

COLORADO COMMISSION ON UNIFORM STATE LAWS REPORT - JANUARY 2012

I. PREAMBLE

To the Honorable Governor, John Hickenlooper; the Chief Justice of the Colorado Supreme Court, Michael L. Bender; 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 119 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 122 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 fourteen 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:

Robert S. Gardner, Member of the State House of Representatives
Study Committee on Regulation of Lawsuit Loans

Thomas T. Grimshaw, Private Law Practice
Drafting Committee on Manufactured Housing Act

Stanley C. Kent, Private Law Practice
Drafting Committee on Powers of Appointment
Drafting Committee on Premarital and Marital Agreements
Standby Committee on Insurable Interests Amendments to the Uniform Trust Code
Enactment Committee for Uniform Principal and Income Act Amendments
Standby Committee on Principal and Income Act

Claire B. Levy, Member of the State House of Representatives
Standby Committee on Military and Overseas Voters Act
Legislative Committee
Study Committee on Relocation of Easements
Committee to Review the ULC Scope and Program Process

Frank McNulty, Member of the State House of Representatives

Donald E. Mielke, Private Law Practice
Standby Committee on U.N. E-Commerce Convention
Study Committee on Appointment and Powers of Real Estate Receivers
Enactment Committee for Emergency Volunteer Health Practitioners Act

Thomas Morris, Senior Attorney, Office of Legislative Legal Services
Committee of Legislative Attorneys

Charles W. Pike, Former Director, Office of Legislative Legal Services

Brandon Shaffer, Member of the State Senate
Legislative Liaison
Public Information Committee
Committee on Relations with Other Organizations

C. Colorado Commissioners attending the ULC Annual Meeting held on July 7-13, 2011, were:

Representative Robert S. Gardner, Thomas T. Grimshaw, Stanley C. Kent,

Representative Claire B. Levy, Representative Frank McNulty, Anne McGihon, Donald E. Mielke, Thomas Morris, 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:

2011 SHORT SUMMARIES

The Uniform Electronic Legal Material Act

The Uniform Electronic Legal Material Act (UELMA) addresses many of the concerns posed by the publication of state primary legal material online. UELMA provides a technology-neutral, outcomes-based approach to ensuring that online state legal material deemed official will be preserved and will be permanently available to the public in unaltered form. It furthers state policies of accountability and transparency in providing legal information to the public.

The act applies to electronic legal material that has been designated official. Four categories of basic state legal material are specifically named in the act, including the state constitution, state session laws, codified laws, and agency regulations which have the effect of law. The state has discretion to include any other publications it desires.

The Act requires that official electronic legal material be:

1. *Authenticated*, by providing a method to determine that it is unaltered;
2. *Preserved*, either in electronic or print form; and
3. *Accessible*, for use by the public on a permanent basis.

The UELMA does not require specific technologies, leaving the choice of technology for authentication and preservation up to the states. The UELMA is intended to be complementary to the Uniform Commercial Code (UCC, which covers sales and many commercial transactions), the Uniform Real Property Electronic Recording Act (URPERA, which provides for electronic recording of real property instruments), and the Uniform Electronic Transactions Act (UETA, which deals with electronic commerce).

Uniform Certificate of Title for Vessels Act

The Uniform Certificate of Title for Vessels Act (UCOTVA) regulates the titling of boats and other vessels that are principally used on an adopting state's waters and that are of at least 16 feet in length, as well as all vessels propelled by an engine of at least ten horsepower.

The UCOTVA removes or avoids ambiguities found in many state titling laws regarding the effect of the title, the consequence of a failure to title, or the effect of errors on the title, thereby facilitating transfers of ownership of a vessel.

The UCOTVA deters and impedes the theft of vessels by making information about the ownership of vessels available to both government officials and those interested in acquiring an interest in a vessel.

The UCOTVA accommodates existing financing arrangements for vessels and

provides certain consumer protections when purchasing a vessel through the Act's branding initiative. Additionally, the UCOTAV integrates seamlessly with the Uniform Commercial Code.

Uniform Business Organizations Code

The Uniform Business Organizations Code harmonizes the numerous uniform business entity acts. The primary purposes of the new Code are: (1) to harmonize the language of all of the unincorporated entity laws, and (2) to revise the language of each of those acts in a manner that permits their integration into a single Code of entity laws. States that choose to adopt this new Code will also have the option of including all of their corporation and non-profit corporation acts within the Uniform Code.

The harmonization process involved the revision of the following acts:

1. Model Entity Transactions Act
2. Model Registered Agents Act
3. Uniform Partnership Act (1997)
4. Uniform Limited Partnership Act (2001)
5. Uniform Limited Liability Company Act (2006)
6. Uniform Statutory Trust Entity Act
7. Uniform Limited Cooperative Association Act
8. Uniform Unincorporated Nonprofit Association Act (2008)

The harmonized version of each of these acts will remain available as stand-alone acts, and can be adopted as such in the states. States can also choose to adopt the entire Business Organization Code as a single Code, or, in states that have adopted one or more of these acts, those states can simply amend the already-enacted acts to harmonize with the others.

Model Protection of Charitable Assets Act

The Model Protection of Charitable Assets Act (MPOCAA) was drafted to clarify and harmonize the role of states' Attorneys General in charitable regulation, and to enhance their ability to effectively track and oversee charitable institutions. It builds upon the older, 1954 Uniform Supervision of Trustees for Charitable Purposes Act, and takes into account the "best practices" in modern charitable regulation from around the country.

MPOCAA was drafted as a model law, as opposed to a uniform law, with the intent that all or parts of the act would be useful to the widest variety of states. As a whole, it provides a minimalist structure for those states without significant existing provisions and regulatory regimes, but components of the act will still enhance the existing laws of those states that do. While uniformity is desirable, adoption by all the states of at least portions of this framework should enhance further cooperation between the state regulators, to the benefit of the public, to those charities operating exclusively within a particular state, and those that operate in multiple jurisdictions.

VI. RECOMMENDATIONS FOR ENACTMENT AND FOR OTHER ACTION

The Colorado Commissioners met with representatives of the Colorado Bar Association in September 2011 and also December 2011 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:

- **Uniform Collaborative Law Act** should be considered by the General Assembly during the 2012 regular session. Representatives Claire Levy and Bob Gardner have agreed to sponsor a committee bill for this purpose.
- **Uniform Protection of Charitable Assets Act** should be considered by the General Assembly during the 2012 regular session. Representatives Bob Gardner and Claire Levy have agreed to sponsor a committee bill for this purpose.
- **Uniform Commercial Code Article 9 Revisions** should be considered by the General Assembly during the 2012 regular session. Representative Bob Gardner has agreed to sponsor a committee bill for this purpose.
- **Uniform Electronic Legal Material Act** should be considered by the General Assembly during the 2012 regular session. Representatives Bob Gardner and Claire Levy have agreed to sponsor a committee bill for this purpose.

VII. ENACTMENT RECORD, TO DATE

Colorado has an enviable record for enacting Uniform Acts. One hundred and one 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)
Adult Guardianship and Protective Proceedings Jurisdiction Act (2008)
Alcoholism and Intoxication Treatment Act (1973)
Anatomical Gift Act (1969) and (2007)
Arbitration Act (1975) and (2004)
Athlete Agents Act (2008)
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)
Debt-Management Services Act (2007)
Deceptive Trade Practices Act, Revised 1966 (1969)
Declaratory Judgments Act (1923)
Determination of Death Act (1981)
Disclaimer of Property Interests Act (2011)
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)
Estate Tax Apportionment Act (2011)
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)
Foreign-country Money Judgments Recognition Act (2008)
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 Depositions and Discovery Act (2008)
Interstate Family Support Act (1993) (2003)
Judicial Notice of Foreign Law Act (1967)
Jury Selection and Service Act (1971)
Limited Cooperative Associations Act (2011)
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)
Military and Overseas Voters Act (2011)
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)
Power of Attorney Act (2009)
Principal and Income Act (1955) and (2000)
Principal and Income Act, Amendments (2009)
Probate Code (1973)
Probate Code, Amendments (1975) and (2009)
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)

Prudent Management of Institutional
Funds Act (2008)
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)
Uniform Trust Code, 2010 Insurable Interest
Amendments (2011)
Unclaimed Property Act (1987)
Unsworn Foreign Declarations Act (2009)
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)