

# **COLORADO COMMISSION ON UNIFORM STATE LAWS REPORT - JANUARY, 2007**

## **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 112 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 seven 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:

**Mike Cerbo**, Member of the State House of Representatives  
Legislative Liaison for Colorado  
Drafting Committee on Registered Agents and Annual Filing Requirements

**Thomas T. Grimshaw**, Private Law Practice  
Chair of the Colorado Commission  
Standby Committee on Assignment of Rents

**Dan Grossman**, Member of the State Senate

**William G. Kaufman**, Private Law Practice  
Drafting Committee on Guardianship Interstate Jurisdiction and Enforcement  
Chair of Study Committee on Health Care Information Interoperability

**Anne L. McGihon**, Member of the State House of Representatives  
Study Committee on Omnibus Business Organizations Code

**Donald E. Mielke**, Private Law Practice  
Drafting Committee on Common Interest Ownership  
Study Committee on Regulation of Medical Examiners  
Study Committee on Emergency Cross-state Licensing

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

- C. Colorado Commissioners attending the ULC Annual Meeting held on July 7 through July 14, 2006, were:

Thomas T. Grimshaw, William G. Kaufman, Donald E. Mielke, 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:

### **2006 SHORT SUMMARIES**

#### **Uniform Emergency Volunteer Healthcare Practitioners Act**

The Uniform Emergency Volunteer Health Practitioners Act (UEVHPA) provides a state with a procedure for recognizing another state's licenses for health care practitioners who volunteer to provide assistance for the duration of an emergency requiring substantial health care assistance. UEVHPA was prompted by the difficulties during the 2005 hurricane season on the gulf coast. Many health care practitioners (doctors, nurses, veterinarians, for example) from other states volunteered services, but were denied the opportunity or were delayed because they were not initially licensed in the disaster states. Federal provisions for interstate cooperation do not reach to most private practitioners. UEVHPA calls for the creation of a registration system which out-of-state practitioners may use either before or during a disaster. The system may coincide with existing federal/state systems. Upon registration, practitioners are expressly allowed to contribute their professional skills to existing organized disaster efforts. The effect of the act should be to ease the utilization of out-of-state practitioners when a state needs them the most.

#### **Uniform Anatomical Gift Act**

The Uniform Anatomical Gift Act (2006) (UAGA 2006) revises the earlier 1969 and 1987 Uniform Acts, which are the basis for organ donation throughout the United States. UAGA 2006 is an important update to reflect the current system for allocations of cadaver organs for transplant purposes. It makes it easier to make a document of gift, particularly as provided on drivers' licenses. It creates a power in certain individuals, such as a holder of a health care power of attorney, to authorize an anatomical gift on behalf of an incapacitated person, before death actually occurs. It expands the list of those who may make an anatomical gift after an individual dies, when the individual has not executed a document of gift. It makes it clear that an anatomical gift that does not specify the donees of organs, goes to a recognized transplant organization responsible for allocating organs. It accommodates the use of donor registries upon which a potential donor may put a document of gift for notice purposes. It more clearly provides for a document of refusal if an individual does not want organs donated. There are criminal penalties for misrepresentation of a document of gift for the purposes of selling organs or tissue. The Act attempts to resolve ambiguity and conflict between anatomical gifts and do not resuscitate instructions. Without changing the basic concept that an individual may execute a document of gift to donate organs, UAGA 2006 makes the Act more usable than the earlier acts are currently.

#### **Uniform Child Abduction Prevention Act**

The Uniform Child Abduction Prevention Act (UCAPA) authorizes a proceeding in a court between contestants in a child custody dispute during which the court considers

the probability that a contestant will abduct a child to another state or foreign jurisdiction. Upon a finding that an abduction is highly probable, the court may issue orders as necessary to prevent that abduction. The court hears evidence respecting the risk of abduction, based upon statutorily provided risk factors: previous abductions or attempts to abduct; threats by a contestant respecting abduction; abuse of the child; domestic violence; negligence; or, refusal to obey an existing child-custody order. There are further risk factors if the anticipated abduction is to a foreign country, i.e., the country is not a party to the Hague Convention on International Child Abduction. Standing to bring such a proceeding broadly includes the court itself, a contestant in a child-custody proceeding, a prosecutor or a public attorney. UCAPA relies upon the jurisdictional rules of the Uniform Child Custody Jurisdiction and Enforcement Act.

### **Uniform Prudent Management of Institutional Funds Act**

The Uniform Prudent Management of Institutional Funds Act (UPMIFA) is an up-date of the Uniform Management of Institutional Funds Act which dates back to 1972. UPMIFA applies to funds held for charitable purposes by nonprofit, charitable institutions. The three principal issues addressed are scope of coverage, investment obligations and expenditure of funds. The earlier act did not include charitable trusts or necessarily nonprofit corporations. UPMIFA applies its rules to charitable institutions no matter how organized. That is its scope. Investment obligations are governed by prudent investment rules derived from the Uniform Prudent Investor Act. They sharply refine the investment obligations in the 1972 Uniform Act. An express rule for prudent expenditure of appreciation as well as income replaces the older rule in the 1972 Act. Abolished is the concept of historic dollar value as a floor beneath which an endowment cannot be spent. The new rule allows a prudent use of total return expenditure. An optional provision allows a state to flag a total return expenditure of more than 7% of total return measured by a three year average as presumed imprudent. UPMIFA also provides a better, modern rule for exercise of cy pres, that is changing an obsolete charitable purpose. Changing a charitable purpose will require notice to the appropriate regulator in a state.

### **Uniform Power of Attorney Act**

The Uniform Power of Attorney Act (UPAA) replaces the 1969 Uniform Durable Power of Attorney Act, the Uniform Statutory Form Power of Attorney Act and provisions on power of attorney in the Uniform Probate Code. Durable powers of attorney have been allowed only since the late 1960's to early 1970's in almost every state. A durable power survives the incapacity of the principal to avoid the need to bring expensive and time-consuming guardianship or conservatorship actions to care for the principal's assets. The named agent steps in the same way a guardian or conservator would. The 1969 Act was originally enacted in almost every state. But amendments from state to state have eroded uniformity between the states. UPAA requires that certain powers be expressly and specifically conferred rather than be general powers. This eliminates questions about the agent's authority and are cautionary in intent. UPAA provides a form power of attorney that must be accepted by any third party. There are civil penalties for refusal to accept if the third party has assets of the principal. There are other provisions that protect the principal from a dishonest agent.

## **Uniform Limited Liability Company Act**

The Uniform Limited Liability Company Act (2006) (ULLCA 2006) replaces the Uniform Act of 1996. A limited liability company (LLC) is an entity that shares the limitation of liability characteristic of a corporation with partnership-like capacity to structure the entity by agreement rather than as prescribed by statute. Like a partnership, a limited liability company does not pay federal income tax on its profits. Its distributions of income to members are taxed as their income. This characteristic has made limited liability companies very popular throughout the U.S. Like the 1996 Act, ULLCA 2006 authorizes the filing of a certificate of registration to create an LLC. The terms of the act, including fiduciary obligations and contractual obligations, govern the relationships between members and between members and managers, if there are designated managers. Most of the rules, as in the 1996 Act, are default rules. Express provisions of the operating agreement prevail over most statutory rules. These are some of the changes the ULLCA 2006 makes over the 1996 Act: the 2006 Act leaves the designation of a manager-managed LLC to the terms of the agreement rather than the certificate of registration; electronic records and signatures are recognized; the standard of care becomes ordinary care subject to the business judgment rule; there is the ability to certificate member transferable interests for the purpose of free transfer as investment securities; it is possible to eliminate the duty of loyalty or duty of care in an agreement, so long as not "manifestly unreasonable;" a member may bring a direct action against the company for misfeasance, not just a derivative action; a company threatened by a derivative action may form a litigation committee to assume the burden of investigating the action and take certain actions on behalf of the company in its best interests.

## **Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings Act**

The Uniform Representation of Children in Abuse, Neglect and Custody Proceedings Act (URCANCPA) tries to answer a question that has plagued domestic relations law for a long time: "Who represents a child in a custody or support proceeding?" The courts have traditionally used what is called a guardian ad litem, but that designation is ambiguous, particularly if an attorney is appointed. Courts have been more and more inclined to appoint an attorney for a child, remembering that this attorney does not represent the principal parties to the proceeding. The scope of representation and an attorney's obligations are not well set out in prior law. URCANPA establishes three categories of representatives: a child's attorney, a best interest attorney and a child's advisor. A child's attorney represents the child purely as a client, taking direction from that client. A best interest attorney represents the child's "best interest" before the court but not subject to the child directions as a client. The child's advisor is appointed by the court to advise the court on the best course of action with respect to the child, and is wholly court directed. A child's attorney is usually the first appointed and recognized, but has the capacity to relinquish the attorney-client relationship in the event the child's directions and desires raise the issue of its "best interests." The child's attorney can step aside and the court then appoints the "best interests" attorney. A child advisor may be appointed at any time, but may also be appointed as an alternative to a best interests attorney. URCANPA does not require a court to appoint any representative for or on behalf of a child. It is in the

court's discretion whether to utilize these provisions. URCANPA provisions reconcile appointments with the standard attorney obligations for representing a client, and should make proceedings in which a child needs representation more certain.

### **Model Registered Agents Act**

The Model Registered Agents Act (MRAA) with amendments to other entity acts allows a state to use the same rules in the same place for registering agents mainly for partnerships, limited partnerships, limited liability companies and corporations. Currently every state has registration requirements for each kind of entity in the specific statute authorizing the entity, i.e., the partnership act has provisions for registering agents representing the partnership. There is no reason to have separate registration requirements, with inevitable differences, in every entity statute. A single statute applying to every kind of entity makes the administration of these statutes much more efficient. Accordingly, MRAA would consolidate registration of agents in one place under one procedure. It would repeal the individual registration provisions from entity act to entity act. The amendments in an appendix, provide suggestions for making the repeal amendments from state to state by showing how it would be done in the existing uniform or model entity statutes. Agents are registered primarily to establish a single office for service of process and for taking jurisdiction of the entity in litigation.

## **VI. RECOMMENDATIONS FOR ENACTMENT AND FOR OTHER ACTION**

The Colorado Commissioners met with a representative of the Colorado Bar Association on December 14, 2006, 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:

- **Articles 1 and 7 of the Uniform Commercial Code** will require several minor corrections. The Commission recommended that a corrective bill be introduced. Representative Mike Cerbo indicated that he would sponsor the Committee's bill during the 2007 regular session for this purpose.
- **Debt-Management Services Act** was discussed, and the Commission agreed to contact the Attorney General's office to determine if it would support the Act. The response of the Attorney General's office will influence the decision of whether to introduce the Act during the 2007 regular session.
- **Uniform Trust Code** should be introduced again. The Bar Association representative will contact the Elder Law Section of the Bar Association to determine its position on the Code.
- **Uniform Limited Partnership Act** was discussed. The Commission recommended that the representative from the Bar Association discuss the

Act with Robert Keatinge. If the Commission ultimately recommends that the Act be introduced during the 2007 regular session, Representative Mike Cerbo indicated he is willing to serve as the legislation's sponsor.

- **Uniform Anatomical Gift Act** should be considered by the General Assembly during the 2007 regular session. Representative Anne McGihon indicated that she would sponsor a Committee bill for this purpose.
- **Uniform Child Abduction Prevention Act** was discussed. The Commission recommended that the Act be referred to the General Assembly for introduction. Representative Anne McGihon will discuss the Act with other members of the House of Representatives to determine if another House member colleague is interested in sponsoring a Committee bill to adopt the Act.
- **Uniform Emergency Volunteer Health Practitioners Act** was recommended for consideration by the General Assembly during the 2007 regular session. Representative Anne McGihon indicated that she would sponsor a Committee bill for this purpose. Commissioner Don Mielke suggested that Senator Joan Fitz-Gerald may have an interest in serving as the Senate sponsor of the bill. Commissioner Mielke will contact Senator Fitz-Gerald on this issue.
- **Uniform Limited Liability Company Act** was recommended for consideration by the General Assembly during the 2007 regular session. However, prior to introduction, the Bar Association will contact Robert Keatinge. If the Commission ultimately recommends that the Act be introduced during the 2007 regular session, Representative Mike Cerbo indicated he is willing to serve as the legislation's sponsor.
- **Uniform Power of Attorney Act** was recommended for consideration by the General Assembly during the 2007 regular session. Representative Anne McGihon will discuss the Act with other members of the House of Representatives to determine if another House member is interested in sponsoring a Committee bill for this purpose.
- **Uniform Prudent Management of Institutional Funds Act** was recommended for consideration by the General Assembly during the 2007 regular session. Prior to introduction, however, the representatives of the Bar Association indicated that they would solicit input from its members and also from the university community to determine whether there was support for the Act.
- **Model Registered Agents Act and Amendments to Entity Acts to Rationalize Annual Filings** was recommended for consideration by the



General Assembly during the 2007 regular session. However, prior to introduction, the Bar Association will contact Robert Keatinge. If the Commission ultimately recommends that the Act be introduced during the 2007 regular session, Representative Mike Cerbo indicated he is willing to serve as the legislation's sponsor.

- **Uniform Representation of Children in Abuse, Neglect and Custody Proceedings Act** was recommended for consideration by the General Assembly during the 2007 regular session. Prior to introduction, however, the representatives of the Bar Association will solicit input from the Family Law Section of the Bar Association to determine if there is any interest in supporting the Act.
- **Uniform Athlete Agents Act** was recommended for consideration by the General Assembly during the 2007 regular session. Prior to introduction, however, contact will be made with Governor Ritter to determine whether the Act might be subject to veto given that Governor Owens vetoed the legislation during the 2006 regular session.

## **VII. ENACTMENT RECORD, TO DATE**

Colorado has an enviable record for enacting Uniform Acts. Ninety-four 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) and (2004)  
Certification of Questions of Law Act (1969)  
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)  
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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