

**Sixty-third Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 8, 2013**

HOUSE BILL NO. 1128
(Judiciary Committee)
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 14-03.2 of the North Dakota Century Code, relating to the Uniform Premarital and Marital Agreements Act and the abrogation of common law regarding premarital and marital agreements; to repeal chapter 14-03.1 and section 30.1-05-07 of the North Dakota Century Code, relating to the Uniform Premarital Agreement Act and the waiver of right to elect of a surviving spouse; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 14-03.2 of the North Dakota Century Code is created and enacted as follows:

14-03.2-01. Definitions.

In this chapter:

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 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.
4. "Marital right or obligation" means any of the following rights or obligations arising between spouses because of their marital status:
 - a. Spousal support;
 - 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 separation, marital dissolution, or death of a spouse; or
 - e. 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 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.
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.

14-03.2-02. Scope.

1. This chapter applies to a premarital agreement or marital agreement signed after July 31, 2013.
2. This chapter does not affect any right, obligation, or liability arising under a premarital agreement or marital agreement signed before August 1, 2013.
3. This chapter 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 separation which resolves their marital rights or obligations and is signed when a proceeding for marital dissolution or court-decreed separation is commenced.
4. This chapter does not affect adversely the rights of a bona fide purchaser for value to the extent that this chapter applies to a waiver of a marital right or obligation in a transfer or conveyance of property by a spouse to a third party.

14-03.2-03. Governing law.

The validity, enforceability, interpretation, and construction of a premarital agreement or marital agreement are determined:

1. By the law of the jurisdiction designated in the agreement if the jurisdiction has a significant relationship to the agreement or either party and the designated law is not contrary to a fundamental public policy of this state; or
2. Absent an effective designation described in subsection 1, by the law of this state, including the choice-of-law rules of this state.

14-03.2-04. Principles of law and equity.

Principles of law and equity may not:

1. Supplement an agreement executed in accordance with this chapter; or
2. Be used to alter a material term in an agreement executed in accordance with this chapter.

14-03.2-05. Formation requirements.

A premarital agreement or marital agreement must be in a record and signed by both parties. The agreement is enforceable without consideration. A marital agreement created pursuant to this chapter must be signed within the first one hundred twenty days of the marriage.

14-03.2-06. When agreement effective.

A premarital agreement is effective on marriage. A marital agreement is effective on signing by both parties.

14-03.2-07. 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.

14-03.2-08. 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;
 - 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 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.
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:
 - (1) Decide whether to retain a lawyer to provide independent legal representation; and
 - (2) 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;
 - b. Expressly waives, in a separate signed record, the right to financial disclosure beyond the disclosure provided; or
 - c. Has adequate knowledge or a reasonable basis for having adequate knowledge of the information described in subdivision a.
5. If a premarital agreement or marital agreement modifies or eliminates spousal support and the modification or elimination causes a party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, on request of that party, may require the other party to provide support to the extent necessary to avoid that eligibility.
6. A court may refuse to enforce a term of a premarital agreement or marital agreement if, in the context of the agreement taken as a whole:
- a. The term was unconscionable at the time of signing; or
 - b. Enforcement of the term would result in substantial hardship for a party because of a material change in circumstances arising after the agreement was signed.
7. The court shall decide a question of unconscionability or substantial hardship under subsection 6 as a matter of law.

14-03.2-09. Unenforceable terms.

1. In this section, "parental rights and responsibilities" means all the rights and responsibilities a parent has concerning the parent's 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 chapter;
 - c. Purports to modify the grounds for a court-decreed separation or marital dissolution available under law of this state other than this chapter; or
 - d. Penalizes a party for initiating a legal proceeding leading to a court-decreed separation or marital dissolution.
3. A term in a premarital agreement or marital agreement which defines the rights or duties of the parties regarding parental rights and responsibilities is not binding on the court.

14-03.2-10. 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.

14-03.2-11. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.] but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)] or authorize electronic delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

SECTION 2. REPEAL. Chapter 14-03.1 and section 30.1-05-07 of the North Dakota Century Code are repealed.

SECTION 3. MARRIAGE AND MARITAL AGREEMENTS - LEGISLATIVE MANAGEMENT STUDY. During the 2013-14 interim, the legislative management shall consider studying marriage, including the positive influence of marriage on society, children, and government spending, and the use of and the need for marital agreements in the state. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-fourth legislative assembly.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-third Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1128.

House Vote: Yeas 87 Nays 2 Absent 5

Senate Vote: Yeas 30 Nays 15 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2013.

Approved at _____ M. on _____, 2013.

Governor

Filed in this office this _____ day of _____, 2013,

at _____ o'clock _____ M.

Secretary of State