

COLORADO COMMISSION ON UNIFORM STATE LAWS

REPORT - JANUARY 2013

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; the President of the Senate, John Morse; the Speaker of the House of Representatives, Mark Ferrandino; and the members of the Colorado General Assembly. The Colorado Commission on Uniform State Laws respectfully submits 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.

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 people who later became Justices of the Supreme Court of the United States have been members: 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.

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 convenes as a body once a year. It meets for a period of eight to twelve days, usually in late July or early 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. An Act does not become 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. Colorado's commissioners must be attorneys admitted

to practice law in Colorado. Six members are appointed or reappointed by joint resolution of the General Assembly, of whom at least two must be legislators and at least two must be members of the public at large. Commissioners serve terms of two years.

In addition, any Colorado citizen who is elected as a life member of the NCCUSL (after twenty years of membership) is a member of the Colorado Commission. The currently active life members are Thomas Grimshaw and Charles Pike; Commissioner Donald Mielke also reached life member status on the Commission in July, 2011. The Director of the Office of Legislative Legal Services, or the Director's designee, has the same status as appointed members of the commission and also serves as the ex officio secretary of the Colorado Commission. Thomas Morris currently serves as the Director's designee to the Commission.

- 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 Veterans Court Act

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

Stanley C. Kent, Private Law Practice
Drafting Committee on Fiduciary Access to Digital Assets
Drafting Committee on Powers of Appointment
Drafting Committee on Premarital and Marital Agreements
Study Committee on Trust Decanting
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
Drafting Committee for Real Estate Receivers
Enactment Committee on Emergency Volunteer Health Practitioners

Standby Committee on U.N. E-Commerce Convention
Study Committee on Appointment and Powers of Real Estate Receivers

Thomas Morris, Senior Attorney, Office of Legislative Legal Services
Secretary of the Colorado Commission on Uniform State Laws
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 13-19, 2012, were:

Representative Robert S. Gardner, Thomas T. Grimshaw, Stanley C. Kent, Representative Frank McNulty, Donald E. Mielke, Thomas Morris, 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:

The Uniform Deployed Parents Custody and Visitation Act

The Uniform Deployed Parents Custody and Visitation Act (UDPCVA) addresses issues of child custody and visitation that arise when parents are deployed in military or other national service. The deployment of a custodial parent raises custody issues that are not adequately dealt with in the law of most states. In many instances, deployment will be sudden, making it difficult to resolve custody issues before the deployment by ordinary child custody procedures. There is a need to ensure that parents who serve their country are not penalized for their service, while still giving adequate weight to the interests of the other parent, and most importantly, the best interest of the child. The UDPCVA contains provisions that apply generally to custody matters of service members, as well as provisions that arise on notice of and during deployment.

The Uniform Premarital and Marital Agreements Act

The Uniform Premarital and Marital Agreements Act addresses the varying standards on both types of agreements that have led to conflicting laws, judgments, and uncertainty about enforcement as couples move from state to state. The Act harmonizes the standards in existing uniform acts governing premarital and marital agreements (Uniform

Premarital Agreement Act, Uniform Marital Property Act, Uniform Probate Code, and Model Marriage and Divorce Act). The Act also addresses waivers of rights at death by agreement and requires explicit knowledge of other waivers. Waivers and unconscionability are also addressed with provisions relating to domestic violence.

The Uniform Asset Freezing Orders Act

The Uniform Asset Freezing Orders Act creates a uniform process for the issuance of asset freezing orders, which are in personam orders freezing the assets of a defendant in order to prevent a party from dissipating assets prior to judgment. An asset freezing order is, by its very nature, an extraordinary remedy with potentially significant impact on the debtor whose assets are frozen and on third-parties holding those assets. Accordingly, it is extremely important that there be rigorous standards which must be met before such an order can be issued, which the uniform act provides. Since asset freezing orders also impact non-parties, the uniform act sets out with specificity the obligations of non-parties. Lastly, the uniform act also contains a mechanism for recognition and enforcement of asset freezing orders issued by other states and from courts outside the United States.

The Uniform Manufactured Housing Act

The Uniform Manufactured Housing Act will allow owners of manufactured houses the option to classify manufactured homes as either real property or personal property. Although only a small percentage of manufactured homes are moved after being sited, the historic assumption is that the manufactured home is personal property – a remaining vestige of its ancestor, the travel trailer. As a result, 42 states issue a certificate of title for manufactured homes, as they do for cars. Though most of these states provide a statutory method by which a manufactured home can be reclassified as real property, the methods are cumbersome and often confusing. The act provides an efficient and effective method for having a manufactured home classified as real property at the time of the first retail sale, thereby obviating the need for a certificate of title, or at any other time. Classification of manufactured homes as real property should allow qualified buyers to obtain financing on more favorable terms. Retailers would be required to notify buyers of the classification option at the time of sale.

The Uniform Choice of Court Agreements Convention Implementation Act

The Uniform Choice of Court Agreements Convention Implementation Act was also approved at the ULC's annual meeting. This act will assist in the implementation and ratification of the Hague Convention on Choice of Court Agreements, and is meant to harmonize with federal implementing legislation.

VI. RECOMMENDATIONS FOR ENACTMENT AND FOR OTHER ACTION

The Colorado Commissioners met with representatives of the Colorado Bar Association in December 2012 to discuss uniform acts and to consider recommendations that the Colorado

Commissioners will make to the General Assembly. The Commissioners voted to begin drafting the following acts for introduction in the General Assembly's 2013 regular session: Uniform Asset Freezing Orders Act, Uniform Choice of Court Agreements Convention Implementation Act, Uniform Deployed Parents Custody and Visitation Act, Uniform Premarital and Marital Agreements Act, UCC Article 4A Amendments (2012), and the Real Property Electronic Recording Act.

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)
Commercial Code, Article 9 Amendments (2012)
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 Legal Material Act (2012)
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)