

# Colorado Commission on Uniform State Laws

c/o Office of Legislative Legal Services  
200 East Colfax Avenue Suite 091  
Denver, Colorado 80203-1716

Colorado General Assembly

Tel: 303-866-2045  
Email: ccusl.ga@state.co.us

## MINUTES

**December 16, 2020, 9:00 a.m.**

(HCR 0112, Commissioners attended online or in person)

Roll was taken and Commissioner Grimshaw was excused. Commissioners Duran, Gardner, Levy, Mielke, Morris, Pike, Scott, Tipper, and Whitfield were present.

1. **Public comment regarding items not on the agenda.** There was no public testimony on this agenda item.

2. **Proposed 2021 legislative agenda bill drafts:**

- a. **LLS 21-0194: Uniform Easement Relocation Act** – *Amy Brimah, Colorado Bar Association (CBA) Real Estates Section*, stated that under current Colorado law, a court order is required for relocations in the absence of an agreement of the property owners, the same as in the Act. The Colorado Supreme Court adopted the Third Restatement rule in the ditch relocation case, *Roaring Fork Club LP v. St. Jude Company*, 36 P.3rd 1229 (Colo. 2001). Relocation under *Roaring Fork* without a court order is considered trespass, with subsequent penalties. The uniform act contains no penalty for relocation without an order. The Act may provide some incremental improvement to Colorado law but it does not improve the situations under *Roaring Fork*. The section does not have a formal position, but does have concerns with moving the Act forward. The commission asked whether adding Colorado-specific provisions regarding the consequences of relocating without a court order or providing for other damages would address the section's concerns. Ms. Brimah answered that she anticipated that the water law section would not be in favor of passing the Act.

*Andrew White, CBA Director of Legislative Relations*, added that *Roaring Fork* has been settled case law for 19 years providing guidance across all property law in Colorado and enacting the uniform act may cause new litigation of provisions or other unintended consequences. The commission discussed that although the legal and real estate communities may be aware of the case law requirements regarding relocations, private citizens may not be. It would benefit everyone to codify *Roaring Fork* so that anyone could more readily ascertain the legal requirements for relocation. The commission acknowledged that there would be opposition to the Act. Commissioner Gardner agreed to speak with the Colorado Water Congress to explain the Act and that this Act does not constitute a significant change to current law. The commission thanked the CBA for their time and comments on the Act.

Commissioner Gardner moved to introduce **LLS 21-0194: Uniform Easement**

**Relocation Act** as a commission bill, with any technical amendments needed, and urged a "No" vote. Commissioner Mielke seconded and the motion passed 5-4. Commissioner Gardner agreed to sponsor the bill and start it in the Senate.

- b. **LLS 21-0195: Uniform Electronic Wills Act** – *Leticia Maxfield, CBA Trust & Estates Section and member of the subcommittee of Trust & Estates and Elder Law attorneys reviewing the Act*, indicated that CBA Legislative Policy Committee has reviewed the LLS 21-0195 draft and it supports the introduction of the bill as drafted. The CBA would like the bill passed as quickly as possible because Colorado will lose the ability to notarize or execute wills remotely when the recently enacted remote notarization law, Senate Bill 20-096, goes into effect on December 31, 2020. Senate Bill 20-096, as well as most remote notarization laws, prohibits remote notarization and the electronic signing of wills. Temporary rules that provided for electronic wills (e-wills) during the pandemic will be expiring soon and citizens need to be able to continue to use e-wills to keep their financial matters in order. Without this Act, attorneys will need to use the harmless error doctrine in district court to probate an e-will. Commissioner Morris highlighted a couple of technical issues to address regarding the official comments section and an "except" clause. The commission thanked the CBA for their work and support on the Act.

Commissioner Gardner moved to introduce **LLS 21-0195: Uniform Electronic Wills Act** as a commission bill, with section three removed and with any technical amendments needed. Commissioner Morris seconded and the motion passed 8-0, with 1-excused. Commissioner Gardner agreed to act as prime sponsor of the bill and start the bill in the Senate. Commissioner Tipper agreed to reach out to House members to find a House prime sponsor.

- c. **LLS 21-0196: Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act** – *Marie Moses, Chair of the CBA Family Law Section Legislative Committee*, stated that the section has no concerns with enacting this Act. The commission expressed some concerns regarding §13-14-203 (3) of the act, allowing law enforcement to determine probable cause or validity of a protection order if a physical order is not presented. These situations can be difficult to handle and the parties may have different requests and orders. Current standard practice is to keep the protective order on your person at all times. Commissioner Whitfield pointed out that the Act requires a registry and in addition, the courts should have protective orders posted online and law enforcement can check that information remotely. Commissioner Morris requested the Act be amended prior to introduction, in §13-14-205, regarding which state agency is responsible for registering Canadian protective orders. Commissioner Scott also expressed concerns regarding the immunity if acting in good faith provisions in §13-14-206. Commissioner Tipper asked if this carves out another exception in SB20-217. The commission decided to try to address concerns through amendments as the bill moves forward.

Commissioner Gardner moved to introduce **LLS 21-0196: Uniform Recognition and**

**Enforcement of Canadian Domestic-Violence Protection Orders Act** as a commission bill, with any amendments needed. Commissioner Tipper seconded and the motion passed 8-1. Commissioners Gardner and Tipper agreed to try to find a House and Senate sponsors or sponsor it themselves.

- d. **LLS 21-0197: Uniform Automated Operation of Vehicles Act** – *Leighton Yates, Director of State Affairs for the Alliance for Automated Innovation*: the Alliance represents more than 30 businesses representing large and small automotive manufacturers and technology companies, and provided written comments to the commission in opposition to the Act. Senate Bill 17-213 regarding automated vehicles and current Colorado motor vehicles laws in effect are sufficient for oversight of the industry. The Alliance considers the Act premature and believes that it would impede future development in the industry in Colorado. It has not passed in other states and the commission should not move it forward in Colorado. Commissioner Mielke asked who gets the ticket if there is an accident. Mr. Yates responded that it would go to the person if the automated system was not engaged at the time; otherwise it would be determined according to existing state or common law. Commissioner Mielke observed that there were many in the industry that supported the Act and that much of the current vehicle advertising for the vehicles emphasize that the manufacturer is the driver. The commission asked if there was current Colorado common law covering this area and about needing to file against businesses in other states.

*Thad Kurowski, Senior Policy Manager at Tesla, Inc.*, Tesla provided written comments in opposition of the Act. He spoke to the safety of autonomous vehicles. Tesla produces a variety of fully electric vehicles designed for safety and continual software improvements with self-driving capabilities. Tesla has experienced one accident in roughly 6 million autonomous driving miles; federal statistics for accident rates for non-autonomous vehicles is one in 479,000 miles. He concurred that existing law balances regulatory oversight and protecting Colorado road users and that passage of the Act would stifle innovation and potentially delay the use of automated vehicles in Colorado. The industry is working with Congress on federal law regarding uniformity on safety and data privacy issues in the industry.

*Libby Snyder, Uniform Law Commission (ULC)*, spoke to some points shared regarding the passage of the Act in other states. The Act was only introduced in one state last year and failed due to the task force in that state not being ready to move forward on it at the time. She emphasized that the question in the Act is who is responsible for the vehicle when it is under autonomous control and that the Act recognizes and respects the federal role regarding autonomous vehicles; the Act does not put states into that role.

*Bryant Walker Smith, Professor at the University of South Carolina and ULC reporter on this Act*, stated that the specific issue the Act is addressing is to identify who the driver is and who gets the ticket, or is liable, when something goes wrong. It is in the state's interest to identify some entity as the driver who is subject to current traffic laws. The commission observed that the technology is developing quickly and current Colorado law does not

require the automated vehicle provider to register or to take responsibility for technical problems leading to accidents. It did consider whether the Act might impede innovation in the industry, but it was pointed out that California has very stringent laws regarding the industry and innovation continues in that state. The commission clarified that the Act does not prohibit individuals from owning these vehicles and that driving regulations – registration of vehicles, licensing, and liability – are state law issues. The commission conceded that the Act may be a heavy lift at this time and finding sponsorship may be an issue, but in spite of the opposition to the Act, it does appear that it would benefit the state. The commission thanked everyone for their time and comments on the Act.

Commissioner Mielke moved to introduce **LLS 21-0197: Uniform Automated Operation of Vehicles Act** as a commission bill, contingent on finding a sponsor and with any technical amendments needed. Commissioner Levy seconded and the motion passed 7-2. Commissioners Tipper and Gardner agreed to find a sponsor.

- e. **LLS 21-0198: Uniform Collaborative Law Act** – The commission summarized the activity on the Act last session. It was introduced in the House (HB 20-1291) and amended to apply only to family law and passed to the Senate. The bill had broad support after it was amended to cover only family law. When the general assembly adjourned for the pandemic, the bill was side-lined and not heard in the Senate. *Marie Moses, Chair of the CBA Family Law Section*, stated that the CBA as a whole tends to support the Act when it is limited to family law, but there are concerns if it extends beyond that.

*Terri Harrington, Family Law Executive Committee and past president of the Colorado Collaborative Law Professionals*, thinks it is a wonderful bill whether limited to family law or applying to other areas of law and supports its enactment. Colorado does need the confidentiality provisions the Act provides. Other states use collaborative law in other areas of the law. The commission wondered if it would be possible to establish it within family law now and then later bring collaborative law into other areas of law as the bar becomes comfortable with it. The commission also expressed concern that limiting collaborative law to family law may imply that it could not be used in other areas of law and it was suggested that a provision be added to the bill stating that the act does not preclude the use of collaborative law in other areas of law. The commission thanked everyone for their time and comments on the Act.

Commissioner Gardner moved to introduce **LLS 21-0198: Uniform Collaborative Law Act** as a commission bill, as amended in the 2020 session and with any technical amendments needed. Commissioner Scott seconded and the motion passed 8-0, 1-excused. Commissioners Tipper and Gardner agreed to find a sponsor.

- f. **LLS 21-0199: Uniform Parentage Act** – Commissioner Levy noted that the draft being considered is the full uniform law and asked if the commission wanted to consider enacting only parts 7, 8, and 9. Commissioner Tipper shared that Representative Froelich has been working with stakeholders using portions of parts 7, 8 and 9 of the

uniform act for a stand-alone bill. *Marie Moses, Chair of the CBA Family Law Section*, requested that parts 1 to 6 of the Act not move forward because they limit the class of people who are eligible to be considered parents, Colorado law is broader, and more is needed on the language in the bill.

*Representative Meg Froelich* confirmed that she is again moving forward with a stand-alone surrogacy bill that incorporates portions of the uniform law act. The bill was well-received last session and was moving through the legislative process until the pandemic hit. *Laura Koupal, a fertility law practitioner*, confirmed that significant portions of the uniform law were used in the stand-alone bill, especially from part 8; the biggest change made was to treat both types of surrogacy the same. *Judith Hoechst, a fertility law practitioner*, added that having a stand-alone bill is a good approach for Colorado as it is a world leader in assisted reproduction and this new language will be a great asset. The commission wondered if the bill will still be considered uniform and it was noted that other states have made substantial modifications and were still considered uniform.

The commission will not move forward with introducing the Act or portions of the Act and supported Representative Froelich moving forward with her surrogacy bill. The commission thanked everyone for their time and comments on the Act.

- g. **LLS 21-0200: Revised Uniform Athlete Agents Act (2015) and 2019 Amendments** – Commissioner Levy summarized where the commission was on the Act. After the Governor's veto in 2019, the commission asked for a sunrise review from the Department of Regulatory Agencies (DORA). The DORA report recommended that no regulation was needed based on a lack of demonstrated harm in Colorado and that other remedies are available. Based on this report, the commission wondered whether it is worth going against the sunrise report and the Governor's opposition, especially with this session starting while still in a pandemic. It was pointed out that the Governor's veto was partially based on the perception that the commission had not complied with the sunrise review process, which we have clearly done now.

*Libby Snyder, ULC Legislative Counsel*, Colorado passed Senate Bill 20-123, which allows student athletes to profit off the use of their name and likeness and the commission will need to be aware of how the definitions in the two bills interact. She also pointed out that Washington amended the Act to remove the registration requirement and instead have agents file disclosure forms.

Commissioner Mielke moved to introduce **LLS 21-0200: Revised Uniform Athlete Agents Act (2015) and 2019 Amendments** as a commission bill, with the registration requirement replaced with a disclosure requirement and with any technical amendments needed. Commissioner Tipper seconded and the motion passed 8-0, 1-excused. Commissioner Tipper agreed to sponsor the bill and to speak with the Governor's office to see if the suggested changes address their concerns.

- h. **LLS 21-0201: Uniform Trust Act, part 5** – *Connie Eyster, Chair of Trust & Estates Section*



*Subcommittee reviewing part 5:* this part was not included in the 2019 enactment of the UTC to allow for additional review, amendments, and to obtain consensus among practitioners. The draft bill, as amended, has been approved by the section, the Elder Law Section, and the CBA Legislative Policy Committee. The commission had questions about §15-5-505 (1.5) and (2) [reserved]. Ms. Eyster replied that the section is regarding creditors and settlor law and that the subcommittee added some exceptions to comply with current Colorado law, but they were similar to what other states had added. The reserved portion dealt with creditor access to assets to which the benefactor has a general power of appointment. Existing Colorado case law prohibits access to these assets until that power is exercised and the uniform law took a different approach. It was decided to let the existing case law stand. Ms. Eyster confirmed that the changes to the Act were not significant and that the bill draft should still be considered uniform. The commission thanked the CBA for their hard work on the Act.

Commissioner Levy moved to introduce **LLS 21-0201: Uniform Trust Act, part 5** as a commission bill, with any technical amendments needed. Commissioner Morris seconded and the motion passed 9-0. Commissioner Gardner agreed to sponsor the bill and start it in the Senate. He and Commissioner Tipper will find a House sponsor.

- i. **LLS 21-0202: Uniform Fiduciary Income and Principal Act (UFIPA)** – *Georgine Kryda, Co-chair of the CBA Trust & Estates subcommittee reviewing the act,* stated that the section and the CBA Legislative Policy Committee approved the bill draft, as amended. The bill incorporates some carryover language from the existing UFIPA and Uniform Principal & Income Act (UPIA) and does not significantly change the Act. Trust administration is constantly changing and the Act will help Colorado law stay current. Colorado-specific changes included a new §15-1.2-204, incorporating notification language from the existing UPIA and is consistent with the notice requirements in §15-1.2-304. They added §15-1.2-309 (3) regarding distribution, which does not change the spirit of the Act, it just makes some aspects more explicit. In part 6 they reserved §15-1.2-601 (5) and expanded §15-1.2-803 to address trusts that may still be administered under previously enacted law. Ms. Kryda thanked the drafter for his assistance in refining the language. The commission thanked the section for their hard work on the Act.

Commissioner Morris moved to introduce **LLS 21-0202: Uniform Fiduciary Income and Principal Act** as a commission bill, with any technical amendments needed. Commissioner Gardner seconded and the motion passed 9-0. Commissioners Gardner and Tipper agreed to find sponsors the bill.

### 3. Other uniform acts for consideration as part of the 2021 legislative agenda:

- a. **Amendments to the Uniform Probate Code** – Commissioner Levy noted that the commission was informed that CBA has indicated that it has not finished its work on the amendments. *Darla Daniel, CBA Trust & Estates Section Subcommittee reviewing the UPC 2019 revisions,* confirmed that the language modernization and gender neutralization portion is finished but not yet approved by the section or the CBA Legislative Policy

Committee. The subcommittee is now working on the substantive changes portion with the assistance of former commissioner Stan Kent. Some of the definitions in this portion refer to the Uniform Parentage Act, which Colorado has not enacted. The subcommittee needs more time and hopes to be ready to move forward in 2022.

The commission thanked the section for the work on this and look forward to hearing back from it in time to move forward on this in 2022.

4. **Other business and next CCUSL meeting.** Commissioner Morris reminded the commission that the joint resolution appointing commissioners is normally introduced early in the legislative session and that the statute requires an annual election of the chair from the newly appointed commissioners. The commission left Commissioner Levy as Chair and Commissioner Gardner as Vice Chair. The commission will not meet again until the annual meeting in July. The commission also authorized Commissioner Morris or his replacement to call the next organizational meeting, when elections will be held, if needed.