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LAW/RWH

P.L.2013, CHAPTER 72, *approved June 27, 2013*
Senate, No. 2151 (*First Reprint*)

1 AN ACT concerning premarital and pre-civil union agreements and
2 amending R.S.37:2-32 and R.S.37:2-38.

3
4 BE IT ENACTED by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. R.S.37:2-32 is amended to read as follows:
8 37:2-32. As used in this article:

9 a. "Premarital or pre-civil union agreement" means an
10 agreement between prospective spouses or partners in a civil union
11 couple made in contemplation of marriage or a civil union and to be
12 effective upon marriage or upon the parties establishing a civil
13 union;

14 b. "Property" means an interest, present or future, legal or
15 equitable, vested or contingent, in real or personal property,
16 including income and earnings;

17 c. **["Unconscionable premarital or pre-civil union agreement"**
18 means an agreement, either due to a lack of property or
19 unemployability:

20 (1) Which would render a spouse or partner in a civil union
21 couple without a means of reasonable support;

22 (2) Which would make a spouse or partner in a civil union
23 couple a public charge; or

24 (3) Which would provide a standard of living far below that
25 which was enjoyed before the marriage or civil union. **】** (Deleted by
26 amendment, P.L. _____, c. _____ (pending before the Legislature as this
27 bill)

28 (cf: P.L.2006, s.103, s.27)

29

30 2. R.S.37:2-38 is amended to read as follows:

31 37:2-38. Enforcement of premarital or pre-civil union agreement;
32 generally.

33 The burden of proof to set aside a premarital or pre-civil union
34 agreement shall be upon the party alleging the agreement to be
35 unenforceable. A premarital or pre-civil union agreement shall not
36 be enforceable if the party seeking to set aside the agreement
37 proves, by clear and convincing evidence, that:

38 a. The party executed the agreement involuntarily; or

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】 in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly floor amendments adopted March 21, 2013.

1 b. ~~【The agreement was unconscionable at the time enforcement~~
2 ~~was sought; or】 (Deleted by amendment, P.L. , c. (pending~~
3 ~~before the Legislature as this bill)~~

4 c. ~~【That】~~ The agreement was unconscionable when it was
5 executed because that party, before execution of the agreement:

6 (1) Was not provided full and fair disclosure of the earnings,
7 property and financial obligations of the other party;

8 (2) Did not voluntarily and expressly waive, in writing, any
9 right to disclosure of the property or financial obligations of the
10 other party beyond the disclosure provided;

11 (3) Did not have, or reasonably could not have had, an adequate
12 knowledge of the property or financial obligations of the other
13 party; or

14 (4) Did not consult with independent legal counsel and did not
15 voluntarily and expressly waive, in writing, the opportunity to
16 consult with independent legal counsel.

17 d. The issue of unconscionability of a premarital or pre-civil
18 union agreement shall be determined by the court as a matter of
19 law. An agreement shall not be deemed unconscionable unless the
20 circumstances set out in subsection c. of this section are applicable.

21 (cf: P.L.2006, s.103, s.33)

22

23 3. This act shall take effect immediately and shall apply to all
24 premarital and pre-civil union agreements ¹~~【which have not been~~
25 ~~the subject of an enforcement proceeding filed with a court as of】~~
26 entered into on or after¹ the effective date¹, or entered into before
27 that effective date but voluntarily revised by the parties on or after
28 the effective date in accordance with the procedures for amending
29 agreements set forth in R.S.37:2-37¹.

30

31

32

33

34 Strengthens enforceability of premarital and pre-civil union
35 agreements.

SENATE, No. 2151

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JULY 26, 2012

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Senator NELLIE POU

District 35 (Bergen and Passaic)

Co-Sponsored by:

Senator Cardinale

SYNOPSIS

Strengthens enforceability of premarital and pre-civil union agreements.

CURRENT VERSION OF TEXT

As introduced.



S2151 SCUTARI, POU

2

1 AN ACT concerning premarital and pre-civil union agreements and
2 amending R.S.37:2-32 and R.S.37:2-38.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. R.S.37:2-32 is amended to read as follows:

8 37:2-32. As used in this article:

9 a. "Premarital or pre-civil union agreement" means an
10 agreement between prospective spouses or partners in a civil union
11 couple made in contemplation of marriage or a civil union and to be
12 effective upon marriage or upon the parties establishing a civil
13 union;

14 b. "Property" means an interest, present or future, legal or
15 equitable, vested or contingent, in real or personal property,
16 including income and earnings;

17 c. **["Unconscionable premarital or pre-civil union agreement"**
18 means an agreement, either due to a lack of property or
19 unemployability:

20 (1) Which would render a spouse or partner in a civil union
21 couple without a means of reasonable support;

22 (2) Which would make a spouse or partner in a civil union
23 couple a public charge; or

24 (3) Which would provide a standard of living far below that
25 which was enjoyed before the marriage or civil union.] (Deleted by
26 amendment, P.L. , c. (pending before the Legislature as this
27 bill)

28 (cf: P.L.2006, s.103, s.27)

29

30 2. R.S.37:2-38 is amended to read as follows:

31 37:2-38. Enforcement of premarital or pre-civil union agreement;
32 generally.

33 The burden of proof to set aside a premarital or pre-civil union
34 agreement shall be upon the party alleging the agreement to be
35 unenforceable. A premarital or pre-civil union agreement shall not
36 be enforceable if the party seeking to set aside the agreement
37 proves, by clear and convincing evidence, that:

38 a. The party executed the agreement involuntarily; or

39 b. **[The agreement was unconscionable at the time enforcement**
40 **was sought; or]** (Deleted by amendment, P.L. , c. (pending
41 before the Legislature as this bill)

42 c. **[That]** The agreement was unconscionable when it was
43 executed because that party, before execution of the agreement:

44 (1) Was not provided full and fair disclosure of the earnings,

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 property and financial obligations of the other party;

2 (2) Did not voluntarily and expressly waive, in writing, any
3 right to disclosure of the property or financial obligations of the
4 other party beyond the disclosure provided;

5 (3) Did not have, or reasonably could not have had, an adequate
6 knowledge of the property or financial obligations of the other
7 party; or

8 (4) Did not consult with independent legal counsel and did not
9 voluntarily and expressly waive, in writing, the opportunity to
10 consult with independent legal counsel.

11 d. The issue of unconscionability of a premarital or pre-civil
12 union agreement shall be determined by the court as a matter of
13 law. An agreement shall not be deemed unconscionable unless the
14 circumstances set out in subsection c. of this section are applicable.
15 (cf: P.L.2006, s.103, s.33)

16
17 3. This act shall take effect immediately and shall apply to all
18 premarital and pre-civil union agreements which have not been the
19 subject of an enforcement proceeding filed with a court as of the
20 effective date.

21
22
23 STATEMENT
24

25 This bill would strengthen the enforceability of premarital and
26 pre-civil union agreements.

27 Pursuant to subsections b. and c. of R.S.37:2-38, under certain
28 circumstances a premarital or pre-civil union agreement is not
29 enforceable. These circumstances include, among others, proof that
30 the agreement was unconscionable at the time enforcement was
31 sought; *or* proof that the party seeking to set aside the agreement:
32 (1) was not provided full and fair disclosure of the earnings,
33 property and financial obligations of the other party; (2) did not
34 voluntarily and expressly waive, in writing, any right to disclosure
35 of the property or financial obligations of the other party beyond the
36 disclosure provided; (3) did not have, or reasonably could not have
37 had, an adequate knowledge of the property or financial obligations
38 of the other party; or (4) did not consult with independent legal
39 counsel and did not voluntarily and expressly waive, in writing, the
40 opportunity to consult with independent legal counsel.

41 Under the statute, the issue of unconscionability of a premarital
42 or pre-civil union agreement is determined by the court as a matter
43 of law.

44 The term “unconscionability” is defined in R.S.37:2-32 as an
45 agreement, either due to a lack of property or unemployability,
46 which would: (1) render a spouse or partner in a civil union couple
47 without a means of reasonable support; (2) make a spouse or partner
48 in a civil union couple a public charge; or (3) provide a standard of

1 living far below that which was enjoyed before the marriage or civil
2 union.

3 Under the statute, an agreement may be set aside if it was
4 unconscionable *at the time enforcement was sought*. This can be
5 many years after the agreement was originally executed. The bill
6 eliminates this basis for setting aside an agreement and provides
7 instead that an agreement will not be set aside unless it was
8 unconscionable *when it was executed* (i.e., when the parties signed
9 it).

10 The bill also eliminates the statutory definition of
11 “unconscionability.” Under the bill, the issue of unconscionability
12 of a premarital or pre-civil union agreement would continue to be
13 determined by the court as a matter of law.

14 The bill provides that a premarital or pre-civil union agreement
15 could not be deemed unconscionable unless the agreement was
16 unconscionable when executed *because* the party seeking to set
17 aside the agreement: (1) was not provided full and fair disclosure of
18 the earnings, property and financial obligations of the other party;
19 (2) did not voluntarily and expressly waive, in writing, any right to
20 disclosure of the property or financial obligations of the other party
21 beyond the disclosure provided; (3) did not have, or reasonably
22 could not have had, an adequate knowledge of the property or
23 financial obligations of the other party; or (4) did not consult with
24 independent legal counsel and did not voluntarily and expressly
25 waive, in writing, the opportunity to consult with independent legal
26 counsel.

27 The bill provides that an agreement could not be deemed
28 unconscionable unless the circumstances set out above are
29 applicable.

30 The bill would take effect immediately and apply to all
31 premarital and pre-civil union agreements which have not been the
32 subject of an enforcement proceeding filed with a court as of the
33 effective date.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2151

STATE OF NEW JERSEY

DATED: JULY 26, 2012

The Senate Judiciary Committee reports favorably Senate Bill No. 2151.

This bill would strengthen the enforceability of premarital and pre-civil union agreements.

Currently, pursuant to subsection b. of R.S.37:2-38, such agreements may be set aside by a court if deemed, at the time of enforcement, to be “unconscionable.” That term is defined in R.S.37:2-32 as an agreement, either due to a lack of property or unemployability, which would: render a spouse or partner in a civil union couple without a means of reasonable support; make a spouse or partner in a civil union couple a public charge; or provide a standard of living far below that which was enjoyed before the marriage or civil union.

The bill eliminates this statutory definition as well as the determination of unconscionability on the basis of when enforcement of the agreement was sought. It instead provides that a premarital or pre-civil union agreement could not be deemed unconscionable unless the agreement was unconscionable *when executed* because the party seeking to set aside the agreement: (1) was not provided full and fair disclosure of the earnings, property, and financial obligations of the other party; (2) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; (3) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party; or (4) did not consult with independent legal counsel and did not voluntarily and expressly waive, in writing, the opportunity to consult with independent legal counsel.

The above four factors exist under the current law, in subsection c. of R.S.37:2-38, as separate indicators, not tied to unconscionability, for setting aside a premarital or pre-civil union agreement, but pursuant to the bill’s provisions would now be considered as the factors that determine whether or not an agreement is deemed unconscionable.

The bill would take effect immediately and apply to all premarital and pre-civil union agreements which have not been the subject of an enforcement proceeding filed with a court as of the effective date.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2151

STATE OF NEW JERSEY

DATED: OCTOBER 15, 2012

The Assembly Judiciary Committee reports favorably Senate Bill No. 2151.

This bill would strengthen the enforceability of premarital and pre-civil union agreements.

Currently, pursuant to subsection b. of R.S.37:2-38, such agreements may be set aside by a court if deemed, at the time of enforcement, to be “unconscionable.” That term is defined in R.S.37:2-32 as an agreement, either due to a lack of property or unemployability, which would: render a spouse or partner in a civil union couple without a means of reasonable support; make a spouse or partner in a civil union couple a public charge; or provide a standard of living far below that which was enjoyed before the marriage or civil union.

The bill eliminates this statutory definition as well as the determination of unconscionability on the basis of when enforcement of the agreement was sought. It instead provides that a premarital or pre-civil union agreement could not be deemed unconscionable unless the agreement was unconscionable *when executed* because the party seeking to set aside the agreement: (1) was not provided full and fair disclosure of the earnings, property, and financial obligations of the other party; (2) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; (3) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party; or (4) did not consult with independent legal counsel and did not voluntarily and expressly waive, in writing, the opportunity to consult with independent legal counsel.

The above four factors exist under the current law, in subsection c. of R.S.37:2-38, as separate indicators, not tied to unconscionability, for setting aside a premarital or pre-civil union agreement, but pursuant to the bill’s provisions would now be considered as the factors that determine whether or not an agreement is deemed unconscionable.

The bill would take effect immediately and apply to all premarital and pre-civil union agreements which have not been the subject of an enforcement proceeding filed with a court as of the effective date.

This bill is identical to Assembly Bill No.3315.

STATEMENT TO
SENATE, No. 2151

with Assembly Floor Amendments
(Proposed by Assemblyman GREEN)

ADOPTED: MARCH 21, 2013

This floor amendment provides that only premarital and pre-civil union agreements entered into on or after the effective date of the bill (immediately upon enactment), or entered into before the effective date but voluntarily revised by the parties on or after that effective date would be subject to its provisions.

Thus, premarital and pre-civil union agreements entered into before the effective date would remain subject to the current law, which permits agreements to be set aside if deemed, *at the time of enforcement*, to be “unconscionable.” See R.S.37:2-32, subsection c. and R.S.37:2-38, subsection b.

Only new agreements, or older agreements with new revisions, would be subject to the underlying bill’s new standard of unconscionability: such agreements could not be deemed unconscionable unless determined to be unconscionable *when executed* because the party seeking to set aside the agreement: (1) was not provided full and fair disclosure of the earnings, property, and financial obligations of the other party; (2) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; (3) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party; or (4) did not consult with independent legal counsel and did not voluntarily and expressly waive, in writing, the opportunity to consult with independent legal counsel.

ASSEMBLY, No. 3315

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED SEPTEMBER 27, 2012

Sponsored by:

Assemblyman JERRY GREEN

District 22 (Middlesex, Somerset and Union)

Assemblywoman MARLENE CARIDE

District 36 (Bergen and Passaic)

Assemblywoman LINDA STENDER

District 22 (Middlesex, Somerset and Union)

SYNOPSIS

Strengthens enforceability of premarital and pre-civil union agreements.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/20/2012)

1 AN ACT concerning premarital and pre-civil union agreements and
2 amending R.S.37:2-32 and R.S.37:2-38.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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8 37:2-32. As used in this article:

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10 agreement between prospective spouses or partners in a civil union
11 couple made in contemplation of marriage or a civil union and to be
12 effective upon marriage or upon the parties establishing a civil
13 union;

14 b. "Property" means an interest, present or future, legal or
15 equitable, vested or contingent, in real or personal property,
16 including income and earnings;

17 c. **["Unconscionable premarital or pre-civil union agreement"**
18 means an agreement, either due to a lack of property or
19 unemployability:

20 (1) Which would render a spouse or partner in a civil union
21 couple without a means of reasonable support;

22 (2) Which would make a spouse or partner in a civil union
23 couple a public charge; or

24 (3) Which would provide a standard of living far below that
25 which was enjoyed before the marriage or civil union. **]** (Deleted by
26 amendment, P.L. , c. (pending before the Legislature as this
27 bill)

28 (cf: P.L.2006, s.103, s.27)

29

30 2. R.S.37:2-38 is amended to read as follows:

31 37:2-38. Enforcement of premarital or pre-civil union
32 agreement; generally.

33 The burden of proof to set aside a premarital or pre-civil union
34 agreement shall be upon the party alleging the agreement to be
35 unenforceable. A premarital or pre-civil union agreement shall not
36 be enforceable if the party seeking to set aside the agreement
37 proves, by clear and convincing evidence, that:

38 a. The party executed the agreement involuntarily; or

39 b. **["The agreement was unconscionable at the time enforcement**
40 **was sought; or"]** (Deleted by amendment, P.L. , c. (pending
41 before the Legislature as this bill)

42 c. **["That"]** The agreement was unconscionable when it was
43 executed because that party, before execution of the agreement:

44 (1) Was not provided full and fair disclosure of the earnings,

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 property and financial obligations of the other party;

2 (2) Did not voluntarily and expressly waive, in writing, any
3 right to disclosure of the property or financial obligations of the
4 other party beyond the disclosure provided;

5 (3) Did not have, or reasonably could not have had, an adequate
6 knowledge of the property or financial obligations of the other
7 party; or

8 (4) Did not consult with independent legal counsel and did not
9 voluntarily and expressly waive, in writing, the opportunity to
10 consult with independent legal counsel.

11 d. The issue of unconscionability of a premarital or pre-civil
12 union agreement shall be determined by the court as a matter of
13 law. An agreement shall not be deemed unconscionable unless the
14 circumstances set out in subsection c. of this section are applicable.
15 (cf: P.L.2006, s.103, s.33)

16
17 3. This act shall take effect immediately and shall apply to all
18 premarital and pre-civil union agreements which have not been the
19 subject of an enforcement proceeding filed with a court as of the
20 effective date.

21
22
23 STATEMENT

24
25 This bill would strengthen the enforceability of premarital and
26 pre-civil union agreements.

27 Pursuant to subsections b. and c. of R.S.37:2-38, under certain
28 circumstances a premarital or pre-civil union agreement is not
29 enforceable. These circumstances include, among others, proof that
30 the agreement was unconscionable at the time enforcement was
31 sought; *or* proof that the party seeking to set aside the agreement:
32 (1) was not provided full and fair disclosure of the earnings,
33 property and financial obligations of the other party; (2) did not
34 voluntarily and expressly waive, in writing, any right to disclosure
35 of the property or financial obligations of the other party beyond the
36 disclosure provided; (3) did not have, or reasonably could not have
37 had, an adequate knowledge of the property or financial obligations
38 of the other party; or (4) did not consult with independent legal
39 counsel and did not voluntarily and expressly waive, in writing, the
40 opportunity to consult with independent legal counsel.

41 Under the statute, the issue of unconscionability of a premarital
42 or pre-civil union agreement is determined by the court as a matter
43 of law.

44 The term “unconscionability” is defined in R.S.37:2-32 as an
45 agreement, either due to a lack of property or unemployability,
46 which would: (1) render a spouse or partner in a civil union couple
47 without a means of reasonable support; (2) make a spouse or partner
48 in a civil union couple a public charge; or (3) provide a standard of

1 living far below that which was enjoyed before the marriage or civil
2 union.

3 Under the statute, an agreement may be set aside if it was
4 unconscionable *at the time enforcement was sought*. This can be
5 many years after the agreement was originally executed. The bill
6 eliminates this basis for setting aside an agreement and provides
7 instead that an agreement will not be set aside unless it was
8 unconscionable *when it was executed* (i.e., when the parties signed
9 it).

10 The bill also eliminates the statutory definition of
11 “unconscionability.” Under the bill, the issue of unconscionability
12 of a premarital or pre-civil union agreement would continue to be
13 determined by the court as a matter of law.

14 The bill provides that a premarital or pre-civil union agreement
15 could not be deemed unconscionable unless the agreement was
16 unconscionable when executed *because* the party seeking to set
17 aside the agreement: (1) was not provided full and fair disclosure of
18 the earnings, property and financial obligations of the other party;
19 (2) did not voluntarily and expressly waive, in writing, any right to
20 disclosure of the property or financial obligations of the other party
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24 independent legal counsel and did not voluntarily and expressly
25 waive, in writing, the opportunity to consult with independent legal
26 counsel.

27 The bill provides that an agreement could not be deemed
28 unconscionable unless the circumstances set out above are
29 applicable.

30 The bill would take effect immediately and apply to all
31 premarital and pre-civil union agreements which have not been the
32 subject of an enforcement proceeding filed with a court as of the
33 effective date.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3315

STATE OF NEW JERSEY

DATED: OCTOBER 15, 2012

The Assembly Judiciary Committee reports favorably Assembly Bill No. 3315.

This bill would strengthen the enforceability of premarital and pre-civil union agreements.

Currently, pursuant to subsection b. of R.S.37:2-38, such agreements may be set aside by a court if deemed, at the time of enforcement, to be “unconscionable.” That term is defined in R.S.37:2-32 as an agreement, either due to a lack of property or unemployability, which would: render a spouse or partner in a civil union couple without a means of reasonable support; make a spouse or partner in a civil union couple a public charge; or provide a standard of living far below that which was enjoyed before the marriage or civil union.

The bill eliminates this statutory definition as well as the determination of unconscionability on the basis of when enforcement of the agreement was sought. It instead provides that a premarital or pre-civil union agreement could not be deemed unconscionable unless the agreement was unconscionable *when executed* because the party seeking to set aside the agreement: (1) was not provided full and fair disclosure of the earnings, property, and financial obligations of the other party; (2) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; (3) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party; or (4) did not consult with independent legal counsel and did not voluntarily and expressly waive, in writing, the opportunity to consult with independent legal counsel.

The above four factors exist under the current law, in subsection c. of R.S.37:2-38, as separate indicators, not tied to unconscionability, for setting aside a premarital or pre-civil union agreement, but pursuant to the bill’s provisions would now be considered as the factors that determine whether or not an agreement is deemed unconscionable.

The bill would take effect immediately and apply to all premarital and pre-civil union agreements which have not been the subject of an enforcement proceeding filed with a court as of the effective date.

This bill is identical to Senate Bill No. 2151.