

Colorado Commission on Uniform State Laws

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Colorado General Assembly

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MINUTES

October 20, 2023, 9:00 a.m.

Committee Room: HCR 0112

Roll was taken and Commissioners Levy, Pike, and Whitfield were excused. Commissioners Gardner, Love, McGihon, Mielke, Snyder, and Tipper were present.

1. **Introduction of new commissioners and election of chair and vice-chair.** Commissioner McGihon noted that Commissioner Snyder was new to the commission and that Commissioner Whitfield has returned. Commissioner Gardner moved, with Commissioner Snyder seconding, that the commission re-elect Commissioner McGihon as chair. The motion passed 6-0. Commissioner Gardner then moved, with Commissioner Snyder seconding, that the commission re-elect Commissioner Levy as vice chair. The motion passed 6-0.

2. **2023 Uniform or Model Acts for discussion:**

a. **Consumer Debt Default Judgments Act.** There was no public testimony on this agenda item. The commission briefly discussed the act. Commissioner Snyder shared that the act has positive aspects and appears ready to go if the commission wants to move it forward. Commissioner McGihon noted that the act does provide some respite for consumers involved in default judgments and that the industry may find some relief in the act because of the process being laid out clearly. Commissioner Gardner noted surprise that the collectors' association isn't present to comment on the act.

Commissioner Mielke moved the **Uniform Consumer Debt Default Judgments Act** be drafted and introduced as a commission bill. Commissioner Snyder seconded and the motion passed without objection. Commissioner Snyder agreed to sponsor and start the bill in the House. Commissioner Gardner tentatively agreed to be the Senate sponsor.

b. **Health-Care Decisions Act.** *Steve Brainerd, Colorado Bar Association (CBA) Trusts and Estates Section*, testified that the section has not had a chance to thoroughly review and provide comments on this new act. It clearly has some good ideas in it and it takes a scattered group of provisions that are largely covered in the statutes and consolidates them under one roof, which has some benefit. It appears to affect or replace some 25 sections of statutes appearing in three articles of title 15 so it would significantly affect current Colorado law. Colorado statutes already addresses many of the provisions that the act proposes. The section would like to have the next year to review the act to make sure it works well with Colorado law. Commissioner Snyder noted that part of what the act is doing is recognizing the changing nature of the area of advanced directives with many hospitals requiring their own forms be executed. There is value in the act, but it will take some effort to fit it within our current statutory scheme.

The commission concurred with the section and asked that it report back on its review next fall. The commission will also reach out to the Uniform Law Commission (ULC) to see if it can obtain a side by side comparison. The commission thanked Mr. Brainerd

for his testimony. The commission will not move forward with this item this year.

- c. **Special Deposits Act.** There was no public testimony on this agenda item. The commission briefly discussed the act. Commissioner Gardner did not remember any controversy with the act at the national ULC meeting and suggested that the commission move forward with the act, if only to encourage public comment. Commissioner Love recalled that the Uniform Law drafting committee said that there was no organized opposition to the act.

Commissioner Snyder moved the **Uniform Special Deposits Act** be drafted and introduced in the Senate as a commission bill. Commissioner Gardner seconded and the motion passed without objection.

- d. **Unlawful Restrictions in Land Records Act.** *Larry Hudson, Land Title Association of Colorado*, representing title insurance and title agencies across the state. The association has been following the act hoping to find a way to properly remove, redact, or eliminate unlawful restrictive covenants that have been in land records for a very long time. He noted that the American Land Title Association worked with the ULC on the act. His association has observed other states try to address this issue, but the ULC act provides a better avenue moving forward. Commissioner Gardner asked if there were concerns with a homeowner misusing the act and removing lawful restrictions. Mr. Hudson replied that he has not, to date, heard those concerns but there seems to be safeguards in the act, especially for preventing lawful restrictions to not be removed along with unlawful ones. Additional concerns may arise as others become aware of the act and tweaks to the Colorado bill may be needed. Mr. Hudson confirmed that his association supports the act. Commissioner Snyder related that the El Paso County Clerk and Recorder recently removed some unconscionable restrictions, but it took four to five years to do so. The uniform act covers both individual homeowners and homeowner associations and formalizes a process to remove these restrictions much quicker. Believes that there is a federal law now that prohibits the republication of these unconscionable restrictions. The act provides a more efficient, consistent, and equitable way to remove these restrictions from the land records so that they are no longer published.

Adam Aldrich, CBA Real Estate Section, said that upon initial review of the act the section is not ready to support the act, but is open to having ongoing discussions about it to address some of their concerns. One concern is the potential abuse by an owner in the unilateral recording of documents and how that could affect the title moving forward. Currently homeowners do not have the ability to change title documents. Another concern is that even if a restrictive covenant is removed it would still remain in the historical documents in the chain of title documents. Not certain of the practical effect of the act. The section has not taken a formal vote on the act. Commissioner Snyder noted the act proposes to cure and remove these restrictive covenants by affidavit. Mr. Aldridge stated that the section's understanding was that the affidavit would be published but that the historical documents would remain as is. He pointed out that there are statutes in title 38 addressing how to remove restrictive covenants that might be amended to make the process more efficient. The commission asked that the section work with the land title association and Commissioners Snyder and Gardner and other stakeholders on the act. Mr. Aldrich recognized the commission's desire to address removing unconscionable restrictions and mentioned that the section has a task force devoted to that very issue. Commissioner Gardner shared an early experience with unconscionable and unenforceable restrictions and the effect on the potential homeowners that they are directed at. There has to be a way to remove the language in current documents and stop repeating the language in future deeds. Commissioner

Mielke concurred that the act is needed and timely. The commission thanked the witnesses for their testimony.

Commissioner Gardner moved the **Unlawful Restrictions in Land Records Act** be drafted as a commission bill. Commissioner Snyder seconded and the motion passed without objection. Commissioners Gardner and Snyder agreed to sponsor and will decide in which house to start the bill.

- e. **Model Public Health Emergency Authority Act.** There was no public testimony on this agenda item. The commission briefly discussed the act. Commissioner Snyder stated that it was the most intriguing of all the new acts. It is a growing concern across the country and is certainly an issue that has been raised in Colorado. There were lessons learned in the two-year period that Colorado acted under the pandemic emergency declarations. Commissioner McGihon observed that the act seemed to need more work. Commissioner Gardner concurred and noted that it would be controversial. Commissioner Gardner suggested to leave the act on the agenda for public testimony at the December meeting. Commissioner Tipper concurred that the act would be controversial and suggested the commission wait. Commissioner Love suggested that a draft be prepared in case it is decided to move the act to introduction in December.

Commissioner Snyder moved the **Model Public Health Emergency Authority Act** be drafted as a commission bill to be considered at the December meeting. The motion passed without objection.

3. Carry-over uniform acts from previous years for possible introduction in 2024:

- a. **Guardianship, Conservatorship, and Other Protective Arrangements Act (2017).** *Benjamin Orzeske, Uniform Law Commission*, gave a brief national perspective. The act has been adopted in two states, adoption has been difficult because it's length, 165 pages without comments, 250 pages with comments, and it takes a long time to review. It also affects multiple constituencies – mainly adults with dementia, adults with developmental disabilities, and children who are orphaned or have had their parents' parental rights removed. There are a lot of stakeholders representing different types of persons to weigh in on and approve the act. It makes sense for Colorado to start this process because Colorado's guardianship laws are based on the prior version of this act, enacted in 2000. Over the last 20 years there have been a lot of advances in guardianship law – there's a greater emphasis on individual rights, individual due process protection, and individual planning to promote independence. There are at least seven states currently considering the act and expect to see some bills introduced in 2024.

Elizabeth Moran, The ARC of Colorado, currently working with the CBA to look at this legislation side by side with current Colorado law. Has worked on guardianship issues on the national level and appreciates with the value of uniform laws, in particular this act and what it could do to further provide consistency and honor the will and preference of individual's subject to guardianship, ensure meaningful engagement in due process, and to help combat abuse neglect and exploitation of individuals who do not have access to the judicial system. Although Colorado adopted the previous version of the uniform act, it is behind global and national standards and best practices around legislation policy and practice. For instance, Colorado has enacted legislation concerning supported decision-making agreements, that does not show up in our guardianship statutes. The national guardianship summit in May 2021 issued 22 recommendations regarding best practices, including that states should adopt this uniform act. Ms. Moran stated that she has engaged with ULC to create a side-by-side to review which should be available soon. She has been in contact with various Colorado organizations who have indicated their

initial support for this act.

Letty Maxfield, CBA Elder Law Section, stated that the section is excited that this time around that the CBA has Ms. Moran's national expertise. There are a number of reasons for the CBA's prior hesitancy in supporting this act, but a number of things have changed in the last five years making this a better opportunity to see how we can integrate this act into Colorado law. It will not be a light lift and there are a lot of technical pieces to occur to make this act seamless and it will take a lot of resources. The role of the CBA is to work with other stakeholders and will be meeting every Friday to review and identify what needs to be done to not lose Colorado law that is already more progressive.

Andrew Rodgers, CBA Elder Law Section, concurred with Ms. Maxfield's testimony that this will be a heavy lift and will take time to make sure that it is seamlessly integrated with the changes that have been made since the uniform guardianship act was enacted in 2000. Commissioner Snyder noted that guardianship is an important subject and appreciate the CBA and others for taking it on. Commissioner Tipper asked the work group to also work with stakeholders at the municipal and county levels, early on. Commissioner Gardner commented on how important this act is and that it will be important to explain what the act does.

Sophia Alvarez, Colorado Office of Public Guardianship, explained that the office recently became a permanent state agency serving as court-appointed guardians for indigent and incapacitated adults 21 years or older who have no family or friends who can serve as their guardian throughout the state. Ms. Alvarez has been reviewing the act to see how it impacts the office work in serving their vulnerable population. She concurs with the other witnesses that there are a lot of details in current processes to take into consideration and her office wants to be part of the conversation as the act continues to moves forward. She will also be engaging her board and the attorney general before providing any specific recommendations.

Commissioner Gardner moved the **Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act (2017)** be drafted and introduced as a commission bill. Commissioner Snyder seconded, the motion passed without objection. Commissioners Gardner will start the bill in the Senate. The commission thanked the witnesses for their time and testimony.

- b. **Electronic Estate Planning Documents Act (2022)**. *Steve Brainerd, CBA Trusts and Estates Section*, the section has been reviewing the act over the last nine months and are here to offer recommendations to have it work better within Colorado law and practice. First, based on a recommendation from a previous commission meeting to remove the inclusion of the Uniform Electronic Wills Act which Colorado had already enacted, and suggests that the title and terms of the act be changed to refer to only non-testamentary estate planning documents. The purpose of this act is to validate electronically signed documents other than wills. The work group believes that these changes do not affect the uniformity of the act. In addition, they are suggesting a few substantive revisions including modifications to a couple of definitions to accord with similar definitions in related Colorado statutes and to a list of documents in section 1, subsection 5, paragraph A. Most of the list of documents has been maintained, but suggest eliminating the catch-all phrase "Any electronically signed document intended to govern an individual's property, disposition, or health-care at incapacity or death", found in romanette xiv, which may lead to litigation. In paragraph B the section recommends excluding any documents that are not listed in paragraph A. In section 201 the section has tried to make it clear that nothing in the act precludes the validity of an electronic record including community property survivorship agreements that multiple parties expressly agree are

to be executed in electronic form. Finally, the proposed addition of section 211 which is designed to ensure that the act does not create liabilities for persons who undertake in good faith to perform acts based on hard copy documents, not knowing that some other electronic instrument may have eliminated or altered their authority. This testimony represents only the opinion of the Trusts and Estates Section.

Letty Maxfield, CBA Trusts and Estates, assured the commission that there is no conflict between the revised act and the uniform wills act previously enacted.

Benjamin Orzeske, ULC, noted that the section did a thorough job of reviewing the act and proposing changes. The drafting committee on the uniform act felt it would be impossible to come up with a complete list of estate planning documents that might be subject to this act and therefor included the catch-all phrase. With respect to various beneficiary designations and payment on death bank account agreements or IRA transfers, the act proposes that these documents should not be disqualified simply because they have electronic signatures or in electronic form. The documents still have to meet all other requirements. And for the documents that might be subject to the Uniform Transactions Act, the drafting committee felt that their inclusion in this act is at worse a redundancy. The proposed changes do not appear to affect the uniformity of the act. Commission Mielke asked about the addition of section 211 regarding good faith actions. Mr. Orzeske replied that its inclusion does no harm.

Commissioner Mielke moved the Uniform **Electronic Estate Planning Documents Act (2022)** be drafted, as amended by the CBA, as a commission bill for introduction. Commissioner Snyder seconded, the motion passed without objection. Commissioner Snyder agreed to sponsor the act.

- c. **Uniform Parentage Act (2017)**. *Kaela Zihlman, CBA Family Law Section*, stated that the section has not yet formally taken a position on the act, but historically the section has opposed it. She referred to a prior year memo from the section stating reasons that Colorado law is better, there are certainly portions of the uniform act that the section would not object to and could potentially provide useful feedback on. Ms. Zihlman offered to have the section prepare a formal position on the act for this year or work with a commission working group to determine appropriate provisions of the act to consider for Colorado law. Commissioner McGihon suggested that we ask the ULC for a side-by-side comparison of Colorado law before having future discussions on the act. Commissioner Tipper noted that Colorado is listed as having passed the Uniform Parentage Act on the ULC website. She added that Colorado didn't specifically pass the uniform act but has enacted enough portions of it through other legislation for Colorado law regarding parentage to be uniform negating the need for further discussion on the act.

4. Colorado-specific revisions from the Uniform Law Commission

- a. **Nonparent Custody and Visitation Act (2018)**. *Trish Cooper, CBA Family Law Section*, stated that the section has not had time to do a thorough review and does not have a formal position on it. After the *Troxel v. Granville* decision, Colorado appellate courts developed a consistent, robust, and thoroughly thought-out approach to addressing cases of nonparents who are seeking legal rights as to children. Initial concerns with the act, include that it would alter the standing criteria which is codified in 14-10-123, C.R.S., which may expand or contract the current pool of those with standing. It also changes the standards courts would apply in some cases where a nonparent has filed and sought some rights as to a child in a domestic relation. There are additional concerns and this is an act that the section would like to do a legal analysis for the commission if it chooses

to move forward and would like to be considered stakeholders participating in that process.

Commissioner McGihon shared that ULC staff noted that Colorado's statute needs an explicit provision that the decision of the parent regarding visitation with a nonparent is correct (although that presumption can be overcome in certain circumstances). In addition, Colorado's statute would be improved by listing factors to guide the court's discretion in deciding whether to grant visitation. Ms. Cooper responded that although the standing statute, 14-10-123, C.R.S., does not discuss the presumption to be afforded a fit and proper parent when it comes to a custody challenge between a parent and nonparent, however the Colorado Supreme Court is very clear on that standard and the evidence needed to rebut the presumption. Codifying the presumption could be helpful but there are concerns to codifying it regarding this circumstance and not in other circumstances. Commissioner Tipper said if this act moves forward it is important to talk with local municipalities and get their input on what the operational side of it would be. The commission thanked Ms. Cooper for her time and testimony.

Commission consensus was to defer this act to next year's agenda.

- b. **Pretrial Release and Detention Act (2020).** There was no public testimony on this agenda item. Commissioner McGihon relayed that the ULC noticed that the act was introduced, but due to the pandemic was not publicly heard. Commissioner Gardner noted that there has not been much discussion on the uniform act since 2020 in Colorado, although pretrial release and detention is frequently discussed. He added that he questions that this is an appropriate subject for uniformity in that it is a function of each state's criminal justice system. Commissioner McGihon suggested that the commission ask the ULC to do a side-by-side comparison of Colorado law to the act before future consideration. Commissioner Mielke concurred that uniformity in criminal law would be difficult to achieve. Commissioner Tipper concurred noted that the legislature has done a lot of work on this area in the past six years and the commission may want to let the dust settle on that for a bit.

Commission consensus was to not move forward on this act at this time.

5. **Other business or public comment regarding items not on the agenda.** There was no public testimony on this agenda item. Commissioner Gardner shared that the collection agencies are aware of the Uniform Consumer Debt Default Judgments Act and will testify on it in December.
6. **The next CCUSL meeting will be at 9:00 a.m. on Friday, December 8.**