

COLORADO COMMISSION ON UNIFORM STATE LAWS REPORT - JANUARY, 2006

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, Janice B. Davidson; 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 112 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 113 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:

Mike Cerbo, Member of the State House of Representatives
Legislative Liaison for Colorado
Drafting Committee on Registered Agents and Annual Filing Requirements

Thomas T. Grimshaw, Private Law Practice
Chair of the Colorado Commission
Standby Committee on Assignment of Rents

Dan Grossman, Member of the State Senate

William G. Kaufman, Private Law Practice
Drafting Committee on Guardianship Interstate Jurisdiction and Enforcement
Chair of Study Committee on Health Care Information Interoperability

Anne L. McGihon, Member of the State House of Representatives
Study Committee on Omnibus Business Organizations Code

Donald E. Mielke, Private Law Practice
Drafting Committee on Common Interest Ownership
Study Committee on Regulation of Medical Examiners
Study Committee on Emergency Cross-state Licensing

Charles W. Pike, Director, Office of Legislative Legal Services
Legislative Counsel Committee

- C. Colorado Commissioners attending the ULC Annual Meeting held on July 22 through July 29, 2005, were:

Mike Cerbo, Thomas T. Grimshaw, William G. Kaufman, Anne L. McGihon, Donald E. Mielke, 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:

2005 SHORT SUMMARIES

Uniform Assignment of Rents Act (UARA)

Real estate law generally does not provide a consistent creditor's right to rents when a debtor on a real estate loan on property with tenants then defaults on payment. Creditors normally take an assignment of rents upon default as part of the credit transaction, but enforceability of such assignments and their priority over other creditors is often in doubt. The Uniform Assignment of Rents Act seeks to remedy this problem by establishing a comprehensive statutory model for the creation, perfection, and enforcement of a security interest in rents. An assignment of rents creates a security interest in the rents that may be perfected by a filing in the appropriate real estate records. Perfection establishes priority in collection of the rents over competing creditors. Tenants may be required, upon specified notice, to pay rents directly to the assignee as a means of enforcement of the security interest. A receiver may be appointed in the event the assignee can show that direct enforcement is insecure.

Uniform Foreign-Country Money Judgments Recognition Act (UF-CMJRA)

This Act is a revision of the Uniform Foreign Money-Judgments Recognition Act of 1962, which codified the most prevalent common law rules with regard to the recognition and enforcement of money judgments rendered in other countries. Recognition in an American state court is a step towards enforcement of the judgment against assets of the judgment debtor. This revision continues the basic policies and language of the 1962 Act; the main purpose of this modest revision is to correct and clarify gaps in the 1962 Act revealed in the case law. For example, the 2005 Act provides that a petitioner for recognition has the burden of proving that the judgment is entitled to recognition under the standards of the Act, and that any respondent resisting recognition and enforcement has the burden of proof respecting denial of recognition. Burdens of proof were not addressed in the 1962 Act. The 2005 Act has statutes of limitations provisions not found in the 1962 Act at all. The result is a more comprehensive Act and better response to the conditions of international trade.

Uniform Debt-Management Services Act (UDMSA)

The consumer debt management industry has taken many forms over the time since its development in the 1950's. The industry has had a checkered past, with frequent accusations of abuse. The interest in debt counseling and management, however, has been dramatically escalated by the bankruptcy reform legislation passed by Congress in 2005. It mandates counseling by a private agency before an individual may enter into bankruptcy. The Uniform Debt-Management Services Act regulates debt-management companies by requiring them to register with the state. To obtain a certificate of

registration, a provider must supply information about itself, must obtain insurance against employee dishonesty, and must post a surety bond to safeguard any money that it receives from individuals for payment of creditors. The Act also regulates interaction with consumers, including steps to be taken before entering an agreement with an individual, the content of an agreement (including limitations on the fees that may be charged), and provisions concerning the performance and termination of agreements. Finally, the Act provides for enforcement both by a public authority and by private individuals, including rule-making power on the part of the administrator and recovery of minimum, actual, and, in appropriate cases, punitive damages in private enforcement actions.

Uniform Certificate of Title Act (UCOTA)

Ownership of motor vehicles is dependent upon registration of motor vehicle titles in every state. Not only ownership rights, but the rights of secured creditors are dependent upon these registrations. A secured creditor with a security interest in a motor vehicle perfects that interest in the title registration records. Though the buying, selling, financing and owning of motor vehicles is clearly interstate in scope, the law providing for registration of certificates of title for motor vehicles is not uniform from state to state. The Uniform Certificate of Title Act is intended to promote uniformity of certificate of title law. This is significant now because the law of secured transactions, under which motor vehicles are financed, is uniform. The Uniform Act provides basic procedures for registering certificates of title for motor vehicles. It is designed to incorporate electronic registrations of title. It is also designed to incorporate electronic title searches for motor vehicles. While this Act does not cover watercraft or premanufactured homes, nor does it attempt to harmonize state “lemon laws” or title branding systems, it is intended to enable state coordination with federal initiatives to prevent title and odometer fraud. By providing for improved administrative rules and remedies governing title issues, creating better and more consistent data flows and information, and providing increased uniformity in the law, the Act will make certificates of title more meaningful and useful for all parties. The resulting increased integrity of the title system will benefit all involved.

Model Entity Transactions Act (META)

The Model Entity Transactions Act provides procedures for mergers, conversions, interest exchanges, divisions and domestications of business and nonprofit entities, including partnerships, limited partnerships, limited liability companies and corporations. Cross entity transactions of these kinds are made more universally possible. The objective is to accomplish such a transaction with appropriate approvals without having to dissolve an entity and without extinguishing any obligations owed by preceding entities in the process. This is a model act because it must be tailored in each enacting state to tie existing entity statutes together. It was initially completed in 2004. Division of entities was added in 2005.

VI. RECOMMENDATIONS FOR ENACTMENT AND FOR OTHER ACTION

The Colorado Commissioners met with members of the Colorado Bar Association on

December 9, 2005, to discuss the Bar Association's review of uniform acts and to consider recommendations that the Colorado Commissioners will make to the General Assembly. The meeting resulted in the following actions and recommendations:

- **Articles 1 and 7 of the Uniform Commercial Code** should be considered by the General Assembly during the 2006 regular legislative session. Representative Mike Cerbo indicated that he would sponsor a bill for this purpose.
- **Debt-Management Services Act** might be considered for introduction during the 2006 regular legislative session. A review of the current Colorado statute regarding credit services organizations (see 12-14.5-101, et. seq., C.R.S.) would need to be made to ascertain whether the uniform act could be blended with this statute and whether the adoption of the Debt-Management Services Act as a "stand alone act" might require a Sunrise Review for new licensing acts in accordance with section 24-34-104.1, C.R.S. Representative Anne McGihon had previously indicated that she would consider sponsoring a bill for this purpose.
- **Interstate Enforcement of Domestic-Violence Protection Orders Act** might be considered for introduction during the 2006 regular legislative session. The Bar Association's representatives indicated that they would solicit input on the act from their members. Representative Anne McGihon had previously indicated that she would consider sponsoring a bill for this purpose.
- **Uniform Trust Code** might be considered for introduction during the 2006 regular legislative session. However, prior to an introduction, the support for the act and the opposition to the act should be re-evaluated to ascertain whether another effort should be considered at this time. The possibility of introducing a portion of the act or introducing the act without article 5 was discussed, but a final decision was deferred pending the re-evaluation.
- **Uniform Mediation Act** was discussed, and the Bar Association representatives indicated that their previous review of the act and a comparison of the act with Colorado's statute on dispute resolution as contained in 13-22-301, et. seq., C.R.S., suggested that the Colorado statute may provide a better approach to addressing confidentiality issues than the uniform act. However, they indicated that they would conduct a further review to determine whether any portions of the uniform act should be considered as additions to the Colorado statute. Accordingly, consideration could be given to introducing a bill in a future session that would blend the two acts if this is deemed appropriate.
- **Uniform Environmental Covenants Act** was discussed. The introduction of

Senate Bill No. 05-246 and the subsequent informal discussions conducted during the interim were reviewed (SB 05-246 would have enacted the Uniform Environmental Covenants Act - the bill was postponed indefinitely in Senate Judiciary Committee). Since it appeared that there remain further areas for discussion between representatives of the Colorado Attorney General and representatives of the federal government regarding the differences between the enforcement provisions of the uniform act and the similar provisions of the existing Colorado Statute that address this subject, further consideration of an introduction in 2006 would be deferred.

- **Uniform Limited Partnership Act** was discussed. However, no recommendation was made for introduction during the next regular legislative session. Representatives of the Bar Association have previously suggested major rewrites of Colorado's Corporations and Associations Act. Their suggestions have been incorporated into sections 7-90-101, et. seq., C.R.S., to provide for all forms of entities. This would appear to indicate that the Business Law Section might prefer the revised Colorado statutes to the uniform act. The Business Law Section will be asked to review the Colorado provisions in light of the Uniform Limited Partnership Act and the Model Entity Transactions Act.

VII. ENACTMENT RECORD, TO DATE

Colorado has an enviable record for enacting Uniform Acts. Ninety-three 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) and (2004)
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) (2003)
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)

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