

COLORADO COMMISSION ON UNIFORM STATE LAWS REPORT - JANUARY, 2008

I. PREAMBLE

To the Honorable Governor, Bill Ritter; 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 115 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 former 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 117 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 that 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 twelve people.

The ULC maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which contributes 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
Chair of the Colorado Commission
Standby Committee on Assignment of Rents
Standby Committee on Emergency Volunteer Health Practitioners

Ken Gordon, Member of the State Senate

Stanley C. Kent, Private Law Practice
Drafting Committee on Insurable Interests Relating to Trusts
Enactment Committee for Uniform Trust Code

Claire B. Levy, Member of the State House of Representatives

Anne L. McGihon, Member of the State House of Representatives
Chair of Division C, which consists of 11 different committees
Committee to Host Annual Meeting

Donald E. Mielke, Private Law Practice
Drafting Committee to Amend Common Interest Ownership Act
Standby Committee on Emergency Volunteer Health Practitioners

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

Brandon Shaffer, Member of the State Senate

- C. Colorado Commissioners attending the ULC Annual Meeting held on July 26 through August 3, 2007, were:

Thomas T. Grimshaw, Stanley C. Kent, Representative Anne McGihon, Donald E. Mielke, Charles W. Pike, and Senator Brandon Shaffer.

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:

2007 SHORT SUMMARIES

Amendments to Uniform Emergency Volunteer Healthcare Practitioners Act

The Uniform Emergency Volunteer Health Practitioners Act, approved in 2006 and already adopted in three states, allows state governments to give reciprocity to other states' licensees on emergency services providers so that covered individuals may provide services without meeting the disaster state's licensing requirements. Newly approved amendments address the issues of workers' compensation coverage and protection from some aspects of civil liability.

Amendments to Model Entity Transactions Act

Make various changes to the 2005 act. The 2005 act, drafted as a collaborative effort of the National Conference of Commissioners on Uniform State Laws and the American Bar Association, provides states with a single set of procedures covering all types of mergers and conversions among different forms of business entities.

Amendments to Representation of Children in Abuse and Neglect and Custody Proceedings Act

Amendments are being proposed as the result of objections to certain portions of the Act by the Litigation Section of the American Bar Association. The 2006 act seeks to improve the representation of children in proceedings directly affecting their custody by clearly defining the roles and responsibilities of children's representatives and by providing guidelines to courts in appointing representatives.

Adult Guardianship and Protective Proceedings Jurisdiction Act

The new Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act addresses the issue of jurisdiction over adult guardianships, conservatorships, and other protective proceedings. Because there are more than fifty guardianship systems in the United States, problems of determining jurisdiction are frequent. This act provides an effective mechanism for resolving multi-state jurisdictional disputes.

This new act contains specific guidelines to specify which court has jurisdiction to appoint a guardian or conservator for an incapacitated adult. The objective is that only one state will have jurisdiction at any one time.

Interstate Depositions and Discovery Act

The Uniform Interstate Depositions and Discovery Act provides simple procedures for courts in one state to issue subpoenas for out-of-state depositions. The Act is simple and efficient: it establishes a simple clerical procedure under which a state subpoena in the "trial state" can be used to issue a subpoena in another state. The act has minimal judicial

oversight; the goal is to simplify and standardize the current patchwork of procedures across the various states for deposing witnesses for purposes of out-of-state litigation.

Limited Cooperative Association Act

The Uniform Limited Cooperative Association Act addresses the cooperative form of business, a unique business entity which is different from other forms of business organizations. This act creates a new form of business entity and is an alternative to other cooperative and unincorporated structures. It is more flexible than most current law, and provides a default template that encourages planners to utilize tested cooperative principles for a broad range of entities and purposes.

Rules Relating to Discovery of Electronically Stored Information

The Uniform Rules Relating to Discovery of Electronically Stored Information should bring up-to-date the state rules and statutes concerning discovery in civil cases. With the emergence of electronic technology, the extent to which individuals and institutions store or maintain information in an electronic form has clearly increased since the adoption of rules governing discovery generally. By some estimates, more than 90% of corporate information is being stored in some sort of digital or electronic format. This new act mirrors the recently adopted amendments to the Federal Rules of Civil Procedure dealing with electronically stored information.

VI. RECOMMENDATIONS FOR ENACTMENT AND FOR OTHER ACTION

The Colorado Commissioners met with a representative of the Colorado Bar Association on September 4, 2007, to discuss 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:

- **Interstate Depositions and Discovery Act** should be considered by the General Assembly during the 2008 regular session. Representative Anne McGihon indicated that she would sponsor a Committee bill for this purpose.
- **Foreign Country Money Judgments Recognition Act** should be considered by the General Assembly during the 2008 regular session. Representative Anne McGihon indicated that she would sponsor a Committee bill for this purpose.
- **Adult Guardianship and Protective Proceedings Jurisdiction Act** should be considered by the General Assembly during the 2008 regular session. Senator John Morse has agreed to sponsor a Committee bill for this purpose.
- **Prudent Management of Institutions Funds Act** should be considered by the General Assembly during the 2008 regular session. Representative Anne McGihon indicated that she would sponsor a Committee bill for this purpose.
- **Athlete Agents Act** should be introduced again for consideration by the General Assembly during the 2008 regular session. The Act had been adopted by the General Assembly during the 2006 regular session, but the

bill was subsequently vetoed by Governor Bill Owens.

VII. ENACTMENT RECORD, TO DATE

Colorado has an enviable record for enacting Uniform Acts. Ninety-seven 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) and (2007)
Arbitration Act (1975) and (2004)
Certification of Questions of Law Act (1969)
Child Abduction Prevention Act (2007)
Child Custody Jurisdiction Act (1973)
Commercial Code (1965)
Commercial Code, Article 1 (2006)
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 7 (2006)
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)
Emergency Volunteer Health Practitioners Act (2007)
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)

S:\LLS\Uniform Laws\Annual Reports & materials\CUSLReport2008.wpd