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COLORADO GENERAL ASSEMBLY

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MEMORANDUM (2)(I)(ii)¹

TO: Statutory Revision Committee

FROM: Jane M. Ritter, Office of Legislative Legal Services

DATE: August 11, 2017

SUBJECT: Modernized "rights of married women" statutory sections

Summary and Analysis

Part 2 of article 2 of title 14, C.R.S., is titled "Rights of Married Women".² The language of the ten sections in this part 2 is outdated and, it can be argued, unnecessary because it is duplicative of modern legal doctrines. For instance, section 14-2-202, C.R.S., allows that a married woman "may sue and be sued"; section 14-2-203, C.R.S., allows that a married woman may own and operate a business or trade and that such business may be her sole property and used and invested in her own name; and section 14-2-208, C.R.S., allows that a wife "may contract".

Each of the sections currently grant certain rights to "married women":

- 14-2-201. Married woman's own property.
- 14-2-202. Married woman sue and be sued.
- 14-2-203. Rights in her separate business.
- 14-2-204. Not to affect marriage settlements.
- 14-2-205. Wife's land subject to judgment.
- 14-2-206. Husband cannot convey wife's lands.
- 14-2-207. Wife may convey lands as if sole.

¹ This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

² § 14-2-201 et seq., C.R.S.

- 14-2-208. Wife may contract.
- 14-2-209. Loss of consortium.
- 14-2-210. Domicile – sex or marriage not a ban.

Two issues present with the existing language of this part 2. First, women and men, regardless of marital status, already have all the legal rights enumerated in each of the statutory sections in this part 2. Not only is there ample legal precedent for most of the rights enumerated, but there is significant case law supporting the precedent and doctrines. Second, by specifically referencing the "rights of married women", the various sections leave open the question of what rights, if any, are to be provided to spouses of same sex marriages.

Statutory Charge³

Removing or modernizing outdated references to the "rights of married women" meets the Committee's statutory charge to remove antiquated language and to bring the law of this state into harmony with modern conditions.

Recommendation/Proposed Bill

Should the Statutory Revision Committee accept staff recommendation to modernize the statutory references to the "rights of married women," two distinct draft bills are attached that address the issue. Bill (2)(I)(ii)(a)⁴ simply repeals the entire part 2 of article 2 of title 14, C.R.S. Bill (2)(I)(ii)(b)⁵ retains the sections in statute but modernizes the language so that references are to a "married person", "spouse", or "husband or wife" and modernizes the pronouns into gender neutral format. Additionally, staff would like to consult with other experts in family law and other fields regarding the effect of these changes.

³ The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions". § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

⁴ See **Addendum A**.

⁵ See **Addendum B**.

Addendum A

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

BILL (2)(I)(ii)(a)

Temporary storage location: S:\LLS\2018A\Bills\Pre-Draft\18-SRC rights of married women repeal.wpd

LLS NO. 18-#### Jane Ritter x4342

COMMITTEE BILL

Statutory Revision Committee

A BILL FOR AN ACT

101 CONCERNING THE REPEAL OF STATUTORY SECTIONS CONCERNING
102 "RIGHTS OF MARRIED WOMEN".

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://leg.colorado.gov/>.)

Statutory Revision Committee. The bill repeals outdated statutory sections concerning the "rights of married women". The sections are unnecessary and duplicative of accepted modern legal doctrines.

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.

1 *Be it enacted by the General Assembly of the State of Colorado:*
2 **SECTION 1.** In Colorado Revised Statutes, **repeal** part 2 of
3 article 2 of title 14 as follows:
4 **14-2-201. Married woman's own property.** ~~The property, real~~
5 ~~and personal, which any woman in this state owns at the time of her~~
6 ~~marriage, and the rents, issues, profits, and proceeds thereof, and any real,~~
7 ~~personal, or mixed property which comes to her by descent, devise, or~~
8 ~~bequest, or the gift of any person except her husband, including presents~~
9 ~~or gifts from her husband, such as jewelry, silver, tableware, watches,~~
10 ~~money, and wearing apparel, shall remain her sole and separate property,~~
11 ~~notwithstanding her marriage, and shall not be subject to the disposal of~~
12 ~~her husband or liable for his debts.~~
13 **14-2-202. Married woman may sue and be sued.** ~~Any woman,~~
14 ~~while married, may sue and be sued, in all matters having relation to her~~
15 ~~property, person, or reputation, in the same manner as if she were sole.~~
16 **14-2-203. Rights in her separate business.** ~~Any married woman~~
17 ~~may carry on any trade or business and perform any labor or services on~~
18 ~~her sole and separate account, and the earnings of any married woman~~
19 ~~from her trade, business, labor, or services shall be her sole and separate~~
20 ~~property and may be used and invested by her in her own name. Her~~
21 ~~property acquired by trade, business, and services and the proceeds~~
22 ~~thereof may be taken on any execution against her.~~
23 **14-2-204. Not to affect marriage settlements.** ~~Nothing in~~
24 ~~sections 14-2-201 to 14-2-206 shall invalidate any marriage settlement or~~
25 ~~contract.~~
26 **14-2-205. Wife's land subject to judgment.** ~~When any woman~~

1 against whom liability exists marries and has or acquires lands, judgment
2 on such liability may be rendered against her and her husband jointly, to
3 be levied on such lands only.

4 **14-2-206. Husband cannot convey wife's lands.** ~~The separate~~
5 ~~deed of the husband shall convey no interest in the wife's lands.~~

6 **14-2-207. Wife may convey lands as if sole.** Any woman, while
7 married, may bargain, sell, and convey her real and personal property and
8 enter into any contract in reference to the same as if she were sole.

9 **14-2-208. Wife may contract.** Any woman, while married, may
10 contract debts in her own name and upon her own credit, and may execute
11 promissory notes, bonds, bills of exchange, and other instruments in
12 writing, and may enter into any contract the same as if she were sole; and,
13 in all cases where any suit or other legal proceedings are instituted against
14 her and any judgment, decree, or order therein is rendered or pronounced
15 against her, the same may be enforced by execution or other process
16 against her the same as if she were sole.

17 **14-2-209. Loss of consortium.** In all actions for a tort by a
18 ~~married woman, she shall have the same right to recover for loss of~~
19 ~~consortium of her husband as is afforded husbands in like actions.~~

20 **14-2-210. Domicile - sex or marriage not a ban.** The right of any
21 person to become a resident domiciled in the state of Colorado shall not
22 be denied or abridged because of sex or marital status, and the common
23 law rule that the domicile of a married woman is that of her husband shall
24 no longer be in effect in this state.

25 **SECTION 2. Act subject to petition - effective date.** This act
26 takes effect at 12:01 a.m. on the day following the expiration of the
27 ninety-day period after final adjournment of the general assembly (August

1 ■, 2018, if adjournment sine die is on May ■, 2018); except that, if a
2 referendum petition is filed pursuant to section 1 (3) of article V of the
3 state constitution against this act or an item, section, or part of this act
4 within such period, then the act, item, section, or part will not take effect
5 unless approved by the people at the general election to be held in
6 November 2018 and, in such case, will take effect on the date of the
7 official declaration of the vote thereon by the governor.

ADDENDUM B

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

BILL (2)(I)(ii)(b)

Temporary storage location: S:\LLS\2018A\Bills\Pre-Draft\18-SRC rights of married women modify language.wpd

LLS NO. 18-#### Jane Ritter x4342

COMMITTEE BILL

Statutory Revision Committee

A BILL FOR AN ACT

101 CONCERNING MODERNIZATION OF LANGUAGE IN STATUTORY SECTIONS
102 CONCERNING "RIGHTS OF MARRIED WOMEN".

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://leg.colorado.gov/>.)

Statutory Revision Committee. The bill modernizes the language in statutory sections concerning the "rights of married women" to include single and married men and women.

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.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** part 2 of

3 article 2 of title 14 as follows:

4 **14-2-201. Property ownership.** The property, real and personal,

5 ~~which any woman~~ THAT A PERSON in this state owns at the time of HIS OR

6 her marriage, and the rents, issues, profits, and proceeds thereof, and any

7 real, personal, or mixed property which comes to HIM OR her by descent,

8 devise, or bequest, or the gift of any person except HIS OR her husband OR

9 WIFE, including presents or gifts from HIS OR her husband OR WIFE, such

10 as jewelry, silver, tableware, watches, money, and wearing apparel, ~~shall~~

11 **remain** REMAINS HIS OR her sole and separate property, notwithstanding

12 HIS OR her marriage, and ~~shall not be~~ IS NOT subject to the disposal of HIS

13 OR her husband OR WIFE or liable for his OR HER debts.

14 **14-2-202. Married person may sue and be sued.** ~~Any woman~~ A

15 PERSON, while married, may sue and be sued, in all matters having

16 relation to HIS OR her property, person, or reputation, in the same manner

17 as if HE OR she were ~~sole~~ UNMARRIED.

18 **14-2-203. Rights in separate business.** Any A married woman

19 PERSON may carry on any trade or business and perform any labor or

20 services on HIS OR her sole and separate account, and the earnings of any

21 A married ~~woman~~ PERSON from HIS OR her trade, business, labor, or

22 services ~~shall be~~ IS HIS OR her sole and separate property and may be used

23 and invested by HIM OR her in HIS OR her own name. ~~Her~~ Property

24 acquired by trade, business, and services BY THE MARRIED PERSON and the

25 proceeds ~~thereof~~ may be taken on any execution against ~~her~~ THE PERSON.

26 **14-2-204. Not to affect marriage settlements.** Nothing in

1 sections 14-2-201 to 14-2-206 shall ~~invalidate~~ INVALIDATES any marriage
2 settlement or contract.

3 **14-2-205. Married person's land subject to judgment.** When
4 ~~any woman~~ A PERSON against whom liability exists marries and has or
5 acquires lands, judgment on such liability may be rendered against HIM OR
6 her and HIS OR her husband OR WIFE jointly, to be levied on such lands
7 only.

8 **14-2-206. Spouse cannot convey other spouse's lands.** The
9 separate deed of ~~the husband shall convey~~ A SPOUSE CONVEYS no interest
10 in the ~~wife's~~ OTHER SPOUSE'S lands.

11 **14-2-207. Spouse may convey lands as if unmarried.** Any
12 woman A PERSON, while married, may bargain, sell, and convey HIS OR
13 her real and personal property and enter into any contract in reference to
14 the same as if HE OR she were ~~sole~~ UNMARRIED.

15 **14-2-208. Married person may contract.** ~~Any woman~~ A PERSON,
16 while married, may contract debts in HIS OR her own name and upon HIS
17 OR her own credit, and may execute promissory notes, bonds, bills of
18 exchange, and other instruments in writing, and may enter into any
19 contract the same as if HE OR she were ~~sole~~; and UNMARRIED. In all cases
20 where any suit or other legal proceedings are instituted against ~~her~~ THE
21 MARRIED PERSON and any judgment, decree, or order therein is rendered
22 or pronounced against ~~her~~ THE MARRIED PERSON, the same may be
23 enforced by execution or other process against ~~her the same as if she were~~
24 ~~sole~~ THE MARRIED PERSON AS IF HE OR SHE WERE UNMARRIED.

25 **14-2-209. Loss of consortium.** In all actions for a tort by a
26 married ~~woman, she shall have the same right~~ PERSON, BOTH SPOUSES
27 HAVE AN EQUAL RIGHT to recover for loss of consortium of ~~her husband~~

1 ~~as is afforded husbands in like actions~~ HIS OR HER SPOUSE.

2 **14-2-210. Domicile.** The right of ~~any~~ A person to become a
3 resident domiciled in the state of Colorado ~~shall~~ MUST not be denied or
4 abridged because of sex or marital status, and the common law rule that
5 the domicile of a married ~~woman~~ PERSON is that of ~~her husband~~ ~~shall~~ HIS
6 OR HER SPOUSE IS no longer ~~be~~ in effect in this state.

7 **SECTION 2. Act subject to petition - effective date.** This act
8 takes effect at 12:01 a.m. on the day following the expiration of the
9 ninety-day period after final adjournment of the general assembly (August
10 , 2018, if adjournment sine die is on May , 2018); except that, if a
11 referendum petition is filed pursuant to section 1 (3) of article V of the
12 state constitution against this act or an item, section, or part of this act
13 within such period, then the act, item, section, or part will not take effect
14 unless approved by the people at the general election to be held in
15 November 2018 and, in such case, will take effect on the date of the
16 official declaration of the vote thereon by the governor.