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S.B. 210
134th General Assembly

Final Analysis

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Primary Sponsor: Sen. Gavarone

Effective date: March 23, 2023

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UPDATED VERSION*

SUMMARY

Legal relations between spouses

- 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.

Maintaining Social Security numbers

- Repeals a requirement that the record of any action for divorce, dissolution, annulment, or spousal support contain the parties' Social Security numbers.

Dating protection orders; domestic violence shelters

- Expands the definition of "person with whom the respondent (or actor) is or was in a dating relationship" to include minors who are subject to domestic or dating violence for purposes of domestic violence protection order law and domestic violence shelters law.

* This version updates the effective date.

Appointing acting judges

- Removes the population limit and in-territory residency preference for appointing certain acting municipal court or county court judges.

DETAILED ANALYSIS

Altering legal relations between spouses

The act generally expands the ability of spouses to enter into agreements with each other to alter their legal relations. It establishes postnuptial agreements and treats them the same as antenuptial agreements. Previously, the Revised Code only recognized antenuptial agreements.

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

Contracts, generally

The act slightly modifies the law to specify that a husband or wife may enter into any 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 act adds that an agreement under (1) that alters legal relations between the spouses must comply with certain requirements established under the act (see “**Requirements for agreements altering legal relations,**” below).

The law previously specified that a husband or wife could 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 act 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.

¹ R.C. 3103.05.

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

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

Requirements for agreements altering legal relations

Under the act, 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.

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 act adds postnuptial agreements to the law declaring that any antenuptial or separation agreement to which a deceased spouse was a party is valid unless: (1) an action to set it aside 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 act 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 act modifies the definition of “separate property,” for purposes of equitable division of marital and separate property and distributive awards under marriage termination law, to

² R.C. 3103.06.

³ R.C. 3103.061.

⁴ R.C. 2106.22.

⁵ R.C. 3105.17(C).

include any real or personal property or interest in real or personal property that is excluded by a valid antenuptial or postnuptial agreement. Previously, this applied to antenuptial agreements only.⁶

Maintaining Social Security numbers

The act repeals the law requiring the record of any action for divorce, dissolution, annulment, or spousal support contain the Social Security numbers of the parties to the action.⁷

Dating protection orders; domestic violence shelters

The act modifies the definitions of “person with whom the respondent is or was in a dating relationship” and “person with whom the actor is or was in a dating relationship” under the domestic violence protection order law and domestic violence shelter law, respectively. Under both laws, the definition is expanded to designate such *person* as an *individual*, rather than an *adult*, who, at the time of the conduct in question, is in a dating relationship with the actor or respondent who is an adult or who, within the 12 months preceding the conduct in question, has had a dating relationship with the respondent or actor who is an adult.

Under the domestic violence protection order law, the definition change would allow a minor to petition for a domestic violence protection order against an adult; under previous law, only an adult was allowed to petition for an order against another adult. In the domestic violence shelter law, the definition change would include a minor provided shelter who is or was dating an actor who is an adult; previously, the law only applied to an adult provided shelter who was or is dating an adult actor.⁸

Appointing acting judges

The act eliminates two limitations on the authority of the presiding judges of smaller municipal and county courts to appoint substitute judges who are not residents of the court’s territory. The courts in question are municipal and county courts having only one or two judges. First, the act eliminates the limitation that the authority to appoint a nonresident substitute judge applies only if the court’s territory has a population under 25,000. Second, it eliminates the stipulation that the judge must have been unable to appoint a substitute who resides in the court’s territory. The act retains the requirement that the substitute must be a resident of a contiguous municipal or county court.

These changes are made within the continuing law, retained by the act, authorizing a municipal court presiding judge or a county court presiding judge to appoint a substitute judge or, upon the request of the presiding judge, the Chief Justice of the Supreme Court to appoint another judge, in either of the following instances:

⁶ R.C. 3105.171(A)(6)(a)(v).

⁷ R.C. 3105.72, repealed.

⁸ R.C. 3113.31(A)(9) and 3113.33(F).

- If a judge of a municipal court or of a county court that consists of only one judge is temporarily absent for a reason other than being incapacitated or unavailable due to disqualification, suspension, or recusal;
- If a vacancy occurs in the office of a judge of a municipal court or of a county court that consists of two judges, or if a judge of either court is incapacitated, unavailable, or temporarily absent.⁹

HISTORY

Action	Date
Introduced	07-13-21
Reported, S. Judiciary	11-10-21
Passed Senate (30-1)	11-16-21
Reported, H. Civil Justice	11-30-22
Passed House (76-2)	12-01-22
Senate concurred in House amendments (28-1)	12-07-22

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⁹ R.C. 1901.121(A)(2) and (B)(1) and 1907.141(A)(2) and (B)(1).