

# Colorado Commission on Uniform State Laws

## Colorado General Assembly

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### MINUTES

## Colorado Commission on Uniform State Laws

**October 15, 2018, 11:00 a.m.**

Committee Room: HCR 0112

Roll was taken and Commissioners Grimshaw and Wist were excused. Commissioners Gardner, Levy, McGihon, Mielke, Morris, Pike, Shaffer, and Steadman were present. Commissioner Wist was present after the roll call.

**New business:** *Kevin Millard, Colorado Bar Association (CBA) Trusts & Estates Section*, reported that his section had completed its review of the 2017 Uniform Directed Trust Act and, as indicated in a written report, suggested some minor changes to conform it to Colorado law. The section supports the act and hopes that the commission will move to introduce it this session. The commission asked about other CBA section approval. *Jeremy Schupbach, CBA Director of Legislative Relations*, confirmed that the Elder Law section has also reviewed and approved the act, but that the act still needs to go through the legislative policy committee before getting full bar approval. The commission thanked the CBA for its work on this review.

Commissioner Steadman moved that the commission request a bill draft for the Uniform Directed Trust Act with the minor changes recommended by the bar association. The motion passed without objection. The commission also directed that staff share the report with the Uniform Law Commission (ULC) for input on the recommended changes.

### 1. Updates on ULC acts proposed for the 2019 legislative agenda:

- a. **Criminal Records Accuracy Act** – There was no public testimony regarding this agenda item. Commissioner Shaffer reported that he has been in contact with Representative Weissman regarding sponsoring the bill in Colorado. There is interest, but more information is needed on some of the substantive aspects of the act and more time needed to reach out to different stakeholders. In addition, there is a need to determine what customization may be necessary for Colorado while maintaining uniformity. It is a work in progress and may not be ready for this legislative session. The commission asked about any other interested organizations contacted for comment and thanked Commissioner Shaffer for his work on this act and asked him to continue to work on it.

The commission will keep the act on its legislative agenda but not ask for a bill draft at this time.

- b. **Fiduciary Income and Principal Act** – *Jeremy Schupbach, CBA Director of Legislative Relations*, reported that the bar has formed a committee to study the act but does not expect the study to be completed in time for the 2019 legislative session.

The commission will keep the act on its legislative agenda but not ask for a bill draft at this time.

- c. **Nonparent Custody and Visitation Act (NCVA)**– *Kim Willoughby, American Academy of Matrimonial Lawyers (AAML), Colorado Chapter*, stated that her organization does not support the act at this time. The act is inconsistent with current Colorado law, has different standards for who can apply for certain custodial rights, and has a limited range of applicability. If enacted it would cause confusion, especially if not enacted with the Uniform Parentage Act (2017) (UPA\2017) and without repealing some current Colorado law. The chapter believes that Colorado law could be amended to provide additional protections for children who are with individuals functioning as parents but who are not their legal parents.

The commission asked which set of laws in this area is most expansive in its protections and includes the greatest number of people who are able to seek custody or visitation, and for Ms. Willoughby to explain the need for the UPA 2017. Current Colorado law is more expansive regarding protections, but the NCVA allows for current state law regarding de facto and psychological parents, which is part of the confusion. The NCVA is also more limiting regarding grandparent petitions. She explained that the UPA\2017 includes de facto and psychological parents, which are not part of the NCVA. Colorado’s current Uniform Parentage Act is dated and relies on case law to cover some parental presumptions, leaving Colorado with holes in the law.

The commission asked the Colorado chapter of the AAML to assist the commission in determining what portions of the UPA\2017 should be considered to cover gaps in Colorado law. The commission will keep the Nonparent Custody and Visitation Act on its legislative agenda and add the Uniform Parentage Act (2017) to that agenda, but not ask for bill drafts at this point.

- d. **Guardianship, Conservatorship, and Other Protective Arrangements Act** – *Brooke Brestel, CBA Elder Law Section*, stated that the subcommittee has one more meeting before penning a position statement summarizing stakeholder positions and expects to be finished by early November. The position statement will most likely reflect that Colorado already has solid laws in this area as it includes prior versions of uniform acts in enacted in 2000 and 2008 and that have been updated as needed. Colorado may only need to incorporate some aspects of the new uniform act. The commission thanked the subcommittee for their hard work on this project.

## 2. Proposed 2019 legislative agenda bill drafts:

- a. **LLS 19-0157: Uniform Voidable Transactions Act** – Commissioner Morris explained the changes made to conform the uniform law to Colorado law, specifically regarding series organization language. *Jeremy Schupbach, CBA Director of Legislative Relations*, reported that, to his knowledge, two of the CBA sections remain opposed to the bill and will try to acquire details and relay them to the commission. The commission asked the bar sections to reconsider the act as amended, specify any changes needed, and to comment on the rest of the act. The commission also pointed out that as 19 states have enacted this act, Colorado law will need to be updated to address series organizations created in other states.

The commission deferred action on this bill until the next meeting, but is moving towards introduction in the 2019 legislative session.

- b. **LLS 19-0158: Revised Unclaimed Property Act** – *John Burrus, Independent Bankers of Colorado*, stated that his organization does not oppose the bill and appreciates the commission working on several concerns with it. Concerns remain regarding the contingency fee arrangements allowed under the act, the need for a delayed effective date for industry retraining, and lack of clarity regarding the determination of abandonment. He suggested a reasonableness standard be added to the determination language and to limit what must be searched to a holders' own records. The commission had follow-up questions regarding contingency fee arrangements already allowed in statute, dormancy periods, and abandonment determinations.

*Ed DeCecco, bill drafter with the Office of Legislative Legal Services*, answered that contingency fees are not specifically referenced in statutes but are not prohibited and that any effective dates in the draft would be changed to 2020 dates. The commission explained that the current Treasurer's office custom and practice is to use out-of-state auditors for contingency fee use and that the uniform act would now provide guidance on when contingency fees can be used. The commission will contact the ULC regarding the suggested changes.

Commissioner Levy moved that the Revised Unclaimed Property Act be introduced, with updated effective dates, as a commission bill with Commissioners Gardner and Wist as sponsors. The motion passed without objection.

- c. **LLS 19-0159: Uniform Athlete Agents Act** – There was no public testimony regarding this agenda item. The commission deferred action on this act until the next meeting.
- d. **LLS 19-0160: Uniform Regulation of Virtual Currencies** – *Patty Salazar, Department of Regulatory Agencies*, stated that the division has no position on this act but looks forward to being part of the conversation regarding this advancing technology and would like to work with the commission and other interested stakeholders. Bank regulators across the country are looking at virtual currency, and how it does and does not fit into the current financial services regulatory framework. The commission asked how the division of banking is currently regulating virtual currency, what timelines might be needed for implementation of the act, and the division's thoughts on organizational oversight and rulemaking needs. The division uses the current Money Transmitters Act for guidance regarding current regulation, but there are aspects of virtual currency that are not subject to the Money Transmitters Act. The commission is also conferring with the Governor's Council on the Advancement of Blockchain Technology Use regarding the act.

The commission deferred action on this bill until the next meeting.

- e. **LLS 19-0161: Remote Notarization-Uniform Law** – Commissioner Morris noted that the bill has been drafted as an amendment to the existing uniform law on remote notarization recently enacted in Colorado. Commissioner Gardner noted that the commission had received a letter from the Colorado Bar Association, Colorado Association of Realtors, Land Title Guarantee Company, Land Title Association of Colorado, and Colorado Mortgage Lenders Association expressing concerns with data security and jurisdictional issues regarding out-of-state notaries.

The commission pointed out that the bill has been amended for service of process to go to the Secretary of State's (SOS) office as the provider's agent. In addition, the recently enacted data privacy law, HB 18-1128, would provide protection for sensitive information. To address some privacy concerns it may be necessary to

limit what can be included in the recording and thus subject to release, either in the bill or through rulemaking. The commission will continue to work with stakeholders to address concerns within the confines of the uniformity of the act.

*Suzanne Staiert, Deputy Secretary of State*, stated that department's promulgation of rules would be guided by the legislature through its grants of rulemaking authority. If specific rules are desired it is best to include specific grants of rulemaking authority to create those rules in the bill.

The commission deferred action on this bill until the next meeting, but is moving towards introduction in the 2019 legislative session.

- f. **LLS 19-0162: Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images** – There was no public testimony regarding this agenda item. Commissioner Levy reported that the ULC style committee has made some changes to the act that are not included in the bill draft. The draft does include Colorado-specific amendments that were identified as being needed for conformity

Commissioner McGihon moved that the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images be introduced, as amended by the ULC style committee, as a commission bill. There were no objections.

3. **Next CCUSL meeting.** The next meeting was scheduled for Friday, January 11, 2019.
4. **Other business.** The commission received a comparison of Colorado law with the Uniform Wage Garnishment Act from the ULC. Commissioners were invited to meet with joint committees of reference in January regarding the ULC, CCUSL, and potential uniform law legislation