

D R A F T

FOR DISCUSSION ONLY

ECONOMIC RIGHTS OF UNMARRIED COHABITANTS ACT

[Proposed new name: ECONOMIC INTERESTS OF UNMARRIED COHABITANTS ACT]

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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January 7, 2021

ECONOMIC RIGHTS OF UNMARRIED COHABITANTS ACT

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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. [Proposed new name: Economic Interests of Unmarried
4 Cohabitants Act.]

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

6 (1) “Cohabitant” means each of two individuals not married to each other who, after each
7 has reached the age of majority or been emancipated, live together as a couple. The term does
8 not include individuals in an incestuous relationship.

9 (2) “Cohabitants’ agreement” means an agreement between individuals regarding an
10 economic interest, including the waiver of an economic interest, if the individuals become, are,
11 or were cohabitants. A cohabitants’ agreement may be in a record, oral, or implied-in-fact.

12 (3) “Contributions to the relationship” means contributions of a cohabitant to or for the
13 benefit of the other cohabitant or the cohabitants’ relationship, whether those contributions are in
14 the form of efforts, activities, services, or property. The term includes domestic services, such as
15 cooking, cleaning, shopping, household maintenance, and conducting errands for the benefit of
16 the other cohabitant or the cohabitants’ relationship, and otherwise caring for the other
17 cohabitant, a joint child, or a family member of the cohabitant. The term does not include sexual
18 services.

19 (4) “Economic interest” means a right, interest, duty, promise, or obligation of a
20 cohabitant relating to property or contributions to the relationship.

21 (5) “Individual” means a natural person age 18 or over.

22 (6) “Property” means anything that may be the subject of ownership, whether real or
23 personal, tangible or intangible, legal or equitable, or any interest therein, and includes

responsibility for a debt.

(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) “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.

(9) “Termination of cohabitation” means the earliest of:

(A) the death of a cohabitant [[:

(B) [the date the cohabitants stop living together as a couple; or

(C)]; or (B)] the date the cohabitants marry each other.

SECTION 3. SCOPE.

(a) This [act] applies to the recognition and enforcement of contractual and equitable claims between cohabitants regarding their economic interests.

(b) This [act] does not affect marriage, including common law marriage.

(c) This [act] does not affect a right, interest, duty, obligation, or remedy of a cohabitant which arises under the law of this state other than this [act], including any obligation to support a child or spouse of a cohabitant.

SECTION 4. GOVERNING LAW.

(a) Unless otherwise specified in this [act], a claim to enforce an economic interest is governed by the law of this state other than this [act], including this state’s choice-of-law rules.

(b) The validity, enforceability, interpretation, and construction of a cohabitants’ agreement are determined: (1) by the law of the jurisdiction designated in the agreement in accordance with law of this state, other than this [act]; or (2) absent an effective designation

described in subparagraph (1), by the law of this state, including the choice-of-law rules of this state.

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

SECTION 5. RIGHTS OF COHABITANTS TO BRING CLAIMS. Except as otherwise provided under this [act], a contractual or equitable claim shall not be restricted or barred because the parties are or were cohabitants.

SECTION 6. AGREEMENTS BETWEEN COHABITANTS.

(a) Contributions to the relationship may provide consideration for a cohabitants' agreement.

(b) A claim for breach of a cohabitants' agreement accrues on breach and may be commenced during cohabitation or after termination of cohabitation.

(c) A term in a cohabitants' agreement is not enforceable to the extent that it operates to limit or restrict a remedy available outside of this [act] for a cohabitant who, during the relationship, was a victim of domestic violence, sexual assault, or stalking as a result of the actions of the other cohabitant.

SECTION 7. EQUITABLE RELIEF.

(a) An equitable claim between cohabitants may be predicated on contributions to the relationship.

(b) A claim for equitable relief accrues on termination of cohabitation.

(c) The court shall adjudicate an equitable claim upon consideration of the following factors:

(1) contributions to the relationship, the value of which shall not be restricted to

1 or limited by market value;

2 (2) whether and to what extent a cohabitant intended to share property or
3 liabilities with the other cohabitant during or upon termination of cohabitation; and

4 (3) the duration and continuity of the cohabitation, and the age, stage of life, and
5 physical and mental condition of each cohabitant; and

6 (4) such other factors as the court deems relevant.

7 (d) Relief provided under this section to a cohabitant shall not exceed the intestate share
8 that cohabitant would have received under the laws of intestacy of this state, if the cohabitants
9 had married on the date the cohabitation began and remained married until either cohabitant filed
10 a claim under this [act] or the other cohabitant died.

11 **SECTION 8. JURISDICTION.** A claim under this [act] shall be brought in a [[court
12 of general jurisdiction] or [probate court]].

13 **SECTION 9. MARRIAGE OF COHABITANTS.**

14 **Question for the Committee: Do we need to address the effect of the cohabitants’**
15 **marriage to one another? If so, please consider these approaches.**

16 *Option A:*

17 If the cohabitants marry, the statute of limitations to enforce a cohabitation agreement or
18 bring an equitable claim is tolled during the marriage.

19 *Option B:*

20 If the cohabitants marry, any claim based on a cohabitants’ agreement and any equitable
21 claim shall be extinguished, but such claim may be the subject of a premarital or marital
22 agreement of the parties [recognized under the law of this state] [executed in accordance with the
23 Uniform Premarital and Marital Agreements Act].

1 *Option C:*

2 If the cohabitants marry, any claim based on a cohabitants' agreement shall be
3 extinguished, but such claim may be the subject of a premarital or marital agreement of the
4 parties [recognized under the law of this state] [executed in accordance with the Uniform
5 Premarital and Marital Agreements Act]. If the cohabitants marry, any equitable claim which
6 arose during the cohabitation must be brought within [1 year] of the marriage, or is forever
7 barred unless such claim is the subject of a premarital or marital agreement of the parties
8 [recognized under the law of this state] [executed in accordance with the Uniform Premarital and
9 Marital Agreements Act].

10 **SECTION 10. EFFECT OF COURT ORDER OR JUDGMENT ON THIRD**
11 **PARTIES.**

12 (a) A court order or judgment entered with respect to a claim made under this [act] may
13 not impair the rights of a good faith purchaser from, or secured creditor of, a cohabitant.

14 (b) A claim of a surviving spouse in probate is superior to the rights of a cohabitant as
15 determined by a court order or judgment entered pursuant to this [act].

16 **SECTION 11. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
17 applying and construing this uniform act, consideration must be given to the need to promote
18 uniformity of the law with respect to its subject matter among states that enact it.

19 **SECTION 12. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
20 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the federal
21 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
22 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
23 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15

1 U.S.C. Section 7003(b).

2 **SECTION 13. SAVINGS AND TRANSITIONAL PROVISIONS.**

3 (a) This [act] validates and applies to a cohabitants' agreement made before, on, or after
4 [the effective date of this [act]].

5 (b) This [act] validates and applies to an equitable claim that accrues before, on, or after
6 [the effective date of this [act]].

7 **SECTION 14. REPEALS; CONFORMING AMENDMENTS.**

8 (a)

9 (b)

10 (c)]

11 **SECTION 15. EFFECTIVE DATE.** This [act] takes effect