

# Colorado Commission on Uniform State Laws

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Colorado General Assembly

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## MINUTES

**December 7, 2022, 9:30 a.m.**  
Committee Room: HCR 0112

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

### 1. Uniform Acts for possible introduction in 2023:

- a. **Community Property Disposition at Death Act – 2021.** *Steve Brainerd with the Trusts & Estates Section of the Colorado Bar Association (CBA)*, testified that the Statutory Revisions Committee of the section established a subcommittee to review the act and how it works within the confines of the Colorado Probate Code. The subcommittee is in favor of the act but there are some revisions needed to help it to accord with Colorado law. Most of the revisions are minor, but there are a few substantive ones, mostly dealing with the time periods within which interested parties can stake a claim to the community property. The subcommittee believes that it can have its revisions approved by the appropriate CBA oversight committees by February.

The commission confirmed that the subcommittee's revisions can be delivered to a drafter and that there are no known objections to the act. The commission thanked Mr. Brainerd and the CBA for their consideration and work on this act.

Commissioner Mielke moved that the **Uniform Community Property Disposition at Death Act** be drafted with the CBA revisions and introduced as a commission bill. Commissioners Gardner and Pike seconded, and the motion passed without objection. Senator Gardner agreed to carry this act as a Senate bill and will find a House sponsor.

- b. **Easement Relocation Act – 2020.** Commissioner Mielke noted that many subdivision maps were drawn based on maps made a hundred or more years ago without the surveyor walking the property. As a result, roads and lots can be somewhat erratic and there is a need to have the easements updated. Commissioner Gardner recollected that in past discussions water law attorneys voiced strong opposition with relocating ditch easements. Commissioner Mielke suggested that the commission work with the CBA to amend the act to exclude water and power lines, or other Colorado-related concerns similar to what was done with the financing areas of the UCC regarding crops. Commissioner Levy added that Colorado has adopted the restatement approach to property law and that common law seems to be the preferred way to address easements.

*Tyler Mounsey, Director of Legislative Relations with the CBA*, testified that the CBA has reviewed the act and Mr. Mounsey is aware it has been opposed in the past but has not received

that same direction yet and is doing more research on his end. He suggested that before making special concessions to the Water Law Section of the CBA there may be other avenues for water law to explore.

Commissioner Levy stated that it would be worth hearing again from the bar before making a decision, but does not see a strong need to codify Colorado common law or for uniformity in property law.

Commissioner Pike moved that the commission defer consideration on the **Uniform Easement Relocation Act** until a future meeting. Commissioner Mielke seconded, and the motion passed without objection.

- c. **Family Law Arbitration Act – 2016.** Commissioner Levy observed that there does not seem to be a great need for this act as current Colorado law addresses mediation and perhaps the commission should wait until it hears there is a need for this act from family law practitioners before moving forward with it.

*Tyler Mounsey, Director of Legislative Relations with the CBA*, confirmed that the CBA is reviewing the act but he has not received any substantive comments on the act.

Commissioner Scott asked that the commission consider this act because of regarding its binding arbitration to help families resolve issues without going to litigation. She asked the commission wait for additional input before deciding to not move forward on it.

Commissioner Pike moved that the commission defer consideration on the **Uniform Family Law Arbitration Act** until a future meeting. Commissioner Love seconded, and the motion passed without objection.

- d. **Prevention of and Remedies for Human Trafficking Act – 2013.** There was no public testimony on this item. Commissioner McGihon noted that last year the Colorado District Attorneys Council was working on updating Colorado law with the uniform act but it wasn't completed in time for introduction during the 2022 legislative session. Commissioner Tipper shared that there were issues with human trafficking stakeholder groups and some of the act's language and suggested that the commission get a status report on where things were left off on last year's efforts for the next meeting. Commissioner Gardner added that there were challenges with trying to keep the act uniform and agreed that the commission should gather more information before making a decision to move forward on it.

Commissioner Pike moved that the commission defer consideration on the **Uniform Prevention of and Remedies for Human Trafficking Act** until a future meeting. Commissioner Mielke seconded, and the motion passed without objection.

- e. **Public Expression Protection Act – 2020.** There was no public testimony on this item. Commissioner Levy stated that the commission has held fairly extensive discussions on this act and has asked for and received a comparison report of the act with Colorado law from the Uniform Law Commission (ULC). Although this act provides additional procedural protections that would be beneficial to Colorado there are some first amendment issues to be considered. Enough time may have passed since Colorado enacted its laws on public expression that there may now be interest in the uniform act but the sponsor would need to

have a background in this area of law. Commissioner Gardner added that the act would be a heavy lift and the commission should find a sponsor before moving forward with it. Commissioner Levy suggested that the commission look to the advocacy community and search out other sources of comment and support for the act.

Commissioner Mielke moved that the act be drafted but that the commission defer consideration on the **Uniform Public Expression Protection Act** until a future meeting. Three commissioners seconded, and the motion passed without objection.

- f. **UCC, 2022 Amendments to – 2022.** There was no public testimony on this item. Commissioner Mielke stated that the updates in the act fit easily into the current Uniform Commercial Code enacted in Colorado and should be moved forward. Commissioner Gardner concurred and agreed to be the Senate sponsor and find a House sponsor.

Commissioner Pike moved the **Uniform UCC 2022 Amendments Act** be drafted and introduced as a commission bill. Commissioner Mielke seconded, and the motion passed without objection.

- g. **Unregulated Child Custody Transfer Act – 2021.** There was no public testimony on this item. Commissioner Levy reported that she has received inquiries from a newly-elected legislator, Rep. Joseph, who is interested in sponsoring this act. Commissioner McGihon confirmed that Rep. Joseph practices in family law. Commissioner Scott reaffirmed her strong objections to this act and that parents and adopted parents should be able to act in the best interest of the child as they see fit. She asked that the commission seek out additional testimony from the child welfare community. Commissioner Levy agreed that comment from the child welfare community is needed but that her understanding was that the welfare community was consulted during the drafting of the act. She added that the act is not uniquely targeted to adopted children, although it does address concerns regarding adoptions of a high need child by persons not determined to be a suitable parent for a child with those needs. She recommended that the commission move forward with drafting the act for introduction so that stakeholders do come forward to testify during the legislative process. Commissioner McGihon concurred that a variety of communities were involved in the drafting of the act prior to its approval by the ULC. Commissioner Scott stated that the commission needs to bring a wide variety of voices in the room and moved that the commission not move forward on the act until it hears from these communities, there was no second to the motion and the motion failed.

Commissioner Levy moved the **Uniform Unregulated Child Custody Transfer Act** be drafted and introduced as a commission bill. Commissioners Mielke and Gardner seconded, and the motion passed 8 to 1.

## 2. **2022 Uniform Acts for discussion:**

- a. **Alcohol Direct-Shipping Compliance Act.** There was no public testimony on this item. Commissioner Levy reported that Colorado (CCUSL) voted to not approve the act at the ULC meeting and she does not see a need for the commission to consider it for Colorado. There is sufficient regulation in this area, the authority to regulate in this area already exists, and the act is unlikely to be adopted by the states. Commissioners Mielke and Gardner concurred with not

moving the act forward.

Commissioner Pike moved that the commission defer any further action on the **Uniform Alcohol Direct-Shipping Compliance Act**. Commissioner Mielke seconded, and the motion passed without objection.

- b. **Electronic Estate Planning Documents Act (UEEPDA)**. *Steve Brainerd with the Trusts & Estates Section of the Colorado Bar Association*, reported that the section was just beginning to review the act and would like time to proceed cautiously. The act attempts to coordinate Uniform Electronic Transactions Act (UETA) with other the things like the Uniform Electronic Wills Act (UEWA). Initial perception is that the framework is viable and beneficial and will be needed at some point but Colorado's UEWA is not entirely uniform and some effort will be needed to make them work well together. In addition, the act's document list has omitted some important estate planning documents such as beneficiary designations for IRAs and retirement accounts. Finally, there is concern that there may be some discomfort and reluctance from some sections, such as the Elder Law Section, concerning the potential for the exploitation of older adults where electronic means are used to execute certain important documents. It may take some time to work with and among the sections to develop something that is not going to create divisiveness. The section is confident this can be done but does not believe it can complete its review for this session.

Commissioner Mielke shared that he served on the drafting committee for the act and that during the drafting process many legal and financial associations, including the American Bar Association's various sections, were involved and indicated an urgency in moving forward with act. In addition, he stated that article 3 it is just a placeholder for the regarding the UEWA and that portion can be eliminated and the definitions in this act only relate to estate planning documents. There is a misconception that UETA covers all of this, but it's scope is limited to business, commercial, and government transactions and its transactions are defined as between two persons. Other transactions are not subject to UETA and there is nothing in the law today authorizing a single person to transact electronically creating the need for this act. He agreed that the document list in UEEPDA is not all-inclusive and suggested that additional documents could be added to the list. Single person transactions are occurring and there are concerns regarding possible challenges. Commissioner Gardner cautioned that there was a danger in trying to move before the bar has had adequate opportunity to look at the act. Commissioner McGihon brought up the possibility of a late bill introduction towards the end of February in order to allow the CBA additional time for review. Mr. Brainerd said that the section would try to find a way to weigh in on the act within the commission's time frame but has a strong preference for the time to do so at a thoughtful pace.

Commissioner Levy noted that this is an area in which, if the commission does not proceed forward with the act, events may push forward the need for some sort of legislation and even if the uniform act doesn't pass at least people will know that there is uniform law available. Commissioner McGihon noted that moving forward to drafting doesn't mean introduction without further comment from the CBA and asked if there was a list of the documents to be added available. Mr. Brainerd clarified that one of the issues with determining the additional documents is that the act doesn't fully provide direction as to whether certain ones should be

considered testamentary or a non-testamentary, and the act is designed to deal only with non-testamentary documents. He said that the section would provide a list of documents for inclusion for the commission's consideration. The commission thanked Mr. Brainerd and the CBA for their time, consideration, and future work on this act.

Commissioner Mielke moved the **Uniform Electronic Estate Planning Documents Act** to drafting, with article 3 stricken, article 4 renumbered to article 3, and with additional documents to be determined included in the list in section 102 (5)(a), which was amended to moving the **Uniform Electronic Estate Planning Documents Act** to drafting, with article 3 stricken and article 4 renumbered to article 3, which Commissioner Love seconded, and the motion passed without objection.

- c. **Public Meetings During Emergencies Act.** There was no public testimony on this item. Commissioner Levy reported that she served on the drafting committee for the act. It was changed to be a model act in recognition that uniformity is not needed in this area. It's designed to fit within the frame work of open meetings laws which vary from state to state. The drafting committee did not want to create new requirements for open meetings, but to create what could be considered a best practices act for creating a balance with proceeding with business during a public emergency in a way that is compatible with the public's right to know what their public officials are doing and to participate in that process to the best extent possible. During COVID, many jurisdictions acting under executive orders met but did not have time to explore all options to best achieve that balance. The model act would not apply to state legislatures and state agencies but the real need for it is for local public bodies and asked the commission to move it forward. Commissioner Gardner added that the pandemic made us aware of just how many public bodies there are in Colorado while it left them scrambling to figure out what meetings they could still have. The model act addresses that and the commission should introduce this while the last two years is still fresh in everyone's mind. Commissioner Gardner agreed to sponsor this act in the Senate or find another Senator to do so. Commissioner Levy noted that there may be newly-elected legislators who come from public bodies who may be interested in carrying the bill and will help with finding a House sponsor.

Commissioner Levy moved the **Uniform Public Meetings During Emergencies Model Act** be drafted and introduced as a commission bill. Commissioners Pike and Duran seconded, and the motion passed without objection.

- d. **Telehealth Act.** There was no public testimony on this item. Commissioner Levy advised the commission not move forward with this act. Commissioner Gardner concurred and Commissioner Tipper added that some of the General Assembly's recently enacted legislation in this area was contentious and the act would most likely not be well-received. Commissioner McGihon shared concerns with how this act integrates with Colorado's existing statutes and the commission needs to study it to see if there is anything useful to Colorado in the act and asked Commissioner Love to ask the ULC to provide a comparison memo.

Commissioner Pike moved that the commission defer further action on the **Uniform Telehealth Act**. Commissioner Love seconded, and the motion passed without objection.

3. **Other business or public comment regarding items not on the agenda.** There was no public testimony on this item. The commission mentioned that the current two-year commission appointments were expiring soon, and that the new commission would be appointed by resolution sometime in January. Commissioner Love requested the commission approve the Office of Legislative Legal Services (OLLS) prepare drafts on the uniform acts moved to be considered at the January meeting.

Commissioner Pike moved that the **Easement Relocation Act, Family Law Arbitration Act, and Prevention of and Remedies for Human Trafficking Act** be drafted by the OLLS. Commissioner Love seconded, and the motion passed without objection.

4. The next Colorado Commission on Uniform State Laws meeting will be on Friday, January 13, 2023, starting at 1 p.m.