

D R A F T
FOR DISCUSSION ONLY

ECONOMIC RIGHTS OF UNMARRIED COHABITANTS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
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ECONOMIC RIGHTS OF UNMARRIED COHABITANTS ACT

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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.**

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

17 ~~(b) Subject to Section 12(b), except~~ if a cohabitant is married to another individual, ~~the~~

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

21 **SECTION 5. GOVERNING LAW.**

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

23 Section 9, 8, and Section 12, 11 a. A claim to enforce an economic right is governed by

24 the law of this state, including this state's choice-of-law rules, except:

- (1) As otherwise specified in a cohabitation agreement as provided in subsection (b);
- (2) With respect to the effect of the marriage of the cohabitants on the statute of limitations as provided in Section 7 (d);
- (3) With respect to the burden of proof as provided in Section 8 regarding oral or implied-in-fact cohabitation agreements or equitable claims; and
- (4) As provided in Section 11 regarding the remedy of equitable division of certain property .

(b) A cohabitation agreement may designate the law of a jurisdiction which governs the

validity, enforceability, interpretation, and construction of the agreement if:

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

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

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

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

SECTION 7. COHABITATION AGREEMENT.

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

1 (1) (4) 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.

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

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

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

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

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

11 (3) the elements of an equitable claim under Section 104 is a preponderance of the
12 evidence; and

13 (4) the elements of an equitable claim under Section 112 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

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

(c) The court shall decide a question of unconscionability [or substantial economic 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.

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.

(c) An unmarried cohabitant cohabiting with a married cohabitant may assert a claim 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):

(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;

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

(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.

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.

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

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