

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

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.

HOUSE
Amended 2nd Reading
March 15, 2013

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, INCLUDING INCOME AND
21 EARNINGS.

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

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

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

1 (b) TO ATTACH TO OR LOGICALLY ASSOCIATE WITH THE RECORD AN
2 ELECTRONIC SYMBOL, SOUND, OR PROCESS.

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

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

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

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

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

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

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

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

1 (a) BY THE LAW OF THE JURISDICTION DESIGNATED IN THE
2 AGREEMENT IF THE JURISDICTION HAS A SIGNIFICANT RELATIONSHIP TO THE
3 AGREEMENT OR EITHER PARTY AT THE TIME THE AGREEMENT WAS SIGNED
4 AND THE DESIGNATED LAW IS NOT CONTRARY TO SECTION 14-2-309 OR TO
5 A FUNDAMENTAL PUBLIC POLICY OF THIS STATE; OR

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

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

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

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

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

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

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

27 (b) THE PARTY DID NOT HAVE ACCESS TO INDEPENDENT LEGAL

1 REPRESENTATION UNDER SUBSECTION (2) OF THIS SECTION;

2 (c) UNLESS THE PARTY HAD INDEPENDENT LEGAL REPRESENTATION
3 AT THE TIME THE AGREEMENT WAS SIGNED, THE AGREEMENT DID NOT
4 INCLUDE A NOTICE OF WAIVER OF RIGHTS UNDER SUBSECTION (3) OF THIS
5 SECTION OR AN EXPLANATION IN PLAIN LANGUAGE OF THE MARITAL
6 RIGHTS OR OBLIGATIONS BEING MODIFIED OR WAIVED BY THE AGREEMENT;
7 OR

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

11 (2) A PARTY HAS ACCESS TO INDEPENDENT LEGAL REPRESENTATION
12 IF:

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

15 (I) DECIDE WHETHER TO RETAIN A LAWYER TO PROVIDE
16 INDEPENDENT LEGAL REPRESENTATION; AND

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

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

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

1 IF YOU SIGN THIS AGREEMENT, YOU MAY BE:
2 GIVING UP YOUR RIGHT TO BE SUPPORTED BY THE
3 PERSON YOU ARE MARRYING OR TO WHOM YOU ARE
4 MARRIED.

5 GIVING UP YOUR RIGHT TO OWNERSHIP OR CONTROL
6 OF MONEY AND PROPERTY.

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

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

12 GIVING UP YOUR RIGHT TO HAVE YOUR LEGAL FEES
13 PAID.

14 (4) A PARTY HAS ADEQUATE FINANCIAL DISCLOSURE UNDER THIS
15 SECTION IF THE PARTY:

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

19 (b) **[reserved]**

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

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

1 TO THE DETERMINATION, MODIFICATION, LIMITATION, OR ELIMINATION OF
2 SPOUSAL MAINTENANCE OR THE WAIVER OR ALLOCATION OF ATTORNEY
3 FEES, AND SUCH PROVISIONS ARE UNCONSCIONABLE AT THE TIME OF
4 ENFORCEMENT OF SUCH PROVISIONS. THE ISSUE OF UNCONSCIONABILITY
5 SHALL BE DECIDED BY THE COURT AS A MATTER OF LAW.

6 (6) [reserved]

7 (7) [reserved]

8 (8) A PREMARITAL OR MARITAL AGREEMENT, OR AN AMENDMENT
9 OF EITHER, THAT IS NOT IN A RECORD AND SIGNED BY BOTH PARTIES IS
10 UNENFORCEABLE.

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

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

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

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

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

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

26 (e) VIOLATES PUBLIC POLICY.

27 (3) A TERM IN A PREMARITAL AGREEMENT OR MARITAL AGREEMENT

1 WHICH DEFINES THE RIGHTS OR DUTIES OF THE PARTIES REGARDING
2 CUSTODIAL RESPONSIBILITY IS NOT BINDING ON THE COURT.

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

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

13 **14-2-313. Relation to electronic signatures in global and**
14 **national commerce act.** THIS PART 3 MODIFIES, LIMITS, OR SUPERSEDES
15 THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
16 COMMERCE ACT", 15 U.S.C. SECTION 7001 ET SEQ., BUT DOES NOT
17 MODIFY, LIMIT, OR SUPERSEDE SECTION 101(c) OF THAT ACT, 15 U.S.C.
18 SECTION 7001(c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE
19 NOTICES DESCRIBED IN SECTION 103(b) OF THAT ACT, 15 U.S.C. SECTION
20 7003(b).

21 **SECTION 2.** In Colorado Revised Statutes, **repeal and reenact,**
22 **with amendments,** 15-11-207 as follows:

23 **15-11-207. Waiver of right to elect and of other rights.** ANY
24 **AFFIRMATION,** MODIFICATION, OR WAIVER OF A MARITAL RIGHT OR
25 OBLIGATION, AS DEFINED IN SECTION 14-2-302, C.R.S., MADE ON OR AFTER
26 JULY 1, 2014, IS UNENFORCEABLE UNLESS THE AFFIRMATION,
27 MODIFICATION, OR WAIVER IS CONTAINED IN A PREMARITAL OR MARITAL

1 AGREEMENT, AS DEFINED IN SECTION 14-2-302, C.R.S., THAT IS
2 ENFORCEABLE UNDER PART 3 OF ARTICLE 2 OF TITLE 14, C.R.S.

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