

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

REVISED

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

LLS NO. 13-0495.01 Brita Darling x2241

HOUSE BILL 13-1204

HOUSE SPONSORSHIP

Gardner,

SENATE SPONSORSHIP

Ulibarri,

House Committees
Judiciary

Senate Committees
Judiciary

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.*

SENATE
Amended 2nd Reading
April 5, 2013

HOUSE
3rd Reading Unamended
March 19, 2013

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 OR BETWEEN PARTNERS IN A CIVIL UNION
4 BECAUSE OF THEIR STATUS AS PARTIES TO A CIVIL UNION:

- 5 (a) SPOUSAL MAINTENANCE;
- 6 (b) A RIGHT TO PROPERTY, INCLUDING CHARACTERIZATION,
7 MANAGEMENT, AND OWNERSHIP;
- 8 (c) RESPONSIBILITY FOR A LIABILITY;
- 9 (d) A RIGHT TO PROPERTY AND RESPONSIBILITY FOR LIABILITIES AT
10 LEGAL SEPARATION, MARITAL DISSOLUTION, OR DEATH OF A SPOUSE; OR
11 (e) AN AWARD AND ALLOCATION OF ATTORNEY'S FEES AND COSTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 MARITAL AGREEMENT ARE DETERMINED:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 AGREEMENT:

2 IF YOU SIGN THIS AGREEMENT, YOU MAY BE:

3 GIVING UP YOUR RIGHT TO BE SUPPORTED BY THE
4 PERSON YOU ARE MARRYING OR TO WHOM YOU ARE
5 MARRIED.

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

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

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

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

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

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

20 (b) **[reserved]**

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

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

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

7 (6) [reserved]

8 (7) [reserved]

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

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

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

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

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

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

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

27 (e) VIOLATES PUBLIC POLICY.

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

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

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

14 **14-2-313. Relation to electronic signatures in global and**
15 **national commerce act.** THIS PART 3 MODIFIES, LIMITS, OR SUPERSEDES
16 THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
17 COMMERCE ACT", 15 U.S.C. SECTION 7001 ET SEQ., BUT DOES NOT
18 MODIFY, LIMIT, OR SUPERSEDE SECTION 101(c) OF THAT ACT, 15 U.S.C.
19 SECTION 7001(c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE
20 NOTICES DESCRIBED IN SECTION 103(b) OF THAT ACT, 15 U.S.C. SECTION
21 7003(b).

22 **SECTION 2. In Colorado Revised Statutes, add with relocated**
23 **provisions 14-2-303.5 as follows:**

24 **14-2-303.5. Applicability of part and case law to marital**
25 **agreements relating to civil unions. [Formerly 14-2-307.5 as added by**
26 **Senate Bill 13-011]** Prospective parties to a civil union and present
27 **parties to a civil union may contract to make an agreement relating to the**

1 civil union that includes any of the rights and obligations that may be
2 included in a marital agreement pursuant to section 14-2-304, but only if
3 the agreement is signed by both parties prior to the filing of an action for
4 legal separation of the civil union, dissolution of the civil union, or for
5 declaration of invalidity of the civil union ENTER INTO A PREMARITAL
6 AGREEMENT OR MARITAL AGREEMENT PURSUANT TO THE PROVISIONS OF
7 THIS PART 3, AND the provisions of this article PART 3 and any case law
8 construing this article PART 3 apply to any agreement made by prospective
9 parties to a civil union or between present parties to a civil union SUCH
10 AGREEMENTS.

11 **SECTION 3. Repeal of relocated provisions in this act. In**
12 **Colorado Revised Statutes, repeal as added by Senate Bill 13-011,**
13 **14-2-307.5, as follows:**

14 **14-2-307.5. Applicability of article and case law to agreements**
15 **relating to civil unions. Prospective parties to a civil union and present**
16 **parties to a civil union may contract to make an agreement relating to the**
17 **civil union that includes any of the rights and obligations that may be**
18 **included in a marital agreement pursuant to section 14-2-304, but only if**
19 **the agreement is signed by both parties prior to the filing of an action for**
20 **legal separation of the civil union, dissolution of the civil union, or for**
21 **declaration of invalidity of the civil union. The provisions of this article**
22 **and any case law construing this article apply to any agreement made by**
23 **prospective parties to a civil union or between present parties to a civil**
24 **union.**

25 **SECTION 4. In Colorado Revised Statutes, repeal and reenact,**
26 **with amendments, 15-11-207 as follows:**

27 **15-11-207. Waiver of right to elect and of other rights. ANY**

1 AFFIRMATION, MODIFICATION, OR WAIVER OF A MARITAL RIGHT OR
2 OBLIGATION, AS DEFINED IN SECTION 14-2-302, C.R.S., MADE ON OR AFTER
3 JULY 1, 2014, IS UNENFORCEABLE UNLESS THE AFFIRMATION,
4 MODIFICATION, OR WAIVER IS CONTAINED IN A PREMARITAL OR MARITAL
5 AGREEMENT, AS DEFINED IN SECTION 14-2-302, C.R.S., THAT IS
6 ENFORCEABLE UNDER PART 3 OF ARTICLE 2 OF TITLE 14, C.R.S.

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