

Colorado Commission on Uniform State Laws

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Colorado General Assembly

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MINUTES

August 25, 2021, 9:30 a.m.

(HCR 0112, Commissioners attended online or in person)

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

1. **Public comment regarding items not on the agenda.** *Darla Daniel, co-legislative liaison for the Colorado Bar Association (CBA) Trusts & Estates Section*, reported that the section has completed most of its review and revision of the **Amendments to the Uniform Probate Code (UPC)**. The last 20% of the review is more complicated, but the section is hoping to complete it and be able to bring its recommendations back to the commission by November or December, providing the sections and statutory revisions committee approve. The Commission thanked the bar for their continuing work on this project.
2. **Newly approved uniform acts for consideration as part of the 2022 legislative agenda:**
 - a. **Uniform Cohabitants' Economic Remedies Act.** There was no public testimony on this agenda item. Commissioners noted that the act had a good debate on the Uniform Law Commission (ULC) floor and the revisions made seemed appropriate, but the act may still may encounter some opposition.

Commission consensus was that the act should remain on the agenda in order for the CBA and other interested parties to review and comment on it. It is possible that the act will need additional vetting before moving to drafting and introduction.
 - b. **Uniform College Student Athlete Name, Image, or Likeness Act.** There was no public testimony on this agenda item. Commissioners observed that if the commission does not move forward with this act then it is likely that there will be two or three bills regarding this subject matter introduced this next session. The uniform act is probably a better approach and better thought through than any potential new bills.

Commission consensus was to push forward with the act to get it in front of the public and to work with colleges and universities and other interested parties. Commissioners McGihon and Mielke expressed interest in working with interested parties and agreed to act as contacts.
 - c. **Amendments to Uniform Common Interest Ownership Act (CIOA).** *Joseph Libinski CBA Real Estate Section and on behalf of the CBA CIOA Task Force*, commenting only on the draft version as the final version was not yet available. There is a lot of good thought and room for policy discussions in this amendment. Rather than being a uniform act in Colorado, it may be better suited as a template for continuing CIOA discussions. Colorado

has made CIOA its own over the years and it has deviated from the uniform act over the years. Colorado's version does not follow uniform language, making it challenging to integrate uniform language back into it. Portions from this act that should be considered for Colorado include pre-existing community treatment and dealing with the use of emergency powers of condominium and HOA boards, which the draft version language predates the Florida incident and may need additional amending, and the policy questions arising out of that situation. The section has a CIOA task force because changes to CIOA have been a hot topic in recent legislation. Knowing that these conversations are expected to continue and stakeholders are already at the table lend credence to the idea that, in Colorado, the various provisions of this amendment might be better served as talking points in CIOA discussions instead of uniform law. Commissioners observed that there are provisions in the uniform act worthy of adoption in Colorado and noted that amendments made at the annual meeting improved the emergency powers portion.

Robin Nolan, CBA Real Estate Section, supported Mr. Lipinski's testimony and looks forward to evaluating the final version to see where its new provisions can be put into place in Colorado law.

Commission consensus was to keep the act on the agenda for additional input from the CBA and other interested parties on the final version of the act.

- d. **Uniform Community Property Disposition at Death Act.** *Darla Daniel, co-legislative liaison for the CBA Trusts & Estates Section*, shared that the section was able to look at the draft version and believe that it contains some good policy elements. It also broadens the acts applied to non-probate in addition to probate assets. Because Colorado is not a community property state, the section would like to form a subcommittee to take a closer look at the final act and vet it with practitioners. Commissioners noted that a primary purpose of the act is to deal with the disposition of community property at death in non-community property states.

Commission consensus was that this is an important issue needing additional study and discussion. The act will remain on the agenda for additional input from the CBA and other interested parties.

- e. **Uniform Restrictive Employment Agreement Act.** There was no public testimony on this agenda item. Commissioners acknowledged that it seems to be a divisive issue and that it would be worthwhile to hear what Colorado stakeholders think about the act and to gain a better understanding of the reasons for the divide. The act raises important national employment issues regarding the requiring of restrictive employment agreements and having a uniform approach to this issue would be beneficial. In addition, restrictive agreements can preclude small businesses from obtaining needed talent. The act does provide protections that do extend to small businesses and could help level the playing field. On the other hand, smaller firms are worried about losing talent to the large businesses.

Commission consensus was that the act is multi-dimensional with important issues and that the uniform act may be able to act as a starting place for Colorado legislation in this area and that it should remain on the agenda for now.

f. **Uniform Personal Data Protection Act.** There was no public testimony on this agenda item. Commissioners discussed recently enacted Colorado law in this area (Senate Bill 21-190). The bill was bipartisan and was still a huge lift. The legislation becomes effective next year so it is probably not feasible to consider making changes at this time. The ULC provided a comparison of the act to the recently enacted Colorado bill, but the Commission did not have a chance to review it. The comparison summary indicated that although there were similarities between the two, the Colorado law was not uniform.

Commission consensus was to remove this act from the 2022 legislative agenda, but noted that it might be put on a future agenda.

g. **Uniform Unregulated Child Custody Transfer Act.** There was no public testimony on this agenda item. Commissioners explained that the act came out of a working group formed of representatives from several federal agencies, state child welfare organizations, and national associations of attorney generals regarding of unregulated transfers. It addresses huge problems in international law regarding adoptions and tries to address potentially dangerous situations when a transfer is not in the best interest of the child. Another area the act may address is child custody transfer during the deportation of undocumented parents with U.S. citizen children. The act applies to biological children as well as adopted children. Commissioners expressed concerns with the portions of the act altering the ability of parents to transfer custody of children by power of attorney in an emergency, state involvement in transfers post-adoption, and with the criminalization aspect in the enforcement provisions.

The Commission decided to leave the act on the agenda in order to obtain comment from the CBA family law and probate sections and other interested parties such as child protective services.

3. **Previously approved uniform acts for consideration as part of the 2022 legislative agenda:**

a. **Uniform Prevention of and Remedies for Human Trafficking Act.** There was no public testimony on this agenda item. Commissioners shared that it had received an analysis from the ULC comparing the uniform act with current Colorado human trafficking laws but had not had time to review all the information. According to the analysis memo, however, it appears that current Colorado law cannot be considered uniform and that our statutes may need some strengthening in some areas.

Commission consensus was to leave the act on the agenda to get input from the district attorneys council and other interested parties and legislators to see if there is a way to proceed forward with the act. Commissioner McGihon agreed to contact some district attorneys and Denver-based advocates regarding the act.

b. **Uniform Voidable Transactions Act.** *Herrick Lidstone, CBA Executive Council, Business Law section, and Chair of the Business Entity Subsection which looks at Title 7 statutes,* stated that generally the act is a good update to the fraudulent act and views the name change from fraudulent to voidable as positive. Sections 10 and 11 remain a problem for the section. There are definitions and jurisdictional issues in the act that differ from those found in the Uniform Commercial Code (UCC) statutes. In addition, series entities are not well-received in Colorado and considered inappropriate by many. The commission could

proceed forward with the act if Sections 10 and 11 are either left out or the language is changed to be consistent with Colorado's UCC language and jurisdiction. Colorado currently deals with series entities by dealing with the parent company, so Section 11 could be left out. The Commission noted that the bar's objections to this act have been consistent and thanked the bar for its continued engagement on it and Mr. Lidstone for raising the issue of harmonizing definitions.

Commission consensus was to leave the act on the agenda and check with the ULC to see if it would be considered uniform with the language changed to conform with Colorado's UCC definitions and jurisdiction and deleting any series entities references.

- c. **Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act.** There was no public testimony on this agenda item. Commissioners expressed some concerns about the enforcement provisions in the act that give considerable control to law enforcement to enforce a protection order even if the protection order is not in hand. It also provides considerable immunity provisions regarding the enforcement of protection orders. The act was introduced last year and ran into opposition.

Commission consensus was to remove this act from the 2022 legislative agenda.

- d. **Revised Uniform Unincorporated Nonprofit Association Act.** There was no public testimony on this agenda item. Commissioners explained that the uniform act defines the type of organizations covered, the relation of the principals to existing law, and the recognition of an unincorporated nonprofit association (UNA) as a legal entity. Also, the legal implications that go with that recognition, including the owning of and disposal of property and fiduciary and insurance requirements. Colorado already has the Colorado Revised Nonprofit Corporation Act in Title 7 under which most Colorado formalized nonprofits incorporate as nonprofit corporations. Current law does address some important gaps, but perhaps there are provisions in the uniform act that would be beneficial to Colorado.

Commission consensus was to leave this act on the agenda to take a closer look at the revisions to see how it works with current law and obtain public comment on it.

- e. **Uniform Parentage Act (UPA).** Commissioners noted that the surrogacy provisions from the act were enacted last session and are looking for any new input on the rest of the act. *Trish Cooper, CBA Family Law Section*, stated that the section's position is that current statutes and case law adequately address parentage in Colorado, especially now that the surrogacy laws were updated. She reminded the commission that the section's primary concerns regarding the new UPA is that it limits the standing of some parents and the presumption of parentage. There are also concerns about the provisions regarding de facto parentage, disparate treatment of genetic parents as compared to presumed parents, registry provisions, disputed parentage, and the termination of a parent's rights.

Ellen Trachman, private practice attorney focusing on assisted reproductive technology and family formation, speaking on behalf of herself, supports the new UPA. The prior UPA was created close to 50 years ago, it was not inclusive, and does not take into consideration the many ways in which families are now formed. Much of its language is archaic and it leaves

those using embryo donation unprotected. The new UPA removes gender and outdated language and takes into consideration the modern ways in which families are now formed. Conversations continue with the bar and other interested parties on moving forward with the new act or portions of the new act, and even if this is not the year it moves forward, perhaps amending Colorado law is still a possibility.

Rachel Catt, family law attorney and member of the CBA Family Law Section and Legislative Policy Committee, speaking only on behalf of herself today, concurred that conversations regarding this act are ongoing and interested parties are looking at ways to update Colorado law. Current law is antiquated, outdated, and offensive to many. It does cover some of the issues but those provisions may be buried in case law and difficult to find, making it confusing to those new to the state or unrepresented parties. In addition, it is possible that some areas of current law may be in conflict with federal law. Would like the commission to recognize that the conversations regarding this act are ongoing and may require future consideration by the commission. Commissioners noted that Colorado law does need updating and hope that there is a way to move the act forward, but realize that doing so may prove difficult.

Commission consensus was to leave it on the agenda to keep discussions continuing and to see if there is a way to move forward on the portions that are not in dispute. Commissioner Scott volunteered to assist with the act.

4. **Other business.** The Commission confirmed that no bill drafts are being requested at this time. Commissioner Levy announced that elections for Chair and Vice Chair will be held at the next meeting.
5. **Next CCUSL meeting.** To be scheduled for a November or December date.