

COLORADO COMMISSION ON UNIFORM STATE LAWS

REPORT - JANUARY, 2003

I. PREAMBLE

To the Honorable Governor, Bill Owens; the Chief Justice of the Colorado Supreme Court, Mary J. Mullarkey; the Chief Judge of the Colorado Court of Appeals, Claus J. Hume; and the members of the Colorado General Assembly. The Colorado Commissioners on Uniform State Laws respectfully submit this Annual Report.

II. HISTORY OF THE NATIONAL CONFERENCE (ULC)

In 1889, the New York Bar Association appointed a special committee on uniformity of laws. In the next year, the New York Legislature authorized the appointment of commissioners "to examine certain subjects of national importance that seemed to show conflict among the laws of the several commonwealths, to ascertain the best means to effect an assimilation or uniformity in the laws of the states, and especially whether it would be advisable for the State of New York to invite the other states of the Union to send representatives to a convention to draft uniform laws to be submitted for approval and adoption by the several states." In that same year, the American Bar Association passed a resolution recommending that each state provide for commissioners to confer with the commissioners of other states on the subject of uniformity of legislation on certain subjects. In August, 1892, the first National Conference of Commissioners on Uniform State Laws (ULC) convened in Saratoga, New York, three days preceding the annual meeting of the American Bar Association. There have been 109 conferences since that time.

By 1912, every state was participating in the ULC. In each year of service, the ULC has steadily increased its contribution to state law. Because of that contribution, it very early became known as a distinguished body of lawyers. The ULC has attracted some of the best of the profession. In 1912, Woodrow Wilson became a member. This, of course, was before his more notable political prominence and service as president of the United States. Several

persons, later to become Justices of the Supreme court of the United States, have been members. These men are former Justices Brandeis and Rutledge, and current Chief Justice Rehnquist. Legal scholars have served in large numbers. Examples are professors Wigmore, Williston, Pound, and Bogert. Many distinguished lawyers have served since 1892, though their names are not as well known in legal affairs and the affairs of the U.S. This distinguished body has guaranteed that the products of the ULC are of the highest quality and are enormously influential upon the process of the law.

As it has developed in its 110 years, the ULC is a confederation of state interests. It arose out of the concerns of state government for the improvement of the law and for better interstate relationships. Its sole purpose has been, and remains, service to state government and improvement of state law.

III. THE OPERATION OF THE ULC

The National Conference is convened as a body once a year. It meets for a period of eight to twelve days, usually in late July or the first two weeks of August. In the interim period between the annual meetings, drafting committees composed of commissioners meet to supply the working drafts which are considered at the annual meeting. At each National Conference, the work of the drafting committees is read and debated. Each Act must be considered over a substantial period of years. No Act becomes officially recognized as a Uniform Act until the National Conference is satisfied that it is ready for consideration in the state legislatures. It is then put to a vote of the states, during which each state caucuses and votes as a unit.

The governing body is the ULC Executive Committee, and is composed of the officers, certain ex-officio members, and members appointed by the President of the ULC. Certain activities are conducted by standing committees. For example, the Committee on Scope and Program considers all new subject areas for possible Uniform Acts. The Legislative Committee superintends the relationships of the ULC to the state legislatures. A small staff located in Chicago operates the national office of the ULC. The national office handles meeting arrangements, publications, legislative liaison, and general administration for the ULC. The total staff numbers only seven people.

The ULC maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which contributes an amount each year to the operation of the ULC. Liaison is also maintained with the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures on an ongoing basis. Liaison and activities may be conducted with other associations as interests and activities necessitate.

IV. ACTIVITIES OF THE COLORADO COMMISSIONERS

A. Participation of the Colorado Commissioners in the National Conference of Commissioners on Uniform State Laws is provided for in part 6 of article 3 of title 2, Colorado Revised Statutes.

B. The current Colorado Commissioners and their offices or committee assignments are:

Thomas T. Grimshaw
(Private Law Practice)
Legislative Liaison for Colorado
Standby Committee on Computer Information Transactions Act

Dwight A. Hamilton, a life member
(Private Law Practice)
Committee on Review of Conference Acts
Legislative Council
Millennium Committee

William Kaufman
(Private Law Practice)

George C. Keely, a life member
(Private Law Practice)

Donald E. Mielke
(Private Law Practice)
Drafting Committee on Environmental Covenants Act

Matt Smith
(Member of the State House of Representatives)

William Thiebaut
(Member of the State Senate)

Wayne Williams
(Private Law Practice)

Charles W. Pike
(Revisor of Statutes)

Committee on Liaison with Legislative Drafting Agencies

C. Colorado Commissioners attending the ULC Annual Meeting held on July 26 through August 2, 2002, were:

Thomas T. Grimshaw, Dwight A. Hamilton, Bill Kaufman, Donald Meilke, Matt Smith, and Charles W. Pike

V. A SUMMARY OF NEW ACTS

The following are summaries of new acts adopted in final form by the Conference at the most recent ULC Annual Meeting:

Uniform Apportionment of Tort Responsibility Act. This Act provides for a modified form of comparative fault which compares the fault of an injured party with that of all contributing tortfeasors in an action for damages until the injured person's contribution reaches or exceeds 50% of his or her own injury. Then contributory fault is an absolute bar to recovery. Joint and several liability of multiple tortfeasors is limited to certain instances, primarily the one in which multiple tortfeasors act in concert. Otherwise, joint and several liability is abolished. There is a reallocation procedure when there are multiple tortfeasors and it appears reasonably certain that a tortfeasor will not pay compensation to an entitled injured party.

Uniform Child Witness Testimony by Alternative Methods Act. This act authorizes a court to consider whether to allow a child to testify outside the presence of a party and outside a proceeding when so testifying would impair the testimony of the child witness or subject the child witness to distress. In a criminal proceeding, to obtain an alternative method, it must be proved by clear and convincing evidence that testimony will cause the child great emotional distress. In a civil proceeding, it must be shown that an alternative is in the best interests of the child by a preponderance of the evidence. Party rights to examination and cross-examination are preserved.

Amendments to Uniform Commercial Code Articles 3 and 4. Very limited amendments to UCC Articles 3 and 4 were promulgated by the American Law Institute and the Uniform Law Conference in 2002. These articles govern negotiable instruments and, bank deposits and collections. The most significant amendment deals with adding suretyship rules from the Restatement of Suretyship to replace the rules for indorsers and accommodation parties when an obligation is released without payment. There are new warranty rules for telephonically generated checks, a new phenomenon. Certain writing requirements are extended to include electronic records. These are examples of these amendments. The primary character of negotiable instruments and checks remains unchanged.

Amendments to Uniform Computer Information Transactions Act. The Uniform Computer Information Transactions Act (UCITA) is the first comprehensive act governing the commercial licensing of computer information and network access contracts. It governs all aspect of licensing contracts from formation to remedies in the event there is breach of contract. Computers operate with, produce and use digitized information. The software that runs the computer and the music that it plays are all the same in that sense. What is transferred from person to person is that digitized information stored electronically. A licensing contract is a contract to transfer the informational rights and copies of the information that the originator of computer information has to a transferee. Usually, the transferor of computer information reserves some of the informational rights — the right to copy being the most commonly withheld right. Computer information can be copied and disseminated instantly and infinitely, and the license contract protects the transferor’s economic interest in computer information by limiting the transferee’s subsequent transfer rights. There are special formation rules in UCITA for acquisition of licenses in the mass-market, warranty rules for transfer of information, including special compatibility rules, rules relating to the authentication of transfers of computer information, and rules for memorializing contracts using electronic records. Remedies for breach of an agreement are, generally, damages. 2002 amendments cut off electronic self-help as a remedy, limit the ability to prohibit reverse engineering and make licensing contracts non-binding until they are available for review either electronically or in a writing.

Amendments to Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act. This act implements the obligation of full faith and credit for domestic violence protection orders required by the U.S. Constitution and the federal Violence against Women Act. There are two principal methods of enforcement, 1) direct enforcement by a court of the domestic violence protection orders of another state; or 2) enforcement by law enforcement officers upon a finding that there is probable cause to believe that a domestic violence protection order from another state has been violated. In addition, a domestic violence protection order from another state may be registered in advance of any possible violation of that order to expedite enforcement by courts or law enforcement officers. The 2002 amendments expressly add anti-stalking orders to the scope of this Act.

Uniform Nonjudicial Foreclosure Act. This act permits the foreclosure of real estate mortgages without a judicial proceeding. It allows traditional sale by auction, placing foreclosed property directly on the real estate market or strictly foreclosing on the property. Nonjudicial foreclosure of a residential mortgage eliminates deficiency judgments for good faith debtors. Post-sale redemption is eliminated. The premise for this act is that in the huge majority of cases, the right to foreclose is clear and unequivocal. A judicial proceeding in every case therefore impedes the inevitable result, which is sale of the property to satisfy the debt. There is always recourse to a court if there is doubt about the right to foreclose.

Amendments to Uniform Parentage Act. The original Uniform Parentage Act (UpaA) was promulgated in 1973. It removed the legal status of illegitimacy from the law of the U.S. and provided a first modern civil paternity action. The 2002 UpaA augments and streamlines the 1973 UpaA. It includes the basic paternity or parentage action with expanded standing to bring such an action, but provides for a non-judicial acknowledgment of paternity procedure that is the equivalent of an adjudication of paternity in a court, providing that there is no presumed father of the child. The presumption of fatherhood is based on the relationship between a man and woman with respect to a child. The most common presumed father is the man married to the birth mother of the child at the time of conception. The acknowledgment proceeding is predicated on the availability of the precise genetic testing that has developed since 1973. A paternity registry is provided in the 2002 UpaA. There is a specific, separate judicial proceeding for ordering genetic testing. The 2002 UpaA provides specific standards for genetic testing. Only genetic tests that identify another man as a father or exclude the presumed father, may be used to rebut the presumption of fatherhood in a paternity action. Also included in the 2002 UpaA are rules for determining the parents of children whose conception is not the result of sexual intercourse. Included kinds of assisted conception are artificial insemination and in vitro fertilization. The 2002 UpaA also incorporates sections on gestational agreements, but as optional sections because of state law differences on these kinds of contracts. The principal amendments in 2002 return some of the nonmarital presumptions of paternity from the 1973 Act that were eliminated in the 2000 Act.

Uniform Securities Act. A major revision of the Uniform Securities Act was promulgated in 2002. There has been a uniform act on the issues of securities regulation going back to 1930. This Act replaces both the 1956 Uniform Act and the 1985/88 Uniform Act. It provides basic law for registration of securities issues, broker-dealers and investment advisors, along with enforcement powers for the securities administrator. Coordination with federal law, particularly after the 1996 National Securities Markets Improvement Act, is a primary goal. The 1996 federal act specifically preempted state securities regulation, making all existing state law out of compliance. The Act also accommodates electronic records and filing systems.

VI. RECOMMENDATIONS FOR ENACTMENT AND FOR OTHER ACTION

The Colorado Commissioners met with members of the Colorado Bar Association on December 16, 2002, to discuss the Bar Association's review of uniform acts and recommendations to be made to the General Assembly. The meeting resulted in the following:

- It is recommended that the **Uniform Trust Code**, as endorsed by the Colorado Bar Association, be considered by the General Assembly during the 2003

regular legislative session.

- It is recommended that the **Amendments to Articles 2, 2A, 3 and 4 of Uniform Commercial Code** be considered by the General Assembly during the 2003 regular legislative session.
- The following acts were discussed with the results noted:

Uniform Securities Act

This act would be recommended for consideration by the General Assembly in the 2004 session. The act could be considered in that session together with the sunset review of the Securities Division. The Colorado Bar Association will form a committee to review the act.

Uniform Mediation Act

A committee of the Colorado Bar Association has been reviewing the act and found many parts that they favored. However, they wish to conduct further review and recommend that consideration by the General Assembly be deferred until the 2004 session.

Uniform Athlete Agents Act

The Gaming, Entertainment & Sports Section of the Colorado Bar Association will undertake a study of this act.

Amendments to Uniform Parentage Act

The Colorado Bar Association will begin consideration of this act.

Uniform Child Witness Testimony

The Colorado Bar Association will begin consideration of this act and will coordinate their efforts with the Colorado District Attorneys Association.

Uniform Nonjudicial Foreclosure Act

No action was taken regarding this act. However, the Colorado Bar Association agreed to discuss the act with the Public Trustees.

VII. ENACTMENT RECORD, TO DATE

Colorado has an enviable record for enacting Uniform Acts. Ninety-two individual acts have been adopted in Colorado. A complete listing of Uniform Acts adopted by Colorado is attached as Appendix A.

APPENDIX A

UNIFORM ACTS ADOPTED BY COLORADO WITH THE YEAR THAT COLORADO ADOPTED THE ACT DESIGNATED IN PARENTHESIS:

Act Regulating Traffic on Highways (1931)
Act to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings (1939)
Alcoholism and Intoxication Treatment Act (1973)
Anatomical Gift Act (1969)
Arbitration Act (1975)
Certification of Questions of Law Act (1969)
Child Custody Jurisdiction Act (1973)
Commercial Code (1965)
Commercial Code, Article 2A (1991)
Commercial Code, Articles 3 & 4 (1994)
Commercial Code, Article 4A (1990)
Commercial Code, Article 5, (1996)
Commercial Code, Article 6, Repeal (1991)
Commercial Code, Article 8 (1985 Amendments) (1996)
Commercial Code, Article 9 Amendments (1977)
Commercial Code, Article 9 (2001)
Commercial Code, Article 9 Amendments (2002)
Common Interest Ownership Act (1991)
Common Trust Fund Act (1947)
Conflict of Law Limitations Act (1984)
Consumer Credit Code (1971)
Controlled Substances Act (1992)
Contribution Among Tortfeasors Act, Revised 1955 (1977)
Criminal Extradition Act (1953)
Deceptive Trade Practices Act, Revised 1966 (1969)
Declaratory Judgments Act (1923)
Determination of Death Act (1981)
Disposition of Community Property Rights at Death Act (1973)
Division of Income for Tax Purposes Act (1968)
Durable Power of Attorney Act (1973)
Duties to Disabled Persons Act (1973)
Electronic Transactions Act (2002)
Enforcement of Foreign Judgments Act, Revised 1964 (1969)
Facsimile Signatures of Public Officials Act (1969)

Federal Tax Lien Registration Act, Revised 1966 (1969)
Fiduciaries Act (1923)
Fraudulent Transfers (1991)
Foreign Money Claims Act (1990)
Gifts to Minors Act, Revised 1966 (1967)
Insurers Liquidation Act (1955)
Interstate Arbitration of Death Taxes Act (1953)
Interstate Compromise of Death Taxes Act (1953)
Interstate Family Support Act (1993)
Judicial Notice of Foreign Law Act (1967)
Jury Selection and Service Act (1971)
Limited Partnership Act (1931)
Limited Partnership Act, Revised 1976 (1981)
Management of Institutional Funds Act (1973)
Mandatory Disposition of Detainers Act (1969)
Marriage and Divorce Act (1971)
Motor Vehicle Operators' and Chauffeurs' License Act (1931)
Motor Vehicle Registration Act (1931)
Narcotic Drug Act (1935)
Negotiable Instruments Law (1897)
Nonprofit Association Act (1994)
Parentage Act (1977)
Partnership Act (1931) (1997)
Photographic Copies of Business and public Records as Evidence Act (1955)
Principal and Income Act (1955) (2000)
Probate Code (1973)
Probate Code, Amendments (1975)
Probate Code, Article II, (1994)
Probate Code, Rule Against Perpetuities (1991)
Probate Code, Article VI, Amendments (1990)
Probate Code, Custodial Trust Act (1999)
Probate Code, Guardianship & Protective Proceedings (2000)
Prudent Investor Act (1995)
Reciprocal Enforcement of Support Act (1951)
Reciprocal Enforcement of Support Act, Amended 1958 (1961)
Reciprocal Enforcement of Support Act, Amended, Revised 1968 (1971)
Reciprocal Transfer Tax Act (1943)
Recognition of Acknowledgments Act (1969)
Rendition of Accused Persons Act (1972)
Sales Act (1941)

Securities Act (1961)
Simplification of Fiduciary Security Transfers Act (1959)
Simultaneous Death Act (1943)
Simultaneous Death Act, Amended 1953 (1967)
Statutory Construction Act (1973)
Statutory Form Power of Attorney Act (1992)
Stock Transfer Act (1927)
Trade Secrets Act (1983)
Trade Secrets Act, Amended 1985 (1986)
Transboundary Pollution Reciprocal Access Act (1984)
Transfer of Dependents Act (1937)
Transfers to Minors Act (1984)
Unclaimed Property Act (1987)
Veteran's Guardianship Act (1929)
Veteran's Guardianship Act, Revised 1942 (1945)
Victims of Crime (1992)
Warehouse Receipts Act (1911)
Warehouse Receipts Act, Amended 1922 (1923)

S:\LLS\Uniform Laws\Annual Reports & materials\CUSLReport2003.wpd