

HOUSE BILL NO. 1128

Introduced by

Judiciary Committee

(At the request of the Commission on Uniform State Laws)

1 A BILL for an Act to create and enact chapter 14-03.2 of the North Dakota Century Code,
2 relating to the Uniform Premarital and Marital Agreements Act and the abrogation of common
3 law regarding premarital and marital agreements; and to repeal chapter 14-03.1 and section
4 30.1-05-07 of the North Dakota Century Code, relating to the Uniform Premarital Agreement Act
5 and the waiver of right to elect of a surviving spouse.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

9 **14-03.2-01. Definitions.**

10 In this chapter:

- 11 1. "Amendment" means a modification or revocation of a premarital agreement or marital
12 agreement.
- 13 2. "Marital agreement" means an agreement between spouses who intend to remain
14 married which affirms, modifies, or waives a marital right or obligation during the
15 marriage or at separation, marital dissolution, death of one of the spouses, or the
16 occurrence or nonoccurrence of any other event. The term includes an amendment,
17 signed after the spouses marry, of a premarital agreement or marital agreement.
- 18 3. "Marital dissolution" means the ending of a marriage by court decree. The term
19 includes a divorce, dissolution, and annulment.
- 20 4. "Marital right or obligation" means any of the following rights or obligations arising
21 between spouses because of their marital status:
 - 22 a. Spousal support;
 - 23 b. A right to property, including characterization, management, and ownership;
 - 24 c. Responsibility for a liability;

- 1 d. A right to property and responsibility for liabilities at separation, marital
2 dissolution, or death of a spouse; or
3 e. Award and allocation of attorney's fees and costs.
4 5. "Premarital agreement" means an agreement between individuals who intend to marry
5 which affirms, modifies, or waives a marital right or obligation during the marriage or at
6 separation, marital dissolution, death of one of the spouses, or the occurrence or
7 nonoccurrence of any other event. The term includes an amendment, signed before
8 the individuals marry, of a premarital agreement.
9 6. "Property" means anything that may be the subject of ownership, whether real or
10 personal, tangible or intangible, legal or equitable, or any interest therein.
11 7. "Record" means information that is inscribed on a tangible medium or that is stored in
12 an electronic or other medium and is retrievable in perceivable form.
13 8. "Sign" means with present intent to authenticate or adopt a record:
14 a. To execute or adopt a tangible symbol; or
15 b. To attach to or logically associate with the record an electronic symbol, sound, or
16 process.
17 9. "State" means a state of the United States, the District of Columbia, Puerto Rico, the
18 United States Virgin Islands, or any territory or insular possession subject to the
19 jurisdiction of the United States.

20 **14-03.2-02. Scope.**

- 21 1. This chapter applies to a premarital agreement or marital agreement signed after
22 July 31, 2013.
23 2. This chapter does not affect any right, obligation, or liability arising under a premarital
24 agreement or marital agreement signed before August 1, 2013.
25 3. This chapter does not apply to:
26 a. An agreement between spouses which affirms, modifies, or waives a marital right
27 or obligation and requires court approval to become effective; or
28 b. An agreement between spouses who intend to obtain a marital dissolution or
29 court-decreed separation which resolves their marital rights or obligations and is
30 signed when a proceeding for marital dissolution or court-decreed separation is
31 ~~anticipated or pending~~commenced.

1 4. This chapter does not affect adversely the rights of a bona fide purchaser for value to
2 the extent that this chapter applies to a waiver of a marital right or obligation in a
3 transfer or conveyance of property by a spouse to a third party.

4 **14-03.2-03. Governing law.**

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

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

12 **14-03.2-04. Principles of law and equity.**

13 ~~Unless displaced by a provision of this chapter, principles of law and equity supplement this~~
14 ~~chapter.~~ Principles of law and equity may not:

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

18 **14-03.2-05. Formation requirements.**

19 A premarital agreement or marital agreement must be in a record and signed by both
20 parties. The agreement is enforceable without consideration.

21 **14-03.2-06. When agreement effective.**

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

24 **14-03.2-07. Void marriage.**

25 If a marriage is determined to be void, a premarital agreement or marital agreement is
26 enforceable to the extent necessary to avoid an inequitable result.

27 **14-03.2-08. Enforcement.**

- 28 1. A premarital agreement or marital agreement is unenforceable if a party against whom
29 enforcement is sought proves:
30 a. The party's consent to the agreement was involuntary or the result of duress;

- 1 b. The party did not have access to independent legal representation under
2 subsection 2;
- 3 c. Unless the party had independent legal representation at the time the agreement
4 was signed, the agreement did not include a notice of waiver of rights under
5 subsection 3 or an explanation in plain language of the marital rights or
6 obligations being modified or waived by the agreement; or
- 7 d. Before signing the agreement, the party did not receive adequate financial
8 disclosure under subsection 4.
- 9 2. A party has access to independent legal representation if:
- 10 a. Before signing a premarital or marital agreement, the party has a reasonable time
11 to:
- 12 (1) Decide whether to retain a lawyer to provide independent legal
13 representation; and
- 14 (2) Locate a lawyer to provide independent legal representation, obtain the
15 lawyer's advice, and consider the advice provided; and
- 16 b. The other party is represented by a lawyer and the party has the financial ability
17 to retain a lawyer or the other party agrees to pay the reasonable fees and
18 expenses of independent legal representation.
- 19 3. A notice of waiver of rights under this section requires language, conspicuously
20 displayed, substantially similar to the following, as applicable to the premarital
21 agreement or marital agreement:
- 22 "If you sign this agreement, you may be:
- 23 Giving up your right to be supported by the person you are marrying or to whom
24 you are married.
- 25 Giving up your right to ownership or control of money and property.
- 26 Agreeing to pay bills and debts of the person you are marrying or to whom you are
27 married.
- 28 Giving up your right to money and property if your marriage ends or the person to
29 whom you are married dies.
- 30 Giving up your right to have your legal fees paid."
- 31 4. A party has adequate financial disclosure under this section if the party:

- 1 a. Receives a reasonably accurate description and good-faith estimate of value of
- 2 the property, liabilities, and income of the other party;
- 3 b. Expressly waives, in a separate signed record, the right to financial disclosure
- 4 beyond the disclosure provided; or
- 5 c. Has adequate knowledge or a reasonable basis for having adequate knowledge
- 6 of the information described in subdivision a.
- 7 5. If a premarital agreement or marital agreement modifies or eliminates spousal support
- 8 and the modification or elimination causes a party to the agreement to be eligible for
- 9 support under a program of public assistance at the time of separation or marital
- 10 dissolution, a court, on request of that party, may require the other party to provide
- 11 support to the extent necessary to avoid that eligibility.
- 12 6. A court may refuse to enforce a term of a premarital agreement or marital agreement
- 13 if, in the context of the agreement taken as a whole:
- 14 a. The term was unconscionable at the time of signing; or
- 15 b. Enforcement of the term would result in substantial hardship for a party because
- 16 of a material change in circumstances arising after the agreement was signed.
- 17 7. The court shall decide a question of unconscionability or substantial hardship under
- 18 subsection 6 as a matter of law.

19 **14-03.2-09. Unenforceable terms.**

- 20 1. In this section, "parental rights and responsibilities" means all the rights and
- 21 responsibilities a parent has concerning the parent's child.
- 22 2. A term in a premarital agreement or marital agreement is not enforceable to the extent
- 23 that it:
- 24 a. Adversely affects a child's right to support;
- 25 b. Limits or restricts a remedy available to a victim of domestic violence under law
- 26 of this state other than this chapter;
- 27 c. Purports to modify the grounds for a court-decreed separation or marital
- 28 dissolution available under law of this state other than this chapter; or
- 29 d. Penalizes a party for initiating a legal proceeding leading to a court-decreed
- 30 separation or marital dissolution.

1 3. A term in a premarital agreement or marital agreement which defines the rights or
2 duties of the parties regarding parental rights and responsibilities is not binding on the
3 court.

4 **14-03.2-10. Limitation of action.**

5 A statute of limitations applicable to an action asserting a claim for relief under a premarital
6 agreement or marital agreement is tolled during the marriage of the parties to the agreement,
7 but equitable defenses limiting the time for enforcement, including laches and estoppel, are
8 available to either party.

9 **14-03.2-11. Relation to Electronic Signatures in Global and National Commerce Act.**

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

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