. (a) Parties to a premarital agreement may contract with
4 respect to all of the following:

5 (1) The rights and obligations of each of the parties in any of
6 the property of either or both of them whenever and wherever
7 acquired or located.

8 (2) The right to buy, sell, use, transfer, exchange, abandon,
9 lease, consume, expend, assign, create a security interest in,
10 mortgage, encumber, dispose of, or otherwise manage and control
11 property.

12 (3) The disposition of property upon separation, marital
13 dissolution, death, or the occurrence or nonoccurrence of any other
14 event.

15 (4) The making of a will, trust, or other arrangement to carry
16 out the provisions of the agreement.

17 (5) The ownership rights in and disposition of the death benefit
18 from a life insurance policy.

19 (6) The choice of law governing the construction of the
20 agreement.

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

24 (b) The right of a child ~~or a spouse~~ to support may not be
25 adversely affected by a premarital agreement.

26 (c) *A premarital agreement regarding spousal support,*
27 *including, but not limited to, a waiver of it, is not enforceable*
28 *unless the party against whom enforcement is sought was*
29 *represented by independent counsel at the time the agreement was*
30 *signed.*

31 SEC. 2. Section 1615 of the Family Code is amended to read:



1 1615. (a) A premarital agreement is not enforceable if the
2 party against whom enforcement is sought proves either of the
3 following:

4 (1) That party did not execute the agreement voluntarily.

5 (2) The agreement was unconscionable when it was executed
6 and, before execution of the agreement, all of the following
7 applied to that party:

8 (A) That party was not provided a fair, reasonable, and full
9 disclosure of the property or financial obligations of the other
10 party.

11 (B) That party did not voluntarily and expressly waive, in
12 writing, any right to disclosure of the property or financial
13 obligations of the other party beyond the disclosure provided.

14 (C) That party did not have, or reasonably could not have had,
15 an adequate knowledge of the property or financial obligations of
16 the other party.

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

19 (c) For the purposes of subdivision (a), it shall be deemed that
20 a premarital agreement was not executed voluntarily unless the
21 court finds all of the following:

22 (1) The party against whom enforcement is sought was
23 represented by independent legal counsel at the time of signing the
24 agreement or, after being advised to seek independent legal
25 counsel, expressly waived, in writing, representation by
26 independent legal counsel.

27 (2) The party against whom enforcement is sought had not less
28 than seven calendar days between the time that party was first
29 presented with the agreement and advised to seek independent
30 legal counsel and the time the agreement was signed.

31 (3) The party against whom enforcement is sought, if
32 unrepresented by legal counsel, was fully informed of the terms
33 and basic effect of the agreement as well as the rights and
34 obligations he or she was giving up by signing the agreement, and
35 was proficient in the language in which the explanation of the
36 party's rights was conducted and in which the agreement was
37 written. The unrepresented party shall, on or before the signing of
38 the premarital agreement, execute a document declaring that he or
39 she received the information required by this paragraph and
40 indicating who provided that information.



1 (4) The agreement and the writing executed pursuant to
2 paragraph (3) were not executed under duress, fraud, or undue
3 influence, and the parties did not lack capacity to enter into the
4 agreement.

5 (5) Any other factors the court deems relevant.

6 ~~SEC. 3.—Section 1618 is added to the Family Code, to read:~~

7 ~~1618.—In the making of any agreement in contemplation of~~
8 ~~marriage, prospective spouses are subject to the same fiduciary~~
9 ~~obligations and have the same fiduciary and confidential~~
10 ~~relationship to one another as spouses in a marital relationship.~~
11 ~~This fiduciary and confidential relationship imposes a duty of the~~
12 ~~highest good faith and fair dealing on each prospective spouse, and~~
13 ~~neither shall take any unfair advantage of the other.~~

