

COLORADO COMMISSION ON UNIFORM STATE LAWS REPORT - JANUARY 2016

I. PREAMBLE

To the Honorable Governor, John Hickenlooper; the Chief Justice of the Colorado Supreme Court, Nancy E. Rice; the Chief Judge of the Colorado Court of Appeals, Alan M. Loeb; the President of the Senate, Bill L. Cadman; the Speaker of the House of Representatives, Dickey Lee Hullinghorst; and the members of the Colorado General Assembly. The Colorado Commission on Uniform State Laws respectfully submits this Annual Report.

II. HISTORY OF THE UNIFORM LAW COMMISSION

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 Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws) was formed, and the first national conference of ULC state commissioners 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 United States. 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 ULC 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 ULC 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 fifteen 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 ULC 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 ULC (after twenty years of membership) is a member of the Colorado Commission. The currently active life members are Thomas Grimshaw, Charles Pike, and Donald Mielke. 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, Private Law Practice

- Study Committee on Drones
- Study Committee on Involuntary Pornography Websites

Thomas T. Grimshaw, Retired, Private Law Practice

Jon Keyser, Member of the State House of Representatives

Claire B. Levy, Executive Director, Colorado Center on Law and Policy

- Standby Committee on Military and Overseas Voters Act
- Drafting Committee to Revise the Uniform Unclaimed Property Act
- Study Committee on Declarations of Quarantine

Donald E. Mielke, Private Law Practice

- Enactment Committee on Emergency Volunteer Health Practitioners
- Standby Committee on U.N. E-Commerce Convention
- Standby Committee on Commercial Real Estate Receivership Act
- Enactment Committee on Uniform Athlete Agents Act

Anne L. McGihon, Private Law Practice

- Chair of the Colorado Commission on Uniform State Laws
- Enactment Committee on Uniform Athlete Agents Act
- Drafting Committee on Wage Garnishment Act
- Study Committee on the Enforcement of Child Custody and Child Support Orders

Thomas Morris, Managing Senior Attorney, Office of Legislative Legal Services

- Secretary of the Colorado Commission on Uniform State Laws

- ULC Committee of Legislative Attorneys
- Study Committee on Driverless Cars

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

Brandon Shaffer, Executive Director of Legal and Governmental Affairs, Community Outreach, and P-TECH at St. Vrain Valley Schools

- Vice Chair of the Colorado Commission on Uniform State Laws
- Drafting Committee on Criminal Records Accuracy

Pat Steadman, Member of the State Senate

- Study Committee on Involuntary Pornography Websites
- Coordinating Committee on Technical Amendments Necessary to Comply with *Obergefell v. Hodges*

C. Colorado Commissioners attending the ULC Annual Meeting held July 10-16, 2015, were:

Robert S. Gardner, Representative Jon Keyser, Claire B. Levy, Anne L. McGihon, Donald E. Mielke, Thomas Morris, Charles W. Pike, Brandon C. Shaffer, and Senator Pat Steadman.

V. A SUMMARY OF NEW ACTS

The following are summaries of new acts adopted in final form by the ULC at the most recent ULC annual meeting:

Revised Uniform Athlete Agents Act (2015)

The Colorado General Assembly adopted the 2000 ULC Uniform Athlete Agents Act in 2008, and the act has been enacted in 42 other states. The revised act makes numerous changes to the original act, including expanding the definition of “athlete agent” and “student athlete;” providing for reciprocal registration between states; adding new requirements to the signing of an agency contract; and expanding notification requirements.

Uniform Home Foreclosure Procedures Act

The high volume of residential foreclosure actions in recent years revealed flaws in the foreclosure system, particularly in states where court systems were overwhelmed. This act strives to provide a balanced set of rules and procedures to standardize and streamline the foreclosure process. The act protects homeowners by requiring adequate notice and

documentation before a foreclosure action can proceed. The act protects lenders by precluding contrary municipal ordinances and expediting foreclosure of abandoned properties. Finally, the act includes rules for pre-foreclosure resolutions and negotiated transfers to encourage non-judicial solutions.

Revised Uniform Residential Landlord and Tenant Act 2015

The Uniform Residential Landlord and Tenant Act was first promulgated in 1972 and last amended in 1974. The purpose of the original Act was to eliminate all elements of outmoded common law from the landlord-tenant relationship and base all phases of the rental agreement on contract law. The Revised Act includes new articles covering the disposition of tenant property, lease termination in case of domestic violence or sexual assault, and security deposits. The Revised Act also includes an appendix for states that only want to enact the updated provisions.

Uniform Trust Decanting Act

Decanting is a term used to describe the distribution of assets from one trust into a second trust, like wine is decanted from the bottle to another vessel. Decanting can be a useful strategy for changing the outdated terms of an otherwise irrevocable trust, but can also be abused to defeat the settlor's intent. The Uniform Trust Decanting Act allows a trustee to reform an irrevocable trust document within reasonable limits that ensure the trust will achieve the settlor's original intent. The act prevents decanting when it would defeat a charitable or tax-related purpose of the settlor.

Uniform Commercial Real Estate Receivership Act

Receivership is an equitable remedy allowing a court to oversee the orderly management and disposition of property subject to a lawsuit. Although the remedy is not new, there is no standard set of receivership rules and the courts of different states have applied widely varying standards. This Uniform Commercial Real Estate Receivership Act applies to receiverships involving commercial real estate, and provides a standard set of rules for courts to apply. It will result in greater predictability for litigants, lenders, and other parties doing business with a company subject to receivership.

Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act

This act provides for the enforcement of domestic violence protection orders issued by Canadian courts. Reflecting the friendship between the United States and Canada, citizens move freely between the two countries, freedom that in certain limited circumstances can work against victims of domestic violence. Canada has granted recognition to protection orders of the United States and other countries in the Uniform Enforcement of Canadian Judgments and Decrees Act. By this act, enacting states accord similar recognition to protection orders from Canada.

Revised Uniform Fiduciary Access to Digital Assets Act (2015)

A fiduciary is appointed to manage the property of another person, subject to strict duties to act in the other person's best interest. Common types of fiduciaries include executors of a decedent's estate, trustees, conservators, and agents under a power of attorney. This act extends the traditional power of a fiduciary to manage tangible property to include management of a person's digital assets. The act allows fiduciaries to manage digital

property like computer files, web domains, and virtual currency, but restricts a fiduciary's access to electronic communications such as email, text messages, and social media accounts unless the original user consented in a will, trust, power of attorney, or other record.

VI. RECOMMENDATIONS FOR ENACTMENT AND FOR OTHER ACTION

The Colorado commissioners met with representatives of the Colorado Bar Association in August, October, and November of 2015 to discuss uniform acts and to consider recommendations that the Colorado Commissioners will make to the General Assembly. The commissioners voted to propose the following acts for introduction in the General Assembly's 2016 Regular Session: the *Revised Uniform Fiduciary Access to Digital Assets Act 2015*, the *Revised Uniform Athlete Agents Act (2015)*, and the *Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act*.

Colorado Commissioners will meet with representatives of the Colorado Bar Association in January to discuss and decide whether the following uniform acts should move forward for introduction during the 2016 Regular Session: the *Uniform Voidable Transactions Act Amendments (2014)*, the *Uniform Recognition of Substitute Decision-Making Documents Act*, the *Uniform Commercial Real Estate Receivership Act*, the *Revised Uniform Residential Landlord and Tenant Act 2015*, and the *Uniform Trust Decanting Act*.

VII. ENACTMENT RECORD, TO DATE

Colorado has an enviable record for enacting Uniform Acts. More than one hundred 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)
Asset Freezing Orders Act (2013)
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 4A (2012 Amendments)
(2013)
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)
Deployed Parents Custody and Visitation Act
(2013)
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,
1966 (1969) 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) (2015)
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)
Powers of Appointment Act (2014)
Power of Attorney Act (2009)
Premarital and Marital Agreements Act (2013)
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 (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)