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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Gavarone

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SUMMARY

- Expands the ability for spouses to enter into agreements that alter legal relations.
- Establishes postnuptial agreements and treats such agreements the same as antenuptial agreements under the Revised Code.
- Allows spouses to modify antenuptial and postnuptial agreements.
- Establishes requirements for agreements entered between spouses that alter legal relations and provides that agreements that meet these requirements are valid and enforceable, with or without consideration.
- Allows a court to terminate a decree of legal separation on a motion signed by both spouses.

DETAILED ANALYSIS

Altering legal relations between spouses

The bill generally expands the ability of spouses to enter into agreements with each other to alter their legal relations. The bill establishes postnuptial agreements and treats such agreements the same as antenuptial agreements. Under current law, only antenuptial agreements are recognized.

An antenuptial agreement is entered into *before* marriage. A postnuptial agreement is an agreement entered into *after* marriage.

Contracts, generally

The bill slightly modifies existing law to provide that a husband or wife may enter into an agreement or transaction with either of the following:

1. The other spouse, subject to the general rules that control the actions of persons occupying the confidential relations with each other;

2. With any other person, which either party would otherwise be able to enter into if unmarried.

The bill adds that an agreement under (1) that alters legal relations between the spouses must comply with certain requirements established under the bill (see “**Requirements for agreements altering legal relations**,” below).

Existing law provides that a husband or wife may enter into any *engagement* (rather than agreement) or transaction with the other, or with any other person, which either might if unmarried; subject, in transactions between themselves, to the general rules controlling actions of persons occupying confidential relations with each other.¹

Postnuptial and antenuptial agreements; agreements for separation

The bill also allows a husband or wife to contract with each other to do any of the following:

1. Enter into a postnuptial agreement that alters their legal relations with each other;
2. Modify or terminate an antenuptial or postnuptial agreement or any other agreement that alters their legal relations with each other;
3. Agree to an immediate separation and make provisions for the division of property and support of either of them and their children during the separation.

The bill adds that an agreement under (1) or (2) must comply with certain requirements established under the bill (see “**Requirements for agreements altering legal relations**,” below).

Under existing law, a husband and wife *cannot*, by any contract with each other, alter their legal relations, except to agree to an immediate separation as described under (3). Existing law also does not provide for the division of property as described under (3).²

Requirements for agreements altering legal relations

Under the bill, an agreement altering legal relations between spouses in (1) under “**Contracts, generally**” (above), or (1) or (2) under “**Postnuptial and antenuptial agreements; agreements for separation**” (above), must meet all of the following requirements:

1. The agreement is in writing and signed by both spouses;
2. The agreement is entered into freely without fraud, duress, coercion, or overreaching;
3. There was full disclosure, or full knowledge, and understanding of the nature, value, and extent of the property of both spouses;
4. The terms do not promote or encourage divorce or profiteering by divorce.

¹ R.C. 3103.05.

² R.C. 3103.06.

An agreement that meets all of these requirements is valid and enforceable, with or without consideration.³

Action to set aside regarding surviving spouse rights

The bill adds postnuptial agreements to an existing law provision declaring that any antenuptial or separation agreement to which a deceased spouse was a party is valid unless: (1) there is an action to set it aside that is commenced within four months after an executor or administrator was appointed to the decedent’s estate, or (2) within the four-month period, the validity of the agreement is otherwise attacked.⁴

Termination of decree of legal separation

The bill allows a court to terminate a decree of legal separation if both spouses sign a motion to do so.⁵

Definition of “separate property”

The bill modifies the definition of “separate property,” for purposes of equitable division of marital and separate property and distributive awards under marriage termination law, to include any real or personal property or interest in real or personal property that is excluded by a valid antenuptial or postnuptial agreement. Under existing law, this applies to antenuptial agreements only.⁶

HISTORY

Action	Date
Introduced	07-13-21

S0210-I-134/ks

³ R.C. 3103.061.

⁴ R.C. 2106.22.

⁵ R.C. 3105.17(C).

⁶ R.C. 3105.171(A)(6)(a)(v).