

COLORADO COMMISSION ON UNIFORM STATE LAWS

REPORT - JANUARY, 2002

I. PREAMBLE

To the Honorable Governor, Bill Owens; the Chief Justice of the Colorado Supreme Court, Mary J. Mullarkey; the Chief Judge of the Colorado Court of Appeals, Claus J. Hume; and the members of the Colorado General Assembly. The Colorado Commissioners on Uniform State Laws respectfully submit this Annual Report.

II. HISTORY OF THE NATIONAL CONFERENCE (ULC)

In 1889, the New York Bar Association appointed a special committee on uniformity of laws. In the next year, the New York Legislature authorized the appointment of commissioners "to examine certain subjects of national importance that seemed to show conflict among the laws of the several commonwealths, to ascertain the best means to effect an assimilation or uniformity in the laws of the states, and especially whether it would be advisable for the State of New York to invite the other states of the Union to send representatives to a convention to draft uniform laws to be submitted for approval and adoption by the several states." In that same year, the American Bar Association passed a resolution recommending that each state provide for commissioners to confer with the commissioners of other states on the subject of uniformity of legislation on certain subjects. In August, 1892, the first National Conference of Commissioners on Uniform State Laws (ULC) convened in Saratoga, New York, three days preceding the annual meeting of the American Bar Association. There have been 109 conferences since that time.

By 1912, every state was participating in the ULC. In each year of service, the ULC has steadily increased its contribution to state law. Because of that contribution, it very early became known as a distinguished body of lawyers. The ULC has attracted some of the best of the profession. In 1912, Woodrow Wilson became a member. This, of course, was before his more notable political prominence and service as president of the United States. Several

persons, later to become Justices of the Supreme court of the United States, have been members. These men are former Justices Brandeis and Rutledge, and current Chief Justice Rehnquist. Legal scholars have served in large numbers. Examples are professors Wigmore, Williston, Pound, and Bogert. Many distinguished lawyers have served since 1892, though their names are not as well known in legal affairs and the affairs of the U.S. This distinguished body has guaranteed that the products of the ULC are of the highest quality and are enormously influential upon the process of the law.

As it has developed in its 110 years, the ULC is a confederation of state interests. It arose out of the concerns of state government for the improvement of the law and for better interstate relationships. Its sole purpose has been, and remains, service to state government and improvement of state law.

III. THE OPERATION OF THE ULC

The National Conference is convened as a body once a year. It meets for a period of eight to twelve days, usually in late July or the first two weeks of August. In the interim period between the annual meetings, drafting committees composed of commissioners meet to supply the working drafts which are considered at the annual meeting. At each National Conference, the work of the drafting committees is read and debated. Each Act must be considered over a substantial period of years. No Act becomes officially recognized as a Uniform Act until the National Conference is satisfied that it is ready for consideration in the state legislatures. It is then put to a vote of the states, during which each state caucuses and votes as a unit.

The governing body is the ULC Executive Committee, and is composed of the officers, certain ex-officio members, and members appointed by the President of the ULC. Certain activities are conducted by standing committees. For example, the Committee on Scope and Program considers all new subject areas for possible Uniform Acts. The Legislative Committee superintends the relationships of the ULC to the state legislatures.

A small staff located in Chicago operates the national office of the ULC. The national office handles meeting arrangements, publications, legislative liaison, and general administration for the ULC. The total staff numbers only seven people.

The ULC maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which contributes an amount each year to the operation of the ULC. Liaison is also maintained with the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures on an ongoing basis. Liaison and activities may be conducted with other associations as interests and activities

necessitate.

IV. ACTIVITIES OF THE COLORADO COMMISSIONERS

A. Participation of the Colorado Commissioners in the National Conference of Commissioners on Uniform State Laws is provided for in part 6 of article 3 of title 2, Colorado Revised Statutes.

B. The current Colorado Commissioners and their offices or committee assignments are:

Thomas T. Grimshaw
(Private Law Practice)
Legislative Liaison for Colorado
Standby Committee on Computer Information Transactions Act

Dwight A. Hamilton, a life member
(Private Law Practice)
Committee on Review of Conference Acts
Legislative Council
Millennium Committee

William Kaufman
(Private Law Practice)

George C. Keely, a life member
(Private Law Practice)

Donald E. Mielke
(Private Law Practice)
Drafting Committee on Environmental Covenants Act

Matt Smith
(Member of the State House of Representatives)

William Thiebaut
(Member of the State Senate)

Wayne Williams
(Private Law Practice)

Charles W. Pike
(Revisor of Statutes)
Committee on Liaison with Legislative Drafting Agencies

C. Colorado Commissioners attending the most recent ULC Annual Meeting were:

Thomas T. Grimshaw, Dwight A. Hamilton, Bill Kaufman, Donald Meilke,
Matt Smith, Wayne Williams, and Charles W. Pike

V. A SUMMARY OF NEW ACTS

The following are summaries of new acts adopted in final form by the Conference at the most recent ULC Annual Meeting:

Uniform Limited Partnership Act. The Uniform Limited Partnership Act (2001) updates limited partnership law to reflect modern business practices by allowing for greater variety and flexibility in the formation and management relationships within these entities. The ULPA allows for the use of a limited partner's name in the entity's name, and authorizes family limited partnerships, entities which by nature require entrenched management and passive limited partners. It shifts default liability away from limited partners by allowing for limited liability limited partnership status, and allows for easier dissolution upon the consent of all general partners together with a number of limited partners owning a majority of the rights to distributions. The ULPA furthers estate planning considerations by restricting the ability of a limited partner to disassociate from an entity prior to its termination, except for specific circumstances. Finally, the ULPA eliminates the previous rule requiring a termination date to be included in a limited partnership certificate, thereby allowing for the default creation of a perpetual entity. ULPA is also a free-standing, comprehensive act, no longer dependent upon general partnership law for rules that are not contained within ULPA. The ULPA represents a significant revision of limited partnership law to reflect modern usages, makes the limited partnership even more appealing to business ventures and estate planners, and will enhance the business climate of those states which adopt it.

Amendments to the Uniform Interstate Family Support Act. Because of the importance of tracking and enforcing family support orders, every U.S. state and jurisdiction has adopted the Uniform Interstate Family Support Act, as it was amended in 1996. In the intervening years, the state child support enforcement community has depended on the act in their efforts, and members of that community have suggested further operational improvements. These amendments incorporate those suggestions. First, jurisdictional rules are clarified with respect to efforts to modify existing orders, and in identifying which order

is controlling. Second, clearer guidance is given to state support agencies as to the redirection of support payments to an obligee's current state of residence. Third, foreign support orders are recognized and brought within the UIFSA system if a state has established comity with that country or if the U.S. State Department has determined that reciprocity exists. Finally, the amendments incorporate certain technical updates concerning the use of electronic communications, the evolution of specific agency practices and forms, and organizational changes meant to clarify certain provisions. These changes improve the operation of the interstate family support system, without changing any of the underlying functionality or policy choices of the act.

Uniform Consumer Leases Act. While federal law and regulations require certain disclosures to be made in connection with consumer leases, with the exception of auto leases most states apply commercial leasing law rules even in consumer contexts. The Uniform Consumer Leases Act (UCLA) is designed to provide substantive contractual and procedural protections to consumer leases of personal property. The ULCA applies to consumer leases (where the property is for personal, family, or household use) with a term of at least 4 months and a total value of less than \$150,000. This excludes short-term rentals, as well as rent-to-own arrangements which may be terminated at will or on a weekly or monthly basis. The protections of the UCLA include a prohibition on taking a broad security interest in a lessee's property (beyond the goods themselves), limits and rules concerning the assessment, cure, and dispute of late, delinquency, and default fees, and protection of a lessee's right to bring actions against assignees of the original lessor. The UCLA also prohibits mandatory gap coverage insurance, imposes reasonable standards on valuation in the event of early termination, and requires lessors to return a trade-in and refund payments received in the event a consumer's lease application is disapproved. The Uniform Consumer Leases Act will help set a fair balance between the need to provide consumer protections and the commercial realities faced by personal property lessors, and should be a valuable addition to state consumer protection law.

Uniform Mediation Act. The use of mediation as means of resolving disputes has increased markedly in recent years, and states have enacted over 2500 separate statutes providing for, or in some way regulating, its use in various contexts. Because mediation depends on the ability of the parties to communicate and negotiate in reaching a voluntary agreement, the candor of the participants is vital to a mediation's success. The multiplicity of potentially-applicable statutes, however, make it difficult for the participants to know which law might apply to a particular proceeding, and thus the participants may be reluctant to communicate necessary information if they fear it may be used against them in the event the mediation fails. The Uniform Mediation Act addresses this problem by providing a statute applicable to all mediations that prescribes precise rules about how the mediation communications of the parties, non-party participants, and mediator may be used. At its

core, the act provides that each participant in a mediation proceeding is the holder of a privilege concerning his or her own mediation communications, and may prevent those communications from being disclosed or used in a subsequent formal proceeding. The parties to a mediation hold the additional power to block the disclosure or use of any participant's mediation communication. There are of course exceptions to this broad rule. There is no privilege for ongoing or future crimes, threats of bodily injury, evidence concerning the abuse or neglect where a protective services agency is a participant, and other circumstances. Evidence that is otherwise admissible does not become inadmissible simply because it is referenced or repeated in a mediation communication. The Uniform Mediation Act is the result of a unique joint project between NCCUSL and the American Bar Association, and will further the goals of alternative dispute resolution by promoting the candor of the parties.

Revision of Uniform Commercial Code Article 1. Article 1 of the Uniform Commercial Code (UCC) provides definitions and general provisions that apply to transactions covered by other articles of the UCC. As other articles of the UCC have been revised and amended to conform to modern usages and legal developments, the revisions to Article 1 are intended to make both conforming, technical changes, as well as changes clarifying various ambiguities that have arisen over the years. The revisions also make certain substantive changes, including expanding the definition of good faith to include "the observance of reasonable commercial standards of fair dealing," and allowing courts to use evidence of the "course of performances" of a transaction in contract interpretation. But perhaps the most significant change to Article 1 involves the ability of parties to designate the application of a particular state's law by contract. Under the current rule, all transactions must bear a "reasonable relation" to the designated state. Under the Revised Article 1, this requirement is dropped as a general restriction, and parties are instead allowed to designate the law of any state (in a domestic transaction) or that of any country (in an international transaction), subject to a limitation that such a designation is ineffective if that application would be contrary to a fundamental public policy of the state or country whose law would otherwise govern in the absence of a contractual designation. Where one of the parties is a consumer, however, the "reasonable relation" test still applies; more significantly, even if a contractual designation meets this test, the application of that state's law may not deprive the consumer of legal protections afforded by the law of the state or country in which the consumer resides, or where the consumer makes a contract and takes delivery of goods.

VI. RECOMMENDATIONS FOR ENACTMENT AND FOR OTHER ACTION

- A. The Colorado Commission on Uniform State Laws recommends that the following Acts be considered by the General Assembly during the 2002 legislative session:

- **Uniform Trust Code (2000)**

The Uniform Trust Code provides a comprehensive model for codifying the law on trusts.

- **Amendments to Article 9 of Uniform Commercial Code**

The amendments cure technical errors in the original act and add a provision to secure automatic perfection of a security interest in the sale of an account that is a right to payment of winnings in a lottery or other game of chance.

- **Uniform Electronic Transactions Act (1999)**

The Uniform Electronic Transactions Act establishes the legal equivalence of electronic records and signatures with paper writings and manually-signed signatures, removing barriers to electronic commerce.

B. The legislative members of the Colorado Commission on Uniform State Laws have been asked to consider the Uniform Money Services Act (2000) as a possible tool for helping address issues related to terrorism. This act provides a framework for dealing with money laundering issues unique to nondepository providers of financial services, and facilitates and enhances enforcement of existing money laundering provisions.

C. The legislative members of the Colorado Commission on Uniform State Laws also considered introducing the Uniform Athletes Agents Act (2000). The act governs relations among student athletes, athlete agents, and educational institutions. It protects the interests of student athletes and academic institutions by regulating the activities of athlete agents. However, since the bill provides for the regulation of an occupation, Colorado statutes require that a "sunrise review" must be conducted prior to the introduction of a bill. The members agreed to submit a request for the review.

VII. ENACTMENT RECORD, TO DATE

Colorado has an enviable record for enacting Uniform Acts. Ninety individual acts have been adopted in Colorado. A complete listing of Uniform Acts adopted by Colorado is attached as Appendix A.

APPENDIX A

UNIFORM ACTS ADOPTED BY COLORADO WITH THE YEAR THAT **COLORADO**
ADOPTED THE ACT DESIGNATED IN PARENTHESIS:

Act Regulating Traffic on Highways (1931)
Act to Secure the Attendance of Witnesses From Without a State in
Criminal Proceedings (1939)
Alcoholism and Intoxication Treatment Act (1973)
Anatomical Gift Act (1969)
Arbitration Act (1975)
Certification of Questions of Law Act (1969)
Child Custody Jurisdiction Act (1973)
Commercial Code (1965)
Commercial Code, Article 2A (1991)
Commercial Code, Articles 3 & 4 (1994)
Commercial Code, Article 4A (1990)
Commercial Code, Article 5, (1996)
Commercial Code, Article 6, Repeal (1991)
Commercial Code, Article 8 (1985 Amendments) (1996)
Commercial Code, Article 9 Amendments (1977)
Commercial Code, Article 9 (2001)
Common Interest Ownership Act (1991)
Common Trust Fund Act (1947)
Conflict of Law Limitations Act (1984)
Consumer Credit Code (1971)
Controlled Substances Act (1992)
Contribution Among Tortfeasors Act, Revised 1955 (1977)
Criminal Extradition Act (1953)
Deceptive Trade Practices Act, Revised 1966 (1969)
Declaratory Judgments Act (1923)
Determination of Death Act (1981)
Disposition of Community Property Rights at Death Act (1973)
Division of Income for Tax Purposes Act (1968)
Durable Power of Attorney Act (1973)
Duties to Disabled Persons Act (1973)
Enforcement of Foreign Judgments Act, Revised 1964 (1969)
Facsimile Signatures of Public Officials Act (1969)
Federal Tax Lien Registration Act, Revised 1966 (1969)

Fiduciaries Act (1923)
Fraudulent Transfers (1991)
Foreign Money Claims Act (1990)
Gifts to Minors Act, Revised 1966 (1967)
Insurers Liquidation Act (1955)
Interstate Arbitration of Death Taxes Act (1953)
Interstate Compromise of Death Taxes Act (1953)
Interstate Family Support Act (1993)
Judicial Notice of Foreign Law Act (1967)
Jury Selection and Service Act (1971)
Limited Partnership Act (1931)
Limited Partnership Act, Revised 1976 (1981)
Management of Institutional Funds Act (1973)
Mandatory Disposition of Detainers Act (1969)
Marriage and Divorce Act (1971)
Motor Vehicle Operators' and Chauffeurs' License Act (1931)
Motor Vehicle Registration Act (1931)
Narcotic Drug Act (1935)
Negotiable Instruments Law (1897)
Nonprofit Association Act (1994)
Parentage Act (1977)
Partnership Act (1931) (1997)
Photographic Copies of Business and public Records as Evidence Act (1955)
Principal and Income Act (1955) (2000)
Probate Code (1973)
Probate Code, Amendments (1975)
Probate Code, Article II, (1994)
Probate Code, Rule Against Perpetuities (1991)
Probate Code, Article VI, Amendments (1990)
Probate Code, Custodial Trust Act (1999)
Probate Code, Guardianship & Protective Proceedings (2000)
Prudent Investor Act (1995)
Reciprocal Enforcement of Support Act (1951)
Reciprocal Enforcement of Support Act, Amended 1958 (1961)
Reciprocal Enforcement of Support Act, Amended, Revised 1968 (1971)
Reciprocal Transfer Tax Act (1943)
Recognition of Acknowledgments Act (1969)
Rendition of Accused Persons Act (1972)
Sales Act (1941)
Securities Act (1961)

Simplification of Fiduciary Security Transfers Act (1959)
Simultaneous Death Act (1943)
Simultaneous Death Act, Amended 1953 (1967)
Statutory Construction Act (1973)
Statutory Form Power of Attorney Act (1992)
Stock Transfer Act (1927)
Trade Secrets Act (1983)
Trade Secrets Act, Amended 1985 (1986)
Transboundary Pollution Reciprocal Access Act (1984)
Transfer of Dependents Act (1937)
Transfers to Minors Act (1984)
Unclaimed Property Act (1987)
Veteran's Guardianship Act (1929)
Veteran's Guardianship Act, Revised 1942 (1945)
Victims of Crime (1992)
Warehouse Receipts Act (1911)
Warehouse Receipts Act, Amended 1922 (1923)

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