

D R A F T  
FOR DISCUSSION ONLY

## **Economic Rights of Unmarried Cohabitants Act**

**[Proposed new name: Uniform Cohabitants' Economic Remedies Act]**

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Uniform Law Commission

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March 19, 2021

## **Economic Rights of Unmarried Cohabitants Act**

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# **Economic Rights of Unmarried Cohabitants Act**

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# Economic Rights of Unmarried Cohabitants Act

## Prefatory Note

The number of nonmarital cohabitants in the United States has increased substantially over the past half-century. The Census first began including “Unmarried Partner” as a possible relationship in 1990.<sup>1</sup> Today, more than 17 million people, representing seven percent of American adults, are cohabiting.<sup>2</sup> More adults have cohabited than have been married.<sup>3</sup> The number of older adults who cohabit is growing. In 1996, only two percent of partners in cohabiting households were ages 65 or older; by 2017, that number had tripled to six percent.<sup>4</sup> Just over 6% of partners in cohabiting households earn over \$90,000 per year, while more than half earn less than \$30,000.<sup>5</sup>

Cohabitants may share financial responsibilities during their cohabitation, or they may keep their finances separate. One cohabitant may move into a dwelling the other had acquired separately. They may acquire property together, or they may not. Both may work, or one may work and the other might take care of the household. The economic rights at separation and death that derive from cohabitation differ greatly depending on state law and range from states not recognizing cohabitants’ claim against one another based on their relationship to allowing claims based on written contracts to imposing a status-based regime.

One of the earliest cases in the United States to recognize potential economic rights between nonmarital cohabitants, notwithstanding the nature of their relationship, was the California Supreme Court opinion in *Marvin v. Marvin*.<sup>6</sup> Before *Marvin*, courts typically rejected claims for support between cohabitants. In *Marvin*, the California Supreme Court held that unmarried cohabitants could enter into enforceable contracts to share earnings or property or for support, notwithstanding the “illicit” nature of their cohabitation, so long as the parties’ sexual relationship is not an inseparable part of the agreement. The court identified a broad range of possible remedies: express or implied contract (including partnership and joint venture) and a cluster of other doctrines: quantum meruit, constructive trust, resulting trust, unjust enrichment, equitable lien, and other equitable theories.

A number of states have followed *Marvin*, yet they have developed inconsistent approaches to the rights of nonmarital cohabitants. Some states recognize the potential existence of both express or implied contracts and include equitable claims,<sup>7</sup> some states have imposed

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<sup>1</sup> Linda A. Jacobsen, *What is a Household?* (2020), <https://www.prb.org/what-is-a-household/>.

<sup>2</sup> Benjamin Gurrentz, *Cohabiting Partners Older, More Racially Diverse, More Educated, Higher Earners* (2019), <https://www.census.gov/library/stories/2019/09/unmarried-partners-more-diverse-than-20-years-ago.html>.

<sup>3</sup> Nikki Graf, *Key Findings on Marriage and Cohabitation in the U.S.* (2019), <https://www.pewresearch.org/fact-tank/2019/11/06/key-findings-on-marriage-and-cohabitation-in-the-u-s/>.

<sup>4</sup> Gurrentz, *supra* n. 2.

<sup>5</sup> Gurrentz, *supra* n. 2.

<sup>6</sup> *Marvin v. Marvin*, 557 P.2d 106 (Cal. 1976).

<sup>7</sup> E.g., *Boland v. Catalano*, 521 A.2d 142 (Conn. 1987) (endorsing *Marvin* approach, recognizing that cohabitants may assert claims based on express or implied contract, quantum meruit, equitable remedies); *Estate of Henry v. Woods*, 77 N.E. 3d 1200 (Ind. Ct. App. 2017) (permitting relief based on an express contract, an implied contract, or unjust enrichment, and rejecting argument that cohabiting couple were in a familial relationship which imposed a presumption that services were performed gratuitously).

1 writing requirements on cohabitants' agreements;<sup>8</sup> and a few states refuse to accept domestic or  
2 household services as lawful consideration, reasoning that such services are inextricably  
3 intertwined with the sexual relationship and are typically provided without expectation of  
4 compensation when a couple shares a home. The Illinois Supreme Court in 2016, for example,  
5 rejected calls to extend further reaching obligations on unmarried couples.<sup>9</sup> The case generated  
6 controversy with its emphasis on the state's continuing interest in distinguishing between marital  
7 and nonmarital relationships.

8  
9 The most ambitious effort to recognize broad obligations among cohabitants came from  
10 the American Law Institute's *Principles of Family Dissolution* (ALI *Principles*) in 2000.<sup>10</sup> The  
11 ALI *Principles* effectively extend the marital remedies of equitable distribution of property and  
12 alimony to cohabitants, but the ALI's approach has not been fully adopted by any state; in  
13 Washington, a long-term marriage-like cohabitation with a sharing of finances and other indicia  
14 of an interdependent relationship can give rise to a presumptive application of community  
15 property principles, both at dissolution and at death, but not to ongoing support obligations.<sup>11</sup>  
16 Other countries have enacted legislation similar to the system set out in the ALI *Principles*.<sup>12</sup> As  
17 an alternative, some jurisdictions have adopted systems that allow a nonmarital couple to opt into  
18 various obligations towards one another.<sup>13</sup>

19  
20 Even in states that do recognize remedies for nonmarital cohabitants, courts may still be  
21 reluctant to award relief. In declining to recognize a cohabitant's claim, courts have often  
22 referenced the meretricious nature of the couple's relationship or a desire to preserve marriage.<sup>14</sup>  
23 There is thus no predictable result when cohabitants dissolve their relationship or when one  
24 cohabitant dies.

---

<sup>8</sup> Minn. Stat. Ann. § 513.075 (“[i]f sexual relations between the parties are contemplated, a contract between a man and a woman who are living together in this state out of wedlock, or who are about to commence living together in this state out of wedlock, is enforceable as to terms concerning the property and financial relations of the parties only if: (1) the contract is written and signed by the parties; and (2) enforcement is sought after termination of the relationship.”); N.J.S.A. § 25:1-5(h) (promise of “support or other consideration” by party to nonmarital personal relationship must be in writing and with independent advice of counsel); Tex. Bus. & Com. Code Ann. § 26.01 (agreement made “on consideration of nonmarital conjugal cohabitation” must be in writing).

<sup>9</sup> 69 N.E.3d 834 (Ill. 2016).

<sup>10</sup> American Law Institute, *Principles of the Law of Family Dissolution: Analyses and Recommendation* (2000).

<sup>11</sup> See *Connell v. Francisco*, 898 P.2d 831 (Wash. 1995) (applying equitable presumption of community property principles to parties who lived in marriage-like “meretricious relationship”); *Muridan v. Redl*, 413 P.3d 1072 (Wash. Ct. App. 2018) (applying *Connell* and affirming that certain assets acquired during the relationship were to be classified as community-like property subject to a 50/50 equitable division between the parties).

<sup>12</sup> E.g., Adult Interdependent Relationships Act, S.A. 2002, c A-4.5 (Can.), [http://www.qp.alberta.ca/1266.cfm?page=A04P5.cfm&leg\\_type=Acts&isbncln=9780779780334](http://www.qp.alberta.ca/1266.cfm?page=A04P5.cfm&leg_type=Acts&isbncln=9780779780334) [<https://perma.cc/N7FX-8PT3>]; Family Statutes Amendment Act, S.A. 2018, c 18 (Can.), [https://www.assembly.ab.ca/ISYS/LADDAR\\_files/docs/bills/bill/legislature\\_29/session\\_4/20180308\\_bill-028.pdf](https://www.assembly.ab.ca/ISYS/LADDAR_files/docs/bills/bill/legislature_29/session_4/20180308_bill-028.pdf) [<https://perma.cc/X4KU-FYN5>] (making numerous references to the Interdependent Relationships Act and substantially affecting the rights of those who qualify as Adult Interdependent Partners)

<sup>13</sup> E.g., C.R.S.A. § 15-22-104 (2021); Mary Charlotte Y. Carroll, Note, *When Marriage Is Too Much: Reviving the Registered Partnership in A Diverse Society*, 130 Yale L.J. 478, 508 -513 (2020)(discussing Belgian and French opt-in structures).

<sup>14</sup> E.g., *Smith v. Carr*, 2012 WL 3962904 \*4 (C.D. Cal. Sept. 12, 2012)(“Without more, plaintiff's express contract claim must fail for lack of consideration, as plaintiff's alleged consideration is inextricably intertwined with any meretricious consideration”); Albertina Antognini, *Nonmarital Contracts*, 73 STAN. L. REV. 67 (2021).

1       The [act name] provides states with comprehensive and uniform guidance on questions  
2 concerning cohabitants' property interests and other obligations based on their relationship. For  
3 purposes of the act, a "cohabitant" is defined as one member of a couple if the two individuals  
4 live together and are not married to each other. The term does not set a time limit as to how long  
5 the individuals must cohabit in order to meet the definition. A cohabitant might be married to  
6 someone else, and each cohabitant must be an adult (or an emancipated minor).

7  
8       The act allows cohabitants to bring contract and equitable claims against one another,  
9 regardless of the intimate nature of their relationship. The primary purpose of the act is to affirm  
10 the capacity of each cohabitant to contract with the other and claim a remedy against the other  
11 with respect to "contributions to the relationship" without regard to any intimate relationship that  
12 exists between them and without subjecting them to hurdles that would not be imposed on  
13 litigants of similar claims.

14  
15       The act provides that "contributions to the relationship," including domestic services,  
16 may be the basis for either a contractual or an equitable claim. This definition represents an  
17 important aspect of the act, because the act provides explicit recognition that such contributions  
18 constitute adequate consideration for a cohabitants' agreement as well as a source for an  
19 equitable claim.<sup>15</sup>

20  
21       The legal rights of third parties, such as secured creditors or good faith purchasers,  
22 cannot be adversely impacted by a remedy granted under the act. A cohabitant married to a third  
23 party may be subject to any claim by the other cohabitant and may assert defenses to such a  
24 claim.

25  
26       The act further clarifies that cohabitants may have claims against one another based on  
27 other state law that are not covered by the act, including, for example, tort claims and partnership  
28 claims. The act, in most instances, supplements and does not replace existing state law. An  
29 enacting state's procedural law will generally govern the claims whether brought in civil court or  
30 in probate.

31  
32       The act does not include a definition of court nor does the act prescribe the court in which  
33 claims between cohabitants may be heard. States may decide that claims between cohabitants  
34 should be heard in general civil or family court: these claims could be treated as general  
35 equitable and contract between individuals who just happen to be cohabitants or as claims that  
36 are similar to those heard by family courts.

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<sup>15</sup> See *Knauer v. Knauer*, 470 A.2d 553 (Pa. Super. Ct. 1983) (finding an oral contract to share assets accumulated during the relationship based on the consideration of domestic services); cf., *Antognini, supra*, at 78 ("Courts hold that individuals cannot contract for exchanges that inhere in the relationship itself, such as services rendered, and generally decline to uphold contracts where the relationship could have been marital").

1                                   **Economic Rights of Unmarried Cohabitants Act**

2                   **Section 1. Title**

3                   This [act] may be cited as the [Uniform] Economic Rights of Unmarried Cohabitants Act.  
4 [Proposed new name: [Uniform Cohabitants' Economic Remedies Act].]

5                   **Section 2. Definitions**

6                   In this [act]:

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

10                           (2) "Cohabitants' agreement" means an agreement between individuals regarding  
11 contributions to the relationship if the individuals are to become, are, or were cohabitants, and  
12 includes a waiver of any such interest. A cohabitants' agreement may be in a record, oral, or  
13 implied-in-fact.

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

21                           (4) "Property" means anything that may be the subject of ownership, whether real  
22 or personal, tangible or intangible, legal or equitable, or any interest therein, and includes  
23 responsibility for a debt.

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

3 (6) “State” means a state of the United States, the District of Columbia, Puerto  
4 Rico, the United States Virgin Islands, or any territory or insular possession subject to the  
5 jurisdiction of the United States.

6 (7) “Termination of cohabitation” means the earliest of:

7 (A) the death of a cohabitant;

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

9 (C) the date the cohabitants marry each other.

#### 10 **Comment**

11 The definition of “cohabitant” specifies to whom the act applies. The parties cannot be in  
12 a common law or other lawful marriage to each other and still be considered cohabitants. A  
13 cohabitant may be an emancipated minor under the age of 18 if otherwise eligible to marry under  
14 state law. The definition clarifies that the act applies only to cohabitating couples rather than to  
15 relationships of more than two people. The definition also requires that the cohabitants live with  
16 one another, so it does not cover couples who are “living apart together.” Cynthia Grant  
17 Bowman, *How Should the Law Treat Couples Who Live Apart Together?*, 29 Child & Fam. L.Q.  
18 335, 335-36 (2018). And the couple must live together as a couple: this phrasing is designed to  
19 include only intimate relationships and to exclude roommates and siblings. If each cohabitant is  
20 unmarried, then they should be otherwise eligible to marry one another.

21  
22 Because the act provides rights only to cohabitants, it does not cover minors.  
23 Consequently, if a minor begins living with a nonmarital partner, the act only provides rights that  
24 start once the minor reaches the age of majority. The minor may well have rights outside of the  
25 act, and those are preserved.

26  
27 Although cohabitants cannot be married to each other, either of them might be married to  
28 a third party. Existing cases typically do not differentiate between a cohabitant who is married  
29 and one who is not in terms of potential remedies. *E.g.*, In re Est. of Roccamonte, 808 A.2d 838,  
30 841 (N.J. 2002) (estate of deceased married cohabitant liable to nonmarital cohabitant for  
31 support). In a somewhat analogous situation, the Uniform Marriage and Divorce Act recognizes  
32 the concept of a “putative spouse” who may have rights against a married partner. See UMDA §  
33 209. The inclusion of married cohabitants is not designed or intended to undercut the rights of  
34 the married cohabitant’s spouse but to ensure equity is done.

35  
36 Example 1: A and B were married thirty years ago. A moved to a different city twenty



1 years ago and began cohabiting with C. A and C built a business together but titled it in A's  
2 name. If A and C separate, C could assert a claim against A under this act.

3  
4 The definition of "contributions to the relationship" is central to the act and is designed to  
5 be expansive. For example, in addition to property and domestic services, it also includes  
6 activities related to business development, business entertaining, and similar activities for the  
7 benefit of the other partner or the relationship generally E.g., *Hills v. Superior Court (Munoz)*,  
8 No. B174068, 2004 WL 1657689, at \*6 (Cal. Ct. App. July 26, 2004) (reasoning that female  
9 plaintiff's assertions, including that "she gave up her career and devoted herself to performing  
10 household and other domestic services for him so as to aid his business career," gave rise to  
11 triable issues). Contributions to the relationship can provide the basis for both a contractual and  
12 an equitable claim under the act.

13  
14 Cohabitation often involves sexual conduct, and the definition severs contributions to the  
15 relationship from sexual services. Sexual services are distinct in nature and entirely severable  
16 from the defined term "contributions to the relationship." As Section 5 makes clear, the existence  
17 of a sexual relationship during the cohabitation should not prevent claims under this act from  
18 moving forward; domestic services are not the same as sexual services. For further discussion of  
19 the need to distinguish the two, see Albertina Antognini, *Nonmarital Contracts*, 73 Stan. L. Rev.  
20 67 (2021).

21  
22 The act does not address, tort suits based on consortium, wrongful death, or infliction of  
23 emotional distress claims but defers to other state laws on such claims.

24  
25 The term "property" is designed to be expansive and includes both assets and liabilities.

26  
27 The definition of "record" includes not just formal writings but also videos, emails, and  
28 any other type of information that can be retrieved in a tangible form to show evidence of an  
29 agreement and of the nature of relationship.

### 30 31 **Section 3. Scope**

32 (a) This [act] applies to the recognition and enforcement of contractual and equitable  
33 claims regarding interests, promises, and obligations arising from contributions to the  
34 relationship including claims (1) between cohabitants who marry each other, or (2) on behalf of  
35 or against a deceased cohabitant's estate.

36 (b) This [act] does not create, affect, enlarge, or diminish a cohabitant's rights or duties,  
37 under the laws of this state other than this [act].

### 38 **Comment**

1 In conjunction with Section 5, Section 3 states the overall intent of the act: to remove  
2 bars to claims which arise within the framework of a cohabiting relationship, even though the  
3 relationship is an intimate, nonmarital one. In general, cohabitants should be treated as other  
4 litigants and not be precluded from bringing claims solely because of the intimate nature of the  
5 relationship.

6  
7 Example 1: The parties shared ownership and care of an animal during the relationship.  
8 After the termination of the relationship, one party may seek visitation or joint custody of the  
9 animal.

10  
11 Example 2: The parties shared a household. One cohabitant still has property in the  
12 household; a court might issue an injunction to vacate the residence.

13  
14 Example 3: One party has videos taken during the relationship that a court might order  
15 be deleted.

16  
17 Subsection (b) makes clear that a cohabitant may have cognizable rights vis-a-vis the  
18 other cohabitant by virtue of other state law (e.g., the state's partnership law), and that those  
19 rights are not lost unless clearly inconsistent with this act. The rights and remedies provided by  
20 the act are not intended to be the exclusive rights and remedies afforded to cohabitants.  
21 Subsection (b) also ensures that a cohabitant's rights are not superior to the claims of prior  
22 creditors or the duty to support a spouse, ex-spouse, or child.

23  
24 This act is not designed to impact state law concerning marriage. Marriage is a formal  
25 legal status that is distinct from cohabitation.

#### 26 27 **Section 4. Governing Law**

28 (a) Except as otherwise provided in this [act], a claim under this [act] is governed by the  
29 law of this state other than this [act], including the choice-of-law rules of this state.

30 (b) The validity, enforceability, interpretation, and construction of a cohabitants'  
31 agreement are determined: (1) by the law of the jurisdiction designated in the agreement in  
32 accordance with law of this state, other than this [act]; or (2) absent an effective designation  
33 described in subparagraph (1), by the law of this state, including the choice-of-law rules of this  
34 state.

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

1 **Comment**

2 This act is designed to coordinate with, and not change, existing state law, except to the  
3 extent necessary to recognize that each cohabitant has some legally cognizable interests against  
4 the other. State procedural law governing statutes of limitations, choice of law rules, transfers of  
5 property, probate proceedings, etc. will control, unless otherwise specified in the act.

6 The intent is for other state law to supplement the act unless clearly inconsistent with the  
7 act. Thus, for example, if the cohabitants have a business partnership agreement with one  
8 another, that agreement would be subject to partnership law rather than subject to the provisions  
9 of this act.

10  
11 Subsection (a) makes clear that state law, will govern cohabitants' claims under the act,  
12 unless otherwise provided in this act. Thus, the act would change state law that does not  
13 recognize contractual or equitable claims between cohabitants where domestic services (in the  
14 form of contributions to the relationship) constitute consideration. Moreover, state statute of  
15 limitations that might otherwise govern equitable claims may be pre-empted by Section 7(b),  
16 which provides that an equitable claim does not accrue until termination of the relationship.

17  
18 Subsection (b) provides that, as with most other agreements, a cohabitation agreement  
19 can specify a governing law, provided that law has a relationship to either the parties or their  
20 agreement, and it is not contrary to the enforcing state's public policy.

21  
22 **Section 5. Rights of Cohabitants to Bring Claims**

23 (a) A claim under this [act] shall not be barred or subjected to additional substantive or  
24 procedural requirements solely because the parties are or were cohabitants.

25 (b) The marriage of the cohabitants to each other does not extinguish a claim under this  
26 [act].

27 (c) A claim under this [act] may be brought on behalf of or against a deceased  
28 cohabitant's estate.

29 (d) A claim under this [act] is not affected by the existence or extent of any sexual  
30 relationship between the cohabitants.

31 **Comment**

32 This section, along with Section 3, sets out the core goals of the act in allowing  
33 cohabitants to assert claims against one another in the same manner as other litigants. It is  
34 intended to abrogate court decisions that have held that cohabitation agreements are void as  
35 against public policy. *See, e.g., Blumenthal v. Brewer*, 69 N.E.3d 834, 854 (Ill. 2016), in which

1 the court rejected constructive trust and restitution claims by long-term same-sex cohabitant  
2 noting that although the parties may have contracted independent of their cohabiting relationship,  
3 recognition of claims based on cohabiting relationship would be inconsistent with legislature's  
4 abolition of common law marriage. In *Gunderson v. Golden*, 360 P.3d 353 (Idaho Ct. App.  
5 2015), the court rejected a claim for equitable distribution of property after a 25-year  
6 cohabitation stating "[t]he elimination of common-law marriage, supported by an explicit public  
7 policy justification, commands our courts to refrain from enforcing contracts in contravention of  
8 clearly declared public policy and from legally recognizing cohabitational relationships in  
9 general."

10  
11 Because the act enables cohabitants to pursue claims in the same manner as other  
12 litigants, cohabitants' claims are subject to the same statute of limitations and burdens of proof  
13 that apply to other contractual and equitable claims.

14 Subsection (b) clarifies that a claim under this act can still be brought, even if the  
15 cohabitants marry each other. Subsection (c) confirms that claims may be brought against, or on  
16 behalf of, the estate of a deceased cohabitant. Subsection (d) emphasizes that sexual relations  
17 between the cohabitants should not be relevant to the validity of their claims.  
18

## 19 **Section 6. Agreements between Cohabitants**

20 (a) Contributions to the relationship are sufficient consideration for a cohabitants'  
21 agreement.

22 (b) A claim for breach of a cohabitants' agreement accrues on breach and may be  
23 commenced, subject to the applicable statute of limitations, during cohabitation or after  
24 termination of cohabitation.

25 (c) A term in a cohabitants' agreement which operates to limit, restrict, or require a  
26 cohabitant to pursue a civil, criminal, or administrative remedy is unenforceable to the extent the  
27 remedy is available because the cohabitant is a victim of a crime of violence.

28 ***Legislative Note:*** Subsection (c) should be modified in a state without a clear definition  
29 of "crime of violence."  
30

## 31 **Comment**

32 A cohabitants' agreement may be express, implied-in-fact, or oral. Subsection (a)  
33 provides that contributions to the relationship may constitute consideration for such an  
34 agreement. In the past, courts have been reluctant to find that domestic services are adequate.  
35 See Antognini, *supra*.  
36

1 Subsection (b) clarifies that a claim for breach may be brought while the couple is still  
2 living together and even though the relationship has not been terminated. It also specifies that the  
3 applicable statute of limitations time period is set by other state law.  
4

5 When cohabitation is terminated by death, there may be questions about the  
6 enforceability of an agreement concerning a provision to be made – or not to be made – in a will.  
7 As Sections 3 and 5 clarify, claims between cohabitants should be treated comparably to claims  
8 between noncohabitants. Issues concerning the enforceability of an agreement to make a  
9 provision at death is governed by other state law. An express contract, for example, may be  
10 covered by Uniform Probate Code Section 2-514 (iii), which permits, for example, “a writing  
11 signed by the decedent evidencing the contract” to be enforceable.  
12

13 Subsection (c) is designed to protect the rights of victims of crime. It ensures that their  
14 remedial rights relating to the crime are not lost through cohabitation and cannot be the subject  
15 of an agreement. For example, a term in an agreement which provided that a cohabitant could  
16 not pursue a civil protection order would be unenforceable. Similarly, a provision in a  
17 cohabitation agreement which purported to give a cohabitant a right or interest in payments the  
18 other cohabitant received from or through the perpetrator, in an administrative or civil  
19 proceeding, would be unenforceable.  
20

## 21 **Section 7. Equitable Relief**

22 (a) In addition to remedies available under the law of this state other than this [act], and  
23 unless inconsistent with an enforceable cohabitants’ agreement, an equitable claim between  
24 cohabitants may be predicated on contributions to the relationship.

25 (b) A claim for equitable relief under this Section accrues on termination of cohabitation.

26 (c) In addition to other provisions of law governing equitable claims, the court shall  
27 adjudicate an equitable claim between cohabitants under this Section upon consideration of the  
28 following factors:

29 (1) the nature and value of contributions to the relationship by each cohabitant,  
30 provided that in determining the value of those contributions, the court shall consider the  
31 subjective value to the cohabitants as well as the market value, of the contributions.

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

- 1 (3) the duration and continuity of the cohabitation; and  
2 (4) such other factors as the court deems relevant.

3 **Comment**

4 This section, and, in particular, subsection (a), makes clear that unjust enrichment and  
5 other equitable claims are available to cohabitants, that such claims need not be tied to a specific  
6 asset, and that such claims may be based on non-monetary contributions to the relationship.

7  
8 Subsection (a) contemplates that there may be other claims, including equitable claims,  
9 outside the scope of this act that one cohabitant could bring. The subsection also contemplates  
10 that there could be a valid agreement that would preclude equitable claims; for example, such an  
11 agreement might provide that neither cohabitant could bring claims against the other under the  
12 act.

13  
14 Under subsection (b), an equitable claim accrues upon termination of cohabitation, which  
15 represents an exception to the general policy of the act to defer to other state law with respect to  
16 procedure. As this subsection makes clear, it is important to have a date certain on which any  
17 applicable statute of limitations begins, and that date is the termination of the relationship.  
18 Unlike claims based on breach of cohabitants' agreements, which accrue on breach and can be  
19 brought while the cohabitants are still living together, equitable claims can only be brought once  
20 the relationship terminates.

21  
22 In adjudicating these claims, courts can consider appropriate forms of relief, such as  
23 disgorgement or constructive trust; injunctive relief, and particularly preliminary injunctive  
24 relief, may be critical to preventing dissipation of assets.

25  
26 With respect to the value of contributions to the relationship in subsection (c)(1), the goal  
27 is to ensure that such contributions are appropriately valued. Because contributions will be the  
28 essence of the exchange between the parties, courts must look to and evaluate those contributions  
29 when doing equity. The value of such contributions is not limited by market value.  
30 Consequently, the court should consider the subjective value, including the value of the benefit,  
31 as well as the market value, when the contribution is tangible (property or money) or intangible  
32 (service or efforts that confer a benefit). This approach is in accord with the Restatement of  
33 Restitution suggests that market value is only one potential measure of "nonreturnable benefits:"

- 34  
35 (3) Enrichment from the receipt of nonreturnable benefits may be measured by  
36 (a) the value of the benefit in advancing the purposes of the defendant,  
37 (b) the cost to the claimant of conferring the benefit,  
38 (c) the market value of the benefit, or  
39 (d) a price the defendant has expressed a willingness to pay, if the defendant's  
40 assent may be treated as valid on the question of price.

41  
42 Restatement (Third) of Restitution and Unjust Enrichment § 49 (2011).  
43

1 Example: A and B cohabit. A takes care of the home and the parties' four children while  
2 B starts a successful business and spends little time on any domestic services. At the end of the  
3 relationship, A may have a claim that the value of A's services should be half of the value of the  
4 successful business. *See, e.g., Hewitt v. Hewitt*, 394 N.E. 2d 1204 (1979).

## 5 6 **Section 8. Effect of Court Order or Judgment on Third Parties**

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

9 (b) The claim of a cohabitant shall not be barred by the marriage of the other cohabitant,  
10 but the rights of the other cohabitant's spouse shall not be prejudiced by a court order or  
11 judgment entered without notice to the spouse and an opportunity to be heard.

12 (c) **See Memo to Committee dated March 19<sup>th</sup>, Paragraph 8, for alternative**  
13 **approaches to claims against the estate of a married cohabitant.**

14 ***Legislative Note:*** Subsection (b) allows a state to refer to a state law that specifies the rights of a  
15 surviving spouse in intestacy or to elect against a decedent's estate.

## 16 17 **Comment**

18 Subsection (a) clarifies the rights of creditors. Creditors generally will have no notice,  
19 constructive or otherwise, of the cohabiting partners' relationship. Therefore, priority is granted to  
20 their claims.

## 21 22 **Section 9. Uniformity of Application and Construction**

23 In applying and construing this uniform act, consideration must be given to the need to  
24 promote uniformity of the law with respect to its subject matter among states that enact it.

## 25 **Section 10. Relation to Electronic Signatures in Global and National Commerce Act**

26 This [act] modifies, limits, or supersedes the federal Electronic Signatures in Global and  
27 National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede  
28 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of  
29 the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

## Section 11. Savings and Transitional Provisions

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

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

### Comment

Section 11 addresses the effective date of the act. It validates and applies to cohabitants' agreements that were made prior to the act's effective date, as well as those made after that date. Similarly, it provides that the act recognizes equitable claims that accrued prior to the act's enactment, as well as those that accrue afterwards. Note that all such claims would be subject to the state's statute of limitations.

## Section 12. Repeals; Conforming Amendments

(a) . . .

(b) . . . .

(c) . . . .]

### Section 13. Effective Date

This [act] takes effect . . . .