S T A T E O F N E W Y O R K

924

2009-2010 Regular Sessions

I N S E N A T E

January 21, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the general obligations law and the domestic relations law, in relation to establishing the public policy of the state that no antenuptial agreement become binding for thirty days during which period either party may withdraw upon written notice to the other and requiring such agreements to be in writing and acknowledged

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings and declaration of intent. The legislature finds that important rights may be surrendered by contracts made between persons in contemplation of marriage and declares that public policy requires that such rights not be surrendered precipitously and without a period of time during which the parties may contemplate the consequences of their intended agreement, consult an attorney for advice, if necessary, and withdraw unilaterally if that be the determination upon reflection. Such waivers of important rights should be entered into knowingly and consciously. Moreover, all such agreements should be in writing, subscribed by both parties, and acknowledged or proven pursuant to requisite formalities, to reflect the importance of the undertaking. Accordingly, the legislature declares this act to reflect the public policy of this state and to be necessary in the public interest.

S 2. Section 3-303 of the general obligations law is amended to read as follows:

S 3-303. Contracts in contemplation of marriage; ANTENUPTIAL AGREEMENTS. 1. [A] EXCEPT AS PROVIDED IN THIS SECTION, A contract made between persons in contemplation of marriage, remains in full force after the marriage takes place.

2. AS USED IN THIS SECTION, AN "ANTENUPTIAL AGREEMENT" IS A CONTRACT BETWEEN TWO PERSONS WHO ARE PROSPECTIVE SPOUSES, WHICH IS MADE IN

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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CONTEMPLATION OF MARRIAGE AND WHICH PROVIDES, AMONG OTHER THINGS, FOR THE PROPERTY, SUPPORT, INHERITANCE AND CUSTODIAL RIGHTS OF THE PARTIES IN THE EVENT OF SUBSEQUENT DISPUTES BETWEEN THEM.

3. SUBJECT TO THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION, AN ANTENUPTIAL AGREEMENT, IN ORDER TO BE BINDING, VALID AND ENFORCEABLE, MUST BE IN WRITING, MUST BE SUBSCRIBED BY BOTH PARTIES, MUST BE ACKNOWLEDGED OR PROVEN IN THE MANNER REQUIRED TO ENTITLE A DEED TO BE RECORDED, AND MUST CONTAIN THE ADDRESS WHERE THE NOTICE DESCRIBED IN SUBDIVISION FOUR OF THIS SECTION IS AUTHORIZED TO BE SERVED, OF EACH PARTY THAT EXECUTES IT. NOTHING IN THIS SUBDIVISION SHALL BE DEEMED TO AFFECT THE VALIDITY OF ANY AGREEMENT MADE PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION.

4. NO ANTENUPTIAL AGREEMENT SHALL BE BINDING, VALID OR ENFORCEABLE FOR A PERIOD OF THIRTY DAYS AFTER ITS ACKNOWLEDGMENT BY THE LAST PARTY TO ACKNOWLEDGE IT. DURING THE PENDENCY OF THE PERIOD SUBSEQUENT TO EXECUTION BUT PRIOR TO ACKNOWLEDGMENT BY THE LAST PARTY TO ACKNOWLEDGE IT, AND DURING THE PENDENCY OF THIS THIRTY DAY PERIOD AFTER ITS ACKNOWLEDGMENT BY THE LAST PARTY TO ACKNOWLEDGE IT, SUCH AGREEMENT SHALL REMAIN INCIPIENT AND EXECUTORY ONLY, AND EITHER PARTY TO THE AGREEMENT MAY UNILATERALLY WITHDRAW THEREFROM BY WRITTEN NOTICE SERVED UPON THE OTHER PERSONALLY DURING SUCH PERIOD; OR BY MAILING THE ORIGINAL OF SUCH WRITTEN NOTICE TO THE OTHER PARTY, TO THE ADDRESS OF SUCH OTHER PARTY STATED IN THE AGREEMENT, DURING SUCH THIRTY DAY PERIOD BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND BY MAILING DURING SUCH THIRTY DAY PERIOD TO SUCH ADDRESS A COPY OF THE ORIGINAL OF SUCH WRITTEN NOTICE BY FIRST-CLASS MAIL TO SUCH OTHER PARTY. UPON SUCH WITHDRAWAL EFFECTED PURSUANT TO THIS SUBDIVISION, SUCH AGREEMENT SHALL NOT TAKE EFFECT AND SHALL BECOME NULL AND VOID. NOTHING IN THIS SUBDIVISION SHALL BE DEEMED TO AFFECT THE VALIDITY OF ANY AGREEMENT MADE PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION.

5. EVERY ANTENUPTIAL AGREEMENT, IN ORDER TO BE BINDING, VALID AND ENFORCEABLE, SHALL CONTAIN A NOTICE OF THE RIGHTS GRANTED BY, AND OF THE REQUIREMENTS OF, SUBDIVISIONS THREE AND FOUR OF THIS SECTION. NOTHING IN THIS SUBDIVISION SHALL BE DEEMED TO AFFECT THE VALIDITY OF ANY AGREEMENT MADE PRIOR TO THE EFFECTIVE DATE OF THIS SUBDIVISION.

6. ANY PROVISION OR AGREEMENT WHICH IN SUBSTANCE WAIVES THE RIGHTS GRANTED BY, OR THE REQUIREMENTS OF, THE PROVISIONS OF THIS SECTION SHALL BE VOID AS AGAINST PUBLIC POLICY.

S 3. Subdivision 3 of part B of section 236 of the domestic relations law, as amended by chapter 595 of the laws of 2003, is amended to read as follows:

3. Agreement of the parties. [An] SUBJECT TO THE PROVISIONS OF SECTION 3-303 OF THE GENERAL OBLIGATIONS LAW IF EXECUTED ON OR AFTER THE EFFECTIVE DATE OF THE AMENDMENT TO THIS SUBDIVISION WHICH ADDED THESE WORDS, AN agreement by the parties, made before or during the marriage, shall be valid and enforceable in a matrimonial action if such agreement is in writing, subscribed by the parties, and acknowledged or proven in the manner required to entitle a deed to be recorded. Notwithstanding any other provision of law, an acknowledgment of an agreement made before marriage may be executed before any person authorized to solemnize a marriage pursuant to subdivisions one, two and three of section eleven of this chapter. Such an agreement may include (1) a contract to make a testamentary provision of any kind, or a waiver of any right to elect against the provisions of a will; (2) provision for the ownership, division or distribution of separate and marital property; (3) provision for the amount and duration of maintenance or other terms and conditions of

the marriage relationship, subject to the provisions of section 5-311 of the general obligations law, and provided that such terms were fair and reasonable at the time of the making of the agreement and are not unconscionable at the time of entry of final judgment; and (4) provision for the custody, care, education and maintenance of any child of the parties, subject to the provisions of section two hundred forty of this article. Nothing in this subdivision shall be deemed to affect the validity of any agreement made prior to the effective date of this subdivision.

S 4. This act shall take effect on the ninetieth day after it shall have become a law, and shall apply only to antenuptial agreements, as defined in subdivision 2 of section 3-303 of the general obligations law, as added by section two of this act, which are executed on or after the effective date of this act.