

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; and to provide for a legislative
6 management study.

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

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

10 **14-03.2-01. Definitions.**

11 In this chapter:

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

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

21 **14-03.2-02. Scope.**

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

1 signed when a proceeding for marital dissolution or court-decreed separation is
2 ~~anticipated or pending~~commenced.

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

6 **14-03.2-03. Governing law.**

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

9 1. By the law of the jurisdiction designated in the agreement if the jurisdiction has a
10 significant relationship to the agreement or either party and the designated law is not
11 contrary to a fundamental public policy of this state; or

12 2. Absent an effective designation described in subsection 1, by the law of this state,
13 including the choice-of-law rules of this state.

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

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

17 1. Supplement an agreement executed in accordance with this chapter; or

18 2. Be used to alter a material term in an agreement executed in accordance with this
19 chapter.

20 **14-03.2-05. Formation requirements.**

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

25 **14-03.2-06. When agreement effective.**

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

28 **14-03.2-07. Void marriage.**

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

1 **14-03.2-08. Enforcement.**

2 1. A premarital agreement or marital agreement is unenforceable if a party against whom
3 enforcement is sought proves:

4 a. The party's consent to the agreement was involuntary or the result of duress;

5 b. The party did not have access to independent legal representation under
6 subsection 2;

7 c. Unless the party had independent legal representation at the time the agreement
8 was signed, the agreement did not include a notice of waiver of rights under
9 subsection 3 or an explanation in plain language of the marital rights or
10 obligations being modified or waived by the agreement; or

11 d. Before signing the agreement, the party did not receive adequate financial
12 disclosure under subsection 4.

13 2. A party has access to independent legal representation if:

14 a. Before signing a premarital or marital agreement, the party has a reasonable time
15 to:

16 (1) Decide whether to retain a lawyer to provide independent legal
17 representation; and

18 (2) Locate a lawyer to provide independent legal representation, obtain the
19 lawyer's advice, and consider the advice provided; and

20 b. The other party is represented by a lawyer and the party has the financial ability
21 to retain a lawyer or the other party agrees to pay the reasonable fees and
22 expenses of independent legal representation.

23 3. A notice of waiver of rights under this section requires language, conspicuously
24 displayed, substantially similar to the following, as applicable to the premarital
25 agreement or marital agreement:

26 "If you sign this agreement, you may be:

27 Giving up your right to be supported by the person you are marrying or to whom
28 you are married.

29 Giving up your right to ownership or control of money and property.

30 Agreeing to pay bills and debts of the person you are marrying or to whom you are
31 married.

1 Giving up your right to money and property if your marriage ends or the person to
2 whom you are married dies.

3 Giving up your right to have your legal fees paid."

4 4. A party has adequate financial disclosure under this section if the party:

5 a. Receives a reasonably accurate description and good-faith estimate of value of
6 the property, liabilities, and income of the other party;

7 b. Expressly waives, in a separate signed record, the right to financial disclosure
8 beyond the disclosure provided; or

9 c. Has adequate knowledge or a reasonable basis for having adequate knowledge
10 of the information described in subdivision a.

11 5. If a premarital agreement or marital agreement modifies or eliminates spousal support
12 and the modification or elimination causes a party to the agreement to be eligible for
13 support under a program of public assistance at the time of separation or marital
14 dissolution, a court, on request of that party, may require the other party to provide
15 support to the extent necessary to avoid that eligibility.

16 6. A court may refuse to enforce a term of a premarital agreement or marital agreement
17 if, in the context of the agreement taken as a whole:

18 a. The term was unconscionable at the time of signing; or

19 b. Enforcement of the term would result in substantial hardship for a party because
20 of a material change in circumstances arising after the agreement was signed.

21 7. The court shall decide a question of unconscionability or substantial hardship under
22 subsection 6 as a matter of law.

23 **14-03.2-09. Unenforceable terms.**

24 1. In this section, "parental rights and responsibilities" means all the rights and
25 responsibilities a parent has concerning the parent's child.

26 2. A term in a premarital agreement or marital agreement is not enforceable to the extent
27 that it:

28 a. Adversely affects a child's right to support;

29 b. Limits or restricts a remedy available to a victim of domestic violence under law
30 of this state other than this chapter;

- 1 c. Purports to modify the grounds for a court-decreed separation or marital
2 dissolution available under law of this state other than this chapter; or
3 d. Penalizes a party for initiating a legal proceeding leading to a court-decreed
4 separation or marital dissolution.
5 3. A term in a premarital agreement or marital agreement which defines the rights or
6 duties of the parties regarding parental rights and responsibilities is not binding on the
7 court.

8 **14-03.2-10. Limitation of action.**

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

13 **14-03.2-11. Relation to Electronic Signatures in Global and National Commerce Act.**

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

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

20 **SECTION 3. MARRIAGE AND MARITAL AGREEMENTS - LEGISLATIVE MANAGEMENT**

21 **STUDY.** During the 2013-14 interim, the legislative management shall consider studying
22 marriage, including the positive influence of marriage on society, children, and government
23 spending, and the use of and the need for marital agreements in the state. The legislative
24 management shall report its findings and recommendations, together with any legislation
25 necessary to implement the recommendations, to the sixty-fourth legislative assembly.