

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.

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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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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)

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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)

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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.

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