

D R A F T
FOR DISCUSSION ONLY

ECONOMIC RIGHTS OF UNMARRIED COHABITANTS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

~~SEPTEMBER 12, 2020 SESSION~~
September 25, 2020 Web Conference



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ON UNIFORM STATE LAWS

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Sept. August 24 21, 2020

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The committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this act consists of the following individuals:

MARY P. DEVINE	Virginia, <i>Co-Chair</i>
TURNEY P. BERRY	Kentucky, <i>Co-Chair</i>
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HARRY L. TINDALL	Texas
CARL H. LISMAN	Vermont, <i>President</i>
JOHN T. McGARVEY	Kentucky, <i>Division Chair</i>

OTHER PARTICIPANTS

NAOMI CAHN	District of Columbia, <i>Reporter</i>
LAURA MORGAN	Massachusetts, <i>American Bar Association Advisor</i>
ANDREA J. BOYACK	Kansas, <i>American Bar Association Section Advisor</i>
ELIZABETH LINDSAY-OCHOA	Massachusetts, <i>American Bar Association Section Advisor</i>
MARK J. CUTRONA	Delaware, <i>Style Liaison</i>
TIM SCHNABEL	Illinois, <i>Executive Director</i>

Copies of this act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.uniformlaws.org

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1 **ECONOMIC RIGHTS OF UNMARRIED COHABITANTS ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the [Uniform] Economic
3 Rights of Unmarried Cohabitants Act.

4 All Comments Deleted For This Draft Only

5 **SECTION 2. DEFINITIONS.** In this [act]:

6 (1) “Cohabitant” means each of two individuals who are not married to each other and
7 live together as a couple in an intimate, committed relationship and function as an economic,
8 social, and domestic unit.

9 (2) “Cohabitation agreement” means an agreement between two cohabitants regarding the
10 management, allocation, disposition, or waiver of a cohabitant’s economic right.

11 (3) “Domestic services” means services and activities performed for the household by a
12 cohabitant for the benefit of the other cohabitant or the cohabitants’ relationship. The term
13 includes cooking, cleaning, shopping, household maintenance, ~~doing errands, and~~ and doing
14 errands for the benefit of the other cohabitant or the cohabitants’ relationship, and otherwise
15 caring for the other cohabitant or a family member of the other cohabitant.

16 (4) “Economic right” means an interest, duty, promise, or obligation of a cohabitant
17 relating to domestic services or property.

18 (5) “Property” means anything that may be the subject of ownership ~~or any interest in the~~
19 ~~thing,~~ whether real or personal, tangible or intangible, legal or equitable. ~~The term includes a~~
20 financial obligation or asset, or any interest therein.

21 (6) “Record” means information that is inscribed on a tangible medium or that is stored in
22 an electronic or other medium and is retrievable in perceivable form.

23 (7) “State” means a state of the United States, the District of Columbia, Puerto Rico, the

1 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
2 the United States.

3 **SECTION 3. SCOPE.**

4 (a) This [act] applies to the recognition and enforcement of economic rights between two
5 cohabitants that arise:

6 (1) by virtue of a cohabitation agreement; or

7 (2) under circumstances in which equity requires a remedy.

8 (b) This [act] does not affect:

9 (1) application of the doctrine of common law marriage to the extent recognized
10 or prohibited by this state; or

11 (2) ~~a an economic right, duty, or remedy~~ of a cohabitant under the law of this state
12 other than this [act], except to the extent inconsistent with this [act].

13 ~~**SECTION 4. EFFECT OF MARRIAGE.**~~

14 ~~(a) The [act]~~ (c) This act does not apply to a claim between cohabitants whose marriage
15 to each other would not be recognized by this [state] if the cohabitants were to marry.

16 ~~(b) Subject to Section 12(b),~~ except if a cohabitant is married to another individual, ~~the~~
17 this [act] including the limitations of Section 12(b) applies to a claim between the cohabitants,
18 unless the cohabitants' marriage to each other would not be recognized by this state for a reason
19 other than the ~~cohabitant's~~ cohabitants' marriage.

20 ~~**SECTION 5. 4. GOVERNING LAW.**~~

21 ~~(a) (a) Except as otherwise provided under subsection (b), Section 8) and Sections 7(d),~~

22 Section 9, 8, and Section 12, 11 a A claim to enforce an economic right is governed by
23 the law of this state, including this state's choice-of-law rules, except:
24

1 (1) As otherwise specified in a cohabitation agreement as provided in subsection (b);

2 (2) With respect to the effect of the marriage of the cohabitants on the statute of

3 limitations as provided in Section 7 (d);

4 (3) With respect to the burden of proof \as provided in Section 8 regrading oral or

5 implied-in-fact cohabitation agreements or equitable claims; and

6 (4) As provided in Section 11 regarding the remedy of equitable division of certain

7 property.

8 (b) A cohabitation agreement may designate the law of a jurisdiction which governs the
9 validity, enforceability, interpretation, and construction of the agreement if:

10 (1) the jurisdiction has a significant relationship to the agreement or either
11 cohabitant; and

12 (2) the designated law is not contrary to ~~fundamental~~ the public policy of this
13 state.

14 (c) The rights and remedies provided by this [act] are not exclusive, and the common law
15 of this state and principles of equity supplement this [act].

16 **SECTION ~~6~~ 5. TREATMENT OF COHABITANTS' CLAIMS.** Except as otherwise
17 provided under Sections ~~98~~ and ~~12,11~~, a claim between two individuals ~~shall~~ may not be
18 precluded or ~~be~~ subjected to an additional procedural or substantive ~~hurdle on account of the~~
19 ~~individuals being current or previous cohabitants.~~ Requirement solely because the individuals
20 were or are cohabitants.

21 **SECTION ~~7~~ 6. COHABITATION AGREEMENT.**

22 (a) ~~(a)~~-A cohabitation agreement entered into in any state and sought to be enforced in
23 this state:

1 (1) ~~(1)~~ is not void as against ~~public policy~~ the public policy of this state solely
2 because the parties to the agreement are or were cohabitants; and

3 (2) ~~(2)~~ may be in a record, oral, or implied-in-fact.

4 (b) ~~(b)~~ A cohabitant's contribution of domestic services or the contribution of property
5 for the benefit of the other cohabitant or the cohabitants' relationship is ~~sufficient~~
6 consideration for a cohabitation agreement.

7 **SECTION 8.7. CLAIM TO ENFORCE ECONOMIC RIGHTS.**

8 (a) In this section, "termination of cohabitation" means the earliest of:

9 (1) the death of a cohabitant;

10 (2) the date the cohabitants' relationship is irretrievably broken; or

11 (3) the date the cohabitants marry each other.

12 (b) A claim for breach of a cohabitation agreement accrues on breach and may be
13 commenced, within the ~~applicable statute of limitations period~~ applicable to the claim, during
14 cohabitation, or after termination of cohabitation.

15 (c) A claim for equitable relief under Section 11 or 12 accrues on termination of
16 cohabitation.

17 (d) If cohabitants marry each other, the marriage:

18 (1) terminates the accrual under this [act] of any additional rights between the
19 cohabitants;

20 (2) tolls the statute of limitations on a claim for breach of a cohabitation
21 agreement until either cohabitant dies or files for [separation,] dissolution[,], or divorce; and

22 (3) extends the time for filing an equitable claim until either cohabitant dies or
23 files for [separation,] dissolution[,], or divorce.

1 (e) A cohabitant may assert in the same action a claim for relief in equity and a claim
2 based on a cohabitation agreement.

3 *Legislative Note: In subsection (d), a state should include “separation” if the filing of a*
4 *separation action terminates the marital community under the state’s laws.*

5
6 **SECTION 9.8. BURDEN OF PROOF.** The burden of proof to establish:

7 (1) the existence and terms of a cohabitation agreement in a record is governed by law of
8 this state other than this [act] applicable to an express agreement;

9 (2) the existence and terms of an oral or implied-in-fact cohabitation agreement is clear
10 and convincing evidence;

11 (3) the elements of an equitable claim under Section 10.4 is a preponderance of the
12 evidence; and

13 (4) the elements of an equitable claim under Section 11.2 is clear and convincing
14 evidence.

15 **SECTION 10.9. UNENFORCEABLE TERMS.**

16 (a) A court may refuse to enforce a term in a cohabitation agreement if, in the context of
17 the agreement taken as a whole:[:][:]

18 [(1)] the term was unconscionable at the time the agreement was made[; or

19 (2) enforcement of the term would result in substantial economic hardship for a
20 cohabitant because of a material change in circumstances arising after the agreement was made].

21 (b) A term in a cohabitation agreement is not enforceable to the extent that it:

22 (1) limits operates to limit or restricts restrict a remedy available for a cohabitant
23 who is a victim of domestic violence, sexual assault, or stalking under law of this state other than
24 this [act]; or

25 (2) adversely affects a child’s right to support.

1 (c) The court shall decide a question of unconscionability [or substantial economic
2 hardship] under subsection (a) as a matter of law.

3 **SECTION 10.** ~~**SECTION 11.**~~ **EQUITABLE CLAIMS.** Except as otherwise provided
4 in an enforceable cohabitation agreement, a court may enforce a claim by a cohabitant ~~may~~
5 ~~assert and a court may enforce an equitable claim, including a claim for~~ that is based in equity,
6 whether promissory estoppel, unjust enrichment, ~~based on or otherwise.~~ The performance of
7 domestic services may be the sole basis for such a claim.

8 **~~SECTION 12.~~ SECTION 11. EQUITABLE DIVISION OF PROPERTY.**

9 (a) Except as otherwise provided in subsection (b) or in an enforceable cohabitation
10 agreement, a cohabitant may assert a claim for, and a court may order, fair and equitable division
11 of property acquired and liabilities incurred as a result of the efforts of either cohabitant during
12 cohabitation, without regard to a cohabitant's legal title to the property.

13 (b) A cohabitant who is married to another individual may ~~not~~ only assert a claim under
14 subsection (a) ~~except~~ with respect to property acquired and liabilities incurred as a result of the
15 efforts of either cohabitant (i) during the cohabitation but and (ii) before that the cohabitant's
16 marriage.

17 (c) An unmarried cohabitant cohabiting with a married cohabitant may assert a claim
18 under subsection (a) against the married cohabitant.

19 (d) The court shall consider the following to determine whether and how to order a fair
20 and equitable division of assets and liabilities under subsection (a):

21 (1) the duration and continuity of the cohabitation;

22 (2) the cohabitants' allocation of financial responsibility for housing, food,
23 clothing, health care, and other daily living expenses of the household;

1 (3) the cohabitants' allocation of responsibility for the performance of domestic
2 services;

3 (4) the cohabitants' allocation of caretaking responsibility for a family member of
4 either cohabitant;

5 (5) the cohabitants' intent to share with one another assets acquired or liabilities
6 incurred during the cohabitation;

7 (6) whether the property being considered for division is subject to interests of a
8 third party;

9 (7) whether a cohabitant has wasted property or transferred property to a third
10 party in an effort to defeat a right of the other cohabitant;

11 (8) if a cohabitant is married, the rights and interest of the married cohabitant's
12 spouse; and

13 (9) other factors the court considers relevant.

14 (e) A court may not presume that any particular percentage of division of assets or
15 liabilities is equitable.

16 **SECTION ~~13~~ 12. LIMITATIONS ON RIGHTS AND- REMEDIES.**

17 (a) The rights and remedies under this [act] granted to a cohabitant may not be greater
18 than the rights and remedies the cohabitant would receive on divorce, dissolution, or death, if the
19 cohabitants had married.

20 (b) Neither this [act~~;~~,] nor a division of assets or liabilities under this [act~~;~~,] affects the
21 right of a third party, including a good faith purchaser from, or secured creditor of, a cohabitant.

22 **SECTION ~~14~~ 13. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
23 applying and construing this uniform act, consideration must be given to the need to promote

1 uniformity of the law with respect to its subject matter among states that enact it.

2 **SECTION ~~15~~ 14. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
3 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the federal
4 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.,
5 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
6 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
7 U.S.C. Section 7003(b).

8 **SECTION ~~15~~ 16. SAVINGS AND TRANSITIONAL PROVISIONS.**

9 (a) This [act] does not affect the validity or effect of a cohabitation agreement made
10 before [the effective date of this [act]].

11 (b) This [act] applies to an equitable claim that accrues on or after [the effective date of
12 this [act]].

13 **[SECTION ~~17~~ 16. REPEALS; CONFORMING AMENDMENTS.**

14 (a)

15 (b)

16 (c)]

17 **SECTION ~~18~~ 17. EFFECTIVE DATE.** This [act] takes effect