

COLORADO COMMISSION ON UNIFORM STATE LAWS

REPORT - JANUARY, 2004

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, Claus J. Hume; 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 111 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 112 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:

Bryan Fredrickson
(Private Law Practice)

Thomas T. Grimshaw
(Private Law Practice)
Legislative Liaison for Colorado
Standby Committee on Computer Information Transactions Act

Dwight A. Hamilton, a life member
(Private Law Practice)
Committee on Review of Conference Acts
Legislative Council
Millennium Committee

George C. Keely, a life member
(Private Law Practice)

Doug Lamborn
(Member of the State Senate)

Richard Mutzebaugh
(Private Law Practice)

Tambor Williams
(Member of the State House of Representatives)

Wayne Williams
(Private Law Practice)

Charles W. Pike
(Revisor of Statutes)
Committee on Liaison with Legislative Drafting Agencies

- C. Colorado Commissioners attending the ULC Annual Meeting held on July 31 through August 7, 2003, were:

Bryan Fredrickson, Thomas T. Grimshaw, Dwight A. Hamilton, Doug Lamborn, Richard Mutzebaugh, Tambor Williams, Wayne Williams, 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:

2003 Amendments to Article 2, Uniform Commercial Code

Article 2 of the Uniform Commercial Code governs sales of goods. It was promulgated as part of the Uniform Commercial Code in 1951. It has ancestry in the Uniform Sales Act, originally promulgated in 1906. The amendments incorporate electronic transactions so that sale contracts can be formed and enforced though in electronic media. Other areas of Article 2 are clarified in light of the experience with this Article since 1951, the year it replaced the Uniform Sales Act and the year the Uniform Commercial Code was launched.

2003 Amendments to Article 2A, Uniform Commercial Code

Article 2A governs leases of goods in a parallel fashion to the governance of sales of goods in Article 2. Article 2A was added to the Uniform Commercial Code in 1987, and was the first new article in the Uniform Commercial Code since its original promulgation in 1951. Article 2A was amended in 1990. The primary purpose of the 2003 amendments is to incorporate electronic transactions so that lease contracts can be formed and enforced though in electronic media. There are other clarifications based on the experience with Article 2A since 1987.

Revised Article 7, Uniform Commercial Code

Article 7 governs the transfer of bills of lading and warehouse receipts as documents of title. Generally, transfer of a document of title from one person to another transfers the rights in the goods represented by the document of title. Article 7 provides for negotiable documents of title, which transfer interests in goods represented in such documents free of any claims or defenses of the issuer or other transferor of the document. The revisions

establish the rules for electronic documents of title. It authorizes them, incorporates electronic records and signatures for statute of fraud purposes, provides an analogous system for transfer of electronic documents to the system of negotiable paper documents of title, provides for conversion of electronic documents of title into tangible documents of title and vice versa, and prepares for the expected reliance upon electronic documents of title into the future. A key concept to transfer of electronic documents of title is that of “control.” Control occurs when it is possible to identify every transfer of an authoritative copy of an electronic document with absolute certainty and when transfer can only occur when the party in control authorizes transfer.

Uniform Environmental Covenants Act

This new uniform act in 2003 creates an interest in real estate called an “environmental covenant” that assures a plan of rehabilitation for contaminated real property (brownfields) and control of use that may be separately conveyed to and enforced by a relevant third person called a holder. An underlying plan between state or federal government and landowner for “remediation” of the property must be in place for an environmental covenant to be created and conveyed. The ultimate objective of this act is to allow contaminated property to be returned to those uses consistent with prescribed clean-up, essentially making them marketable. The Act provides for the creation of such a covenant, its termination when appropriate, priority over other real estate interests and enforcement over the time the covenant is in place. An environmental covenant is perpetual unless a specific term is prescribed in the instrument creating it. The interest will be recorded in the real estate records.

2003 Revision of the Uniform Estate Tax Apportionment Act

This is a revision of earlier acts, and part of the Uniform Probate Code, that provides for apportioning the burden of federal or state estate taxes between the respective interests of heirs or legatees of an estate, or beneficiaries of a revocable trust, when the fiduciary for an estate or trust is required to pay such taxes. Generally, the tax burden is allocated to the interests of estate or trust beneficiaries in proportion to their interests in the whole of the taxable estate. There are special rules for specific sorts of interests such as qualified terminable interest property trusts (a kind of marital trust) and when certain kinds of property are insulated from inclusion in the apportionable estate, though they are taxable property. This update takes into account all changes in tax rules arising since the last time this act was amended.

2003 Amendments to Uniform Mediation Act: UNCITRAL Model Act on Commercial Conciliation

The 2003 Amendment to the Uniform Mediation Act provides for adoption of the UNCITRAL Model Act on Commercial Conciliation by incorporating it by reference in the Uniform Mediation Act. The Model Law was adopted by UNCITRAL in 2002, and provides for the appointment of conciliators (mediators) and the conduct of a conciliation between international commercial disputants. Conciliation and mediation are virtually synonymous for the purposes of these acts.

2003 Amendments to the Uniform Trust Code

The 2003 amendments to the Uniform Trust Code (2000) follow a set of amendments approved in 2001. The changes consist of several clarifications and technical corrections, mostly nonsubstantive. An amendment to Section 105(b)(8) clarifies the mandatory rule requiring qualified beneficiaries over the age of 25 to be notified of the existence of an irrevocable trust, the identity of the trustee and of their right to request a trustee's reports. An amendment to Section 411 adds the words "modification or" to correct an inadvertent technical glitch. The section relates to the modification or termination of a noncharitable irrevocable trust by consent.

Amendments to Sections 602 and 603 deal with revocable trusts and who controls the rights of the beneficiaries while the trust is revocable. The objective is to make sure that, in cases of a trust with a joint interest, a settlor is notified if another settlor amends or revokes the trust. Since Section 603 is much broader in scope, the language has been stricken from it and added more precisely into Section 602. Another amendment to Section 802 deals with the trustee's duty of loyalty. The amendment to Section 802(f) clarifies the Uniform Trust Code provision on proprietary mutual funds. The amendment provides that Section 802(f) applies to institutional trustees in many other contexts other than proprietary mutual funds. The last amendment changes an "or" to an "and" in Section 815, relating to general powers of a trustee. While a technical typographical glitch, its impact is substantive. This amendment clarifies the intent of the drafters that, to the extent the terms of the trust are silent, the trustee powers will be supplemented by those in the Uniform Trust Code.

2003 Amendment to the Uniform Apportionment of Tort Responsibility Act

This Act, which was promulgated originally in 2002 and which replaces the Uniform Comparative Fault Act of 1979, received some limited amendments in 2003. Language relating to "strict liability" in Section 3 has been deleted, since the defense of contributory fault has not ordinarily been available in strict liability cases. The act applies in negligence and any other case in which a defense of contributory fault may have been a defense. Other amendments clarify the reallocation provisions, primarily providing for a more precise statement relating to any security position or subrogation rights considered in reallocating damages. A precise time of 90 days has been provided for filing for reallocation in the event

a share of a party in uncollectible.

VI. RECOMMENDATIONS FOR ENACTMENT AND FOR OTHER ACTION

The Colorado Commissioners met with members of the Colorado Bar Association on (need to insert date), to discuss the Bar Association's review of uniform acts and recommendations to be made to the General Assembly. The meeting resulted in the following:

(Need to add details about recommendations)

VII. ENACTMENT RECORD, TO DATE

Colorado has an enviable record for enacting Uniform Acts. Ninety-two 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)
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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