

CHAPTER 239

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 13-1204

BY REPRESENTATIVE(S) Gardner, Fields, Gerou, Kagan, Labuda, Levy, Pabon, Young, Schafer;
also SENATOR(S) Ulibarri, Carroll, Giron, Guzman, Heath, Hodge, Jones, Nicholson, Steadman, Tochtrop, Morse.

AN ACT

CONCERNING THE "UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT".

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

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

PART 3
UNIFORM PREMARITAL AND MARITAL AGREEMENTS ACT

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

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

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

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

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

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

(a) SPOUSAL MAINTENANCE;

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

(c) RESPONSIBILITY FOR A LIABILITY;

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

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

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

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

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

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

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

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

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

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

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

(3) THIS PART 3 DOES NOT APPLY TO:

(a) AN AGREEMENT BETWEEN SPOUSES WHICH AFFIRMS, MODIFIES, OR WAIVES A

MARITAL RIGHT OR OBLIGATION AND REQUIRES COURT APPROVAL TO BECOME EFFECTIVE; OR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IF YOU SIGN THIS AGREEMENT, YOU MAY BE:

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

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

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

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

GIVING UP YOUR RIGHT TO HAVE YOUR LEGAL FEES PAID.

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

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

(b) **[reserved]**

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

(5) A MARITAL AGREEMENT OR AMENDMENT THERETO OR REVOCATION THEREOF THAT IS OTHERWISE ENFORCEABLE AFTER APPLYING THE PROVISIONS OF SUBSECTIONS (1) TO (4) OF THIS SECTION IS NEVERTHELESS UNENFORCEABLE INsofar, BUT ONLY INsofar, AS THE PROVISIONS OF SUCH AGREEMENT, AMENDMENT, OR REVOCATION RELATE TO THE DETERMINATION, MODIFICATION, LIMITATION, OR ELIMINATION OF SPOUSAL MAINTENANCE OR THE WAIVER OR ALLOCATION OF ATTORNEY FEES, AND SUCH PROVISIONS ARE UNCONSCIONABLE AT THE TIME OF ENFORCEMENT OF SUCH PROVISIONS. THE ISSUE OF UNCONSCIONABILITY SHALL BE DECIDED BY THE COURT AS A MATTER OF LAW.

(6) [reserved]

(7) [reserved]

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

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

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

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

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

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

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

(e) VIOLATES PUBLIC POLICY.

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

14-2-311. Limitation of action. A STATUTE OF LIMITATIONS APPLICABLE TO AN ACTION ASSERTING A CLAIM FOR RELIEF UNDER A PREMARITAL AGREEMENT OR MARITAL AGREEMENT IS TOLLED DURING THE MARRIAGE OF THE PARTIES TO THE AGREEMENT, BUT EQUITABLE DEFENSES LIMITING THE TIME FOR ENFORCEMENT,

INCLUDING LACHES AND ESTOPPEL, ARE AVAILABLE TO EITHER PARTY.

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

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

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

14-2-303.5. Applicability of part and case law to agreements relating to civil unions. [Formerly 14-2-307.5 as added by Senate Bill 13-011] Prospective parties to a civil union and present parties to a civil union may contract to make an agreement relating to the civil union that includes any of the rights and obligations that may be included in a marital agreement pursuant to section 14-2-304, but only if the agreement is signed by both parties prior to the filing of an action for legal separation of the civil union, dissolution of the civil union, or for declaration of invalidity of the civil union. THIS PART 3. The provisions of this article PART 3 and any case law construing this article PART 3 apply to any agreement made by prospective parties to a civil union or between present parties to a civil union.

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

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

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

15-11-207. Waiver of right to elect and of other rights. ANY AFFIRMATION, MODIFICATION, OR WAIVER OF A MARITAL RIGHT OR OBLIGATION, AS DEFINED IN SECTION 14-2-302, C.R.S., MADE ON OR AFTER JULY 1, 2014, IS UNENFORCEABLE UNLESS THE AFFIRMATION, MODIFICATION, OR WAIVER IS CONTAINED IN A PREMARITAL OR MARITAL AGREEMENT, AS DEFINED IN SECTION 14-2-302, C.R.S., THAT IS ENFORCEABLE UNDER PART 3 OF ARTICLE 2 OF TITLE 14, C.R.S.

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

Approved: May 17, 2013