

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 13-0495.01 Brita Darling x2241

HOUSE BILL 13-1204

HOUSE SPONSORSHIP

Gardner,

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE "UNIFORM PREMARITAL AND MARITAL
102 AGREEMENTS ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Colorado Commission on Uniform State Laws. The bill enacts the "Uniform Premarital and Marital Agreements Act" (Act) drafted by the national conference of commissioners on uniform state laws. The bill describes the formation of premarital and marital agreements, when such agreements are effective, provisions that are unenforceable in premarital

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

or marital agreements, and when an agreement is enforceable.

The bill makes changes to the Act with respect to the enforcement of spousal maintenance provisions in a premarital or marital agreement. Under the bill, provisions relating to spousal maintenance are unenforceable if the provisions are unconscionable at the time of enforcement.

The Act applies to premarital or marital agreements signed on or after July 1, 2014.

The bill amends a probate provision relating to the waiver of marital rights or obligations to conform to the Act.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **repeal and reenact,**
3 **with amendments,** part 3 of article 2 of title 14 as follows:

4 **PART 3**

5 **UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT**

6 **14-2-301. Short title.** THIS PART 3 MAY BE CITED AS THE
7 "UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT".

8 **14-2-302. Definitions.** IN THIS PART 3:

9 (1) "AMENDMENT" MEANS A MODIFICATION OR REVOCATION OF A
10 PREMARITAL AGREEMENT OR MARITAL AGREEMENT.

11 (2) "MARITAL AGREEMENT" MEANS AN AGREEMENT BETWEEN
12 SPOUSES WHO INTEND TO REMAIN MARRIED WHICH AFFIRMS, MODIFIES, OR
13 WAIVES A MARITAL RIGHT OR OBLIGATION DURING THE MARRIAGE OR AT
14 LEGAL SEPARATION, MARITAL DISSOLUTION, DEATH OF ONE OF THE
15 SPOUSES, OR THE OCCURRENCE OR NONOCCURRENCE OF ANY OTHER
16 EVENT. THE TERM INCLUDES AN AMENDMENT, SIGNED AFTER THE SPOUSES
17 MARRY, OF A PREMARITAL AGREEMENT OR MARITAL AGREEMENT.

18 (3) "MARITAL DISSOLUTION" MEANS THE ENDING OF A MARRIAGE
19 BY COURT DECREE. THE TERM INCLUDES A DIVORCE, DISSOLUTION, AND
20 ANNULMENT.

1 (4) "MARITAL RIGHT OR OBLIGATION" MEANS ANY OF THE
2 FOLLOWING RIGHTS OR OBLIGATIONS ARISING BETWEEN SPOUSES BECAUSE
3 OF THEIR MARITAL STATUS:

4 (a) SPOUSAL MAINTENANCE;

5 (b) A RIGHT TO PROPERTY, INCLUDING CHARACTERIZATION,
6 MANAGEMENT, AND OWNERSHIP;

7 (c) RESPONSIBILITY FOR A LIABILITY;

8 (d) A RIGHT TO PROPERTY AND RESPONSIBILITY FOR LIABILITIES AT
9 LEGAL SEPARATION, MARITAL DISSOLUTION, OR DEATH OF A SPOUSE; OR

10 (e) AN AWARD AND ALLOCATION OF ATTORNEY'S FEES AND COSTS.

11 (5) "PREMARITAL AGREEMENT" MEANS AN AGREEMENT BETWEEN
12 INDIVIDUALS WHO INTEND TO MARRY WHICH AFFIRMS, MODIFIES, OR
13 WAIVES A MARITAL RIGHT OR OBLIGATION DURING THE MARRIAGE OR AT
14 LEGAL SEPARATION, MARITAL DISSOLUTION, DEATH OF ONE OF THE
15 SPOUSES, OR THE OCCURRENCE OR NONOCCURRENCE OF ANY OTHER
16 EVENT. THE TERM INCLUDES AN AMENDMENT, SIGNED BEFORE THE
17 INDIVIDUALS MARRY, OF A PREMARITAL AGREEMENT.

18 (6) "PROPERTY" MEANS ANYTHING THAT MAY BE THE SUBJECT OF
19 OWNERSHIP, WHETHER REAL OR PERSONAL, TANGIBLE OR INTANGIBLE,
20 LEGAL OR EQUITABLE, OR ANY INTEREST THEREIN.

21 (7) "RECORD" MEANS INFORMATION THAT IS INSCRIBED ON A
22 TANGIBLE MEDIUM OR THAT IS STORED IN AN ELECTRONIC OR OTHER
23 MEDIUM AND IS RETRIEVABLE IN PERCEIVABLE FORM.

24 (8) "SIGN" MEANS WITH PRESENT INTENT TO AUTHENTICATE OR
25 ADOPT A RECORD:

26 (a) TO EXECUTE OR ADOPT A TANGIBLE SYMBOL; OR

27 (b) TO ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN

1 ELECTRONIC SYMBOL, SOUND, OR PROCESS.

2 (9) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT
3 OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR
4 ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF
5 THE UNITED STATES.

6 **14-2-303. Scope.** (1) THIS PART 3 APPLIES TO A PREMARITAL
7 AGREEMENT OR MARITAL AGREEMENT SIGNED ON OR AFTER JULY 1, 2014.

8 (2) THIS PART 3 DOES NOT AFFECT ANY RIGHT, OBLIGATION, OR
9 LIABILITY ARISING UNDER A PREMARITAL AGREEMENT OR MARITAL
10 AGREEMENT SIGNED BEFORE JULY 1, 2014.

11 (3) THIS PART 3 DOES NOT APPLY TO:

12 (a) AN AGREEMENT BETWEEN SPOUSES WHICH AFFIRMS, MODIFIES,
13 OR WAIVES A MARITAL RIGHT OR OBLIGATION AND REQUIRES COURT
14 APPROVAL TO BECOME EFFECTIVE; OR

15 (b) AN AGREEMENT BETWEEN SPOUSES WHO INTEND TO OBTAIN A
16 MARITAL DISSOLUTION OR COURT-DECREED SEPARATION WHICH RESOLVES
17 THEIR MARITAL RIGHTS OR OBLIGATIONS AND IS SIGNED WHEN A
18 PROCEEDING FOR MARITAL DISSOLUTION OR COURT-DECREED SEPARATION
19 IS ANTICIPATED OR PENDING.

20 (4) THIS PART 3 DOES NOT AFFECT ADVERSELY THE RIGHTS OF A
21 BONA FIDE PURCHASER FOR VALUE TO THE EXTENT THAT THIS PART 3
22 APPLIES TO A WAIVER OF A MARITAL RIGHT OR OBLIGATION IN A TRANSFER
23 OR CONVEYANCE OF PROPERTY BY A SPOUSE TO A THIRD PARTY.

24 **14-2-304. Governing law.** (1) THE VALIDITY, ENFORCEABILITY,
25 INTERPRETATION, AND CONSTRUCTION OF A PREMARITAL AGREEMENT OR
26 MARITAL AGREEMENT ARE DETERMINED:

27 (a) BY THE LAW OF THE JURISDICTION DESIGNATED IN THE

1 AGREEMENT IF THE JURISDICTION HAS A SIGNIFICANT RELATIONSHIP TO THE
2 AGREEMENT OR EITHER PARTY AND THE DESIGNATED LAW IS NOT
3 CONTRARY TO A FUNDAMENTAL PUBLIC POLICY OF THIS STATE; OR

4 (b) ABSENT AN EFFECTIVE DESIGNATION DESCRIBED IN PARAGRAPH
5 (a) OF THIS SUBSECTION (1), BY THE LAW OF THIS STATE, INCLUDING THE
6 CHOICE-OF-LAW RULES OF THIS STATE.

7 **14-2-305. Principles of law and equity.** UNLESS DISPLACED BY
8 A PROVISION OF THIS PART 3, PRINCIPLES OF LAW AND EQUITY SUPPLEMENT
9 THIS PART 3.

10 **14-2-306. Formation requirements.** A PREMARITAL AGREEMENT
11 OR MARITAL AGREEMENT MUST BE IN A RECORD AND SIGNED BY BOTH
12 PARTIES. THE AGREEMENT IS ENFORCEABLE WITHOUT CONSIDERATION.

13 **14-2-307. When agreement effective.** A PREMARITAL
14 AGREEMENT IS EFFECTIVE ON MARRIAGE. A MARITAL AGREEMENT IS
15 EFFECTIVE ON SIGNING BY BOTH PARTIES.

16 **14-2-308. Void marriage.** IF A MARRIAGE IS DETERMINED TO BE
17 VOID, A PREMARITAL AGREEMENT OR MARITAL AGREEMENT IS
18 ENFORCEABLE TO THE EXTENT NECESSARY TO AVOID AN INEQUITABLE
19 RESULT.

20 **14-2-309. Enforcement.** (1) A PREMARITAL AGREEMENT OR
21 MARITAL AGREEMENT IS UNENFORCEABLE IF A PARTY AGAINST WHOM
22 ENFORCEMENT IS SOUGHT PROVES:

23 (a) THE PARTY'S CONSENT TO THE AGREEMENT WAS INVOLUNTARY
24 OR THE RESULT OF DURESS;

25 (b) THE PARTY DID NOT HAVE ACCESS TO INDEPENDENT LEGAL
26 REPRESENTATION UNDER SUBSECTION (2) OF THIS SECTION;

27 (c) UNLESS THE PARTY HAD INDEPENDENT LEGAL REPRESENTATION

1 AT THE TIME THE AGREEMENT WAS SIGNED, THE AGREEMENT DID NOT
2 INCLUDE A NOTICE OF WAIVER OF RIGHTS UNDER SUBSECTION (3) OF THIS
3 SECTION OR AN EXPLANATION IN PLAIN LANGUAGE OF THE MARITAL
4 RIGHTS OR OBLIGATIONS BEING MODIFIED OR WAIVED BY THE AGREEMENT;
5 OR

6 (d) BEFORE SIGNING THE AGREEMENT, THE PARTY DID NOT RECEIVE
7 ADEQUATE FINANCIAL DISCLOSURE UNDER SUBSECTION (4) OF THIS
8 SECTION.

9 (2) A PARTY HAS ACCESS TO INDEPENDENT LEGAL REPRESENTATION
10 IF:

11 (a) BEFORE SIGNING A PREMARITAL OR MARITAL AGREEMENT, THE
12 PARTY HAS A REASONABLE TIME TO:

13 (I) DECIDE WHETHER TO RETAIN A LAWYER TO PROVIDE
14 INDEPENDENT LEGAL REPRESENTATION; AND

15 (II) LOCATE A LAWYER TO PROVIDE INDEPENDENT LEGAL
16 REPRESENTATION, OBTAIN THE LAWYER'S ADVICE, AND CONSIDER THE
17 ADVICE PROVIDED; AND

18 (b) THE OTHER PARTY IS REPRESENTED BY A LAWYER AND THE
19 PARTY HAS THE FINANCIAL ABILITY TO RETAIN A LAWYER OR THE OTHER
20 PARTY AGREES TO PAY THE REASONABLE FEES AND EXPENSES OF
21 INDEPENDENT LEGAL REPRESENTATION.

22 (3) A NOTICE OF WAIVER OF RIGHTS UNDER THIS SECTION REQUIRES
23 LANGUAGE, CONSPICUOUSLY DISPLAYED, SUBSTANTIALLY SIMILAR TO THE
24 FOLLOWING, AS APPLICABLE TO THE PREMARITAL AGREEMENT OR MARITAL
25 AGREEMENT:

26 IF YOU SIGN THIS AGREEMENT, YOU MAY BE:
27 GIVING UP YOUR RIGHT TO BE SUPPORTED BY THE

1 PERSON YOU ARE MARRYING OR TO WHOM YOU ARE
2 MARRIED.

3 GIVING UP YOUR RIGHT TO OWNERSHIP OR CONTROL
4 OF MONEY AND PROPERTY.

5 AGREEING TO PAY BILLS AND DEBTS OF THE PERSON
6 YOU ARE MARRYING OR TO WHOM YOU ARE MARRIED.

7 GIVING UP YOUR RIGHT TO MONEY AND PROPERTY IF
8 YOUR MARRIAGE ENDS OR THE PERSON TO WHOM YOU ARE
9 MARRIED DIES.

10 GIVING UP YOUR RIGHT TO HAVE YOUR LEGAL FEES
11 PAID.

12 (4) A PARTY HAS ADEQUATE FINANCIAL DISCLOSURE UNDER THIS
13 SECTION IF THE PARTY:

14 (a) RECEIVES A REASONABLY ACCURATE DESCRIPTION AND
15 GOOD-FAITH ESTIMATE OF VALUE OF THE PROPERTY, LIABILITIES, AND
16 INCOME OF THE OTHER PARTY;

17 (b) EXPRESSLY WAIVES, IN A SEPARATE SIGNED RECORD, THE RIGHT
18 TO FINANCIAL DISCLOSURE BEYOND THE DISCLOSURE PROVIDED; OR

19 (c) HAS ADEQUATE KNOWLEDGE OR A REASONABLE BASIS FOR
20 HAVING ADEQUATE KNOWLEDGE OF THE INFORMATION DESCRIBED IN
21 PARAGRAPH (a) OF THIS SUBSECTION (4).

22 (5) A MARITAL AGREEMENT OR AMENDMENT THERETO OR
23 REVOCATION THEREOF THAT IS OTHERWISE ENFORCEABLE AFTER APPLYING
24 THE PROVISIONS OF SUBSECTIONS (1) TO (4) OF THIS SECTION IS
25 NEVERTHELESS UNENFORCEABLE INSOFAR, BUT ONLY INSOFAR, AS THE
26 PROVISIONS OF SUCH AGREEMENT, AMENDMENT, OR REVOCATION RELATE
27 TO THE DETERMINATION, MODIFICATION, OR ELIMINATION OF SPOUSAL

1 MAINTENANCE, AND SUCH PROVISIONS ARE UNCONSCIONABLE AT THE TIME
2 OF ENFORCEMENT OF SUCH PROVISIONS. THE ISSUE OF UNCONSCIONABILITY
3 SHALL BE DECIDED BY THE COURT AS A MATTER OF LAW.

4 (6) (a) A COURT MAY REFUSE TO ENFORCE A TERM OF A
5 PREMARITAL AGREEMENT OR MARITAL AGREEMENT IF, IN THE CONTEXT OF
6 THE AGREEMENT TAKEN AS A WHOLE, THE TERM WAS UNCONSCIONABLE
7 AT THE TIME OF SIGNING.

8 (b) THE COURT SHALL DECIDE A QUESTION OF UNCONSCIONABILITY
9 UNDER PARAGRAPH (a) OF THIS SUBSECTION (6) AS A MATTER OF LAW.

10 **14-2-310. Unenforceable terms.** (1) IN THIS SECTION,
11 "CUSTODIAL RESPONSIBILITY" MEANS PARENTAL RIGHTS AND
12 RESPONSIBILITIES, PARENTING TIME, ACCESS, VISITATION, OR OTHER
13 CUSTODIAL RIGHT OR DUTY WITH RESPECT TO A CHILD.

14 (2) A TERM IN A PREMARITAL AGREEMENT OR MARITAL AGREEMENT
15 IS NOT ENFORCEABLE TO THE EXTENT THAT IT:

16 (a) ADVERSELY AFFECTS A CHILD'S RIGHT TO SUPPORT;

17 (b) LIMITS OR RESTRICTS A REMEDY AVAILABLE TO A VICTIM OF
18 DOMESTIC VIOLENCE UNDER LAW OF THIS STATE OTHER THAN THIS PART 3;

19 (c) PURPORTS TO MODIFY THE GROUNDS FOR A COURT-DECREED
20 LEGAL SEPARATION OR MARITAL DISSOLUTION AVAILABLE UNDER LAW OF
21 THIS STATE OTHER THAN THIS PART 3; OR

22 (d) PENALIZES A PARTY FOR INITIATING A LEGAL PROCEEDING
23 LEADING TO A COURT-DECREED LEGAL SEPARATION OR MARITAL
24 DISSOLUTION.

25 (3) A TERM IN A PREMARITAL AGREEMENT OR MARITAL AGREEMENT
26 WHICH DEFINES THE RIGHTS OR DUTIES OF THE PARTIES REGARDING
27 CUSTODIAL RESPONSIBILITY IS NOT BINDING ON THE COURT.

1 **14-2-311. Limitation of action.** A STATUTE OF LIMITATIONS
2 APPLICABLE TO AN ACTION ASSERTING A CLAIM FOR RELIEF UNDER A
3 PREMARITAL AGREEMENT OR MARITAL AGREEMENT IS TOLLED DURING THE
4 MARRIAGE OF THE PARTIES TO THE AGREEMENT, BUT EQUITABLE DEFENSES
5 LIMITING THE TIME FOR ENFORCEMENT, INCLUDING LACHES AND ESTOPPEL,
6 ARE AVAILABLE TO EITHER PARTY.

7 **14-2-312. Uniformity of application and construction.** IN
8 APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION MUST BE
9 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
10 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

11 **14-2-313. Relation to electronic signatures in global and**
12 **national commerce act.** THIS PART 3 MODIFIES, LIMITS, OR SUPERSEDES
13 THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
14 COMMERCE ACT", 15 U.S.C. SECTION 7001 ET SEQ., BUT DOES NOT
15 MODIFY, LIMIT, OR SUPERSEDE SECTION 101(c) OF THAT ACT, 15 U.S.C.
16 SECTION 7001(c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE
17 NOTICES DESCRIBED IN SECTION 103(b) OF THAT ACT, 15 U.S.C. SECTION
18 7003(b).

19 **SECTION 2.** In Colorado Revised Statutes, 15-11-207, **amend** (2)
20 as follows:

21 **15-11-207. Waiver of right to elect and of other rights.** (2) A
22 ~~surviving spouse's waiver is not enforceable if such waiver would not be~~
23 ~~enforceable under section 14-2-307, C.R.S.~~ ANY AFFIRMATION,
24 MODIFICATION, OR WAIVER OF A MARITAL RIGHT OR OBLIGATION, AS
25 DEFINED IN SECTION 14-2-302, C.R.S., MADE ON OR AFTER JULY 1, 2014,
26 IS UNENFORCEABLE UNLESS THE AFFIRMATION, MODIFICATION, OR WAIVER
27 IS CONTAINED IN A PREMARITAL OR MARITAL AGREEMENT, AS DEFINED IN

1 SECTION 14-2-302, C.R.S., THAT IS ENFORCEABLE UNDER THE PROVISIONS
2 OF SECTION 14-2-309, C.R.S.

3 **SECTION 3. Inclusion of official comments.** There shall be
4 included in the publication of the "Uniform Premarital and Marital
5 Agreements Act", as nonstatutory matter, following each section of the
6 article, the full text of the official comments to that section contained in
7 the official volume containing the 2012 official text of the "Uniform
8 Premarital and Marital Agreements Act" issued by the national conference
9 of commissioners on uniform state laws, with any changes in the official
10 comments or Colorado comments to correspond to Colorado changes in
11 the uniform act. The revisor of statutes shall prepare the comments for
12 approval by the committee on legal services for publication.

13 **SECTION 4. Act subject to petition - effective date.** This act
14 takes effect July 1, 2014; except that, if a referendum petition is filed
15 pursuant to section 1 (3) of article V of the state constitution against this
16 act or an item, section, or part of this act within the ninety-day period after
17 final adjournment of the general assembly, then the act, item, section, or
18 part will not take effect unless approved by the people at the general
19 election to be held in November 2014 and, in such case, will take effect
20 on the date of the official declaration of the vote thereon by the governor.