

Colorado Commission on Uniform State Laws

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Colorado General Assembly

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MINUTES

December 9, 2019, 9:00 a.m.

Committee Room: SCR 357

Roll was taken and Commissioners Grimshaw and Pike were excused. Commissioners Duran, Gardner, Levy, Mielke, Morris, 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. **Consideration of Uniform Law Commission acts for the 2020 legislative agenda:**

- a. **Uniform Fiduciary Income and Principal Act and Uniform Trust Act, part 5** – *Darla Daniel, Co-legislative Liaison for CBA Trust and Estates Section*, spoke for herself as a member of the Colorado Bar Association (CBA) working group on these bills. The group has completed parts one through five of the Uniform Fiduciary Income and Principal Act and will be working on parts six through eight in early 2020. The review will not be completed in time for the act to be included in the 2020 legislative agenda but should be ready for the 2021 legislative agenda. The group anticipates also completing its review of the Uniform Trust Act, part 5 in time for the 2021 legislative agenda. They will need to clear a few more hurdles with some other sections of the CBA but do anticipate the final product to be regarded as uniform. The commission thanked the group for their careful consideration and work on both of these acts.

Commissioner Gardner moved to table consideration of both the **Uniform Fiduciary Income and Principal Act** and the **Uniform Trust Act, part 5** for this year and to consider them for the 2021 legislative session. Commissioner Tipper seconded and the motion passed without objection.

- b. **Uniform Collaborative Law Act** – *Terri Harrington, of the Colorado Collaborative Divorce Professionals*, was selected by the organization to work with the commission on the draft of this act and generated a redline version of the uniform act that seems to address most of the concerns that have been raised regarding the act. The redline version applies only to family law collaborative law practice, as collaborative law practice in Colorado is already limited to family law. Ms. Harrington indicated that the CBA Alternative Dispute Resolution section has decided not to take a position on the act. The commission expressed concerns regarding the deletion of the disqualification provisions and section 10 regarding reduced fee arrangements in the redline version and wondered if there might be equal protection issues for low-income cases. Ms. Harrington indicated that section 10 regarding low-income cases could be put back in if desired. The commission also asked questions regarding the collaborative law process and how often the process ends and reverts to court. The process utilizes very specific contracts and clients are informed about the process and that collaborative practitioners are required to withdraw should the decision be to end the collaborative process and proceed in court. The commission requested that section 10 remain in the act for drafting purposes while stakeholders are consulted. The commission asked about the possibility of standardizing the forms and contracts used within the process and thanked Ms. Harrington for her work on the act.

Bonnie Schriener, family law attorney and collaborative law practitioner, speaking for herself, shared that people seek out collaborative law as a method to settle issues without litigation. The process works well and the uniform act fits very well with the current process and sets out what is required in collaborative law and contract perimeters. Collaborative law was intended to be used for all cases, but in Colorado collaborative law is only used in family law cases and, in Colorado, that is where the uniform act should be applied. The commission thanked Ms. Schriener for her testimony.

Commissioner Scott moved to draft the redline version of the **Uniform Collaborative Law Act**, with section 10 reinserted, as a commission bill for introduction during the 2020 legislative session. Commissioner Mielke seconded and the motion passed without objection. Commissioner Scott agreed to act as commission contact on the bill. Commissioners Tipper and Gardner agreed to sponsor the bill.

- c. **Uniform Partition of Heirs Property Act** – *Jean Arnold, Vice Chair of CBA Real Estate Section*, spoke for herself and as a member of a recently formed CBA task force on the act. The CBA does not yet have a position on this act. Ms. Arnold pointed out that the partition remedy can come through several different portals – such as family law, trusts & estates, business divorce, or natural resources. The Real Estate Section is taking the lead on looking at this act, but as the act will apply to more than property and real estate law, other sections will need to be consulted before it can go to the CBA legislative policy committee for consideration. Commissioners questioned whether the act was written to apply just to the probate process and Ms. Arnold answered that the definition of heirs' property in the act is very broad and could apply to other areas of law. In addition, the act doesn't take into account some of the issues in partition hearings that are currently addressed through Colorado statute and case law. She stated that the task force is intrigued with the remedy this act offers, it's just a matter of squaring it with current law. Also, in Colorado, mineral and water rights applications under the act will need to be considered carefully. The commission asked about the volume of heirs' partition cases in Colorado and encouraged the task force to keep any changes to the uniform act minimal. Ms. Arnold stated that the task force needs to reach out to more of the rural areas to get a better idea of the volume of partition cases in Colorado and that although some tweaks are anticipated, it's too early for the task force to know if more substantial changes might be needed. The commission thanked the CBA for its time on this act.

Commissioner Tipper moved to table consideration of **Uniform Partition of Heirs Property Act** for this year and to consider it for the 2021 legislative session. Commissioner Whitfield seconded and the motion passed without objection.

- d. **Uniform Parentage Act (UPA)** – *Marie Avery Moses, Co-chair of the CBA Family Law Legislative Section*, provided, as requested by the commission, a detailed memo regarding the section's thoughts regarding the act. The CBA does not yet have a formal position on the act but the family law section continues to oppose it. The memo is organized according to the stated goals of the act and how it applies to Colorado laws, goals, and policies in these areas; i.e. is the goal already adequately covered by Colorado law or is the goal a problematic area for Colorado? The section strongly dislikes the concept of a parentage registry because of the way it is written. It would like to see section 7 from the 2017 UPA in Colorado law and sees benefit in incorporating sections 801 through 812 regarding surrogacy into law. Colorado statutes are broader concerning gender, but the terminology used could be updated. Colorado law holds all presumptive parents equal under the law, but the UPA creates different categories of parents and different rules apply to the different categories. The commission will take the memo under consideration.

Ellen Trachman and Judith Hoechst, assistive reproductive attorneys and on the board of Colorado Fertility Advocates, cannot speak to the entire UPA but can speak to section 7 and section 8 of the uniform act regarding assistive reproductive technology and surrogacy. Colorado's statutes are inadequate to deal with this flourishing technology. Colorado has some of the best doctors practicing in this area of medicine and people come here from all over the world for reproductive assistance. Colorado has section 19-4-106, C.R.S., which refers only to donors and contains out-of-date terminology and definitions. Additional judicial action is required regarding pre-birth orders in order to protect parental rights. Section 8 of UPA allows for additional protections for parental rights regarding gestational surrogacy. Parental rights under the UPA regarding traditional/genetic surrogacy is problematic as it allows a 72-hour period of time in which the surrogate can decide to keep the child. The commission noted that there are several groups interested in moving forward with portions of this act and discussed whether a bill should be drafted in order to focus the various groups on what portions can be adopted in Colorado. The commission noted that it is important to have up-to-date and gender-neutral language in the statutes for clarity purposes and discussed how the act applies the best interest of the child. Ms. Hoechst suggested that the ABA model act might be a helpful reference regarding the use of gender-neutral language.

Commissioner Tipper moved to draft the **2017 Uniform Parentage Act** as a commission bill for introduction during the 2020 legislative session. Commissioner Levy seconded and the motion passed without objection. Commissioners Tipper and Scott agreed to act as commission contacts on the bill. Commissioner Tipper agreed to sponsor the bill.

- e. **Amendments to the Uniform Probate Code (UPC)** – *Darla Daniel, Co-legislative Liaison for CBA Trust and Estates Section*, speaking as an individual member of the subcommittee working on the UPC amendments and not on behalf of the section as a whole. The group is on board for removing outdated language and updating terminology to be gender-neutral and have approved three of the 28 proposed changes. Colorado adopted the 2008 UPC amendments regarding artificial reproductive technology, but the subcommittee is looking at what tweaks may be required to incorporate the 2019 amendments in this area. The subcommittee will not be ready to proceed for the 2020 session. The commission asked if the subcommittee would be ready in time for the 2021 session. Ms. Daniel indicated that the terminology update changes could be ready for 2021 but some decisions might be contingent on decisions made regarding the 2017 Uniform Parentage Act. The commission thanked the CBA for its time on this act.

Commissioner Scott moved to table consideration of the **Amendments to the Uniform Probate Code** for this year and to consider it for the 2021 legislative session. Commissioner Tipper seconded and the motion passed without objection.

- f. **Uniform Automated Operation of Vehicles Act** – There was no public testimony on this agenda item. Commissioner Mielke shared the final Uniform Law Commission (ULC) draft with comments and other ULC materials with the commission and explained that the uniform act deals only with non-commercial automated vehicles, i.e., ownership, registration, and who is the driver, similar to what is required in current motor vehicle law. The uniform act was drafted to fit into current motor vehicle statutes, which will need to be updated anyway, to define the new players as they fit into current law regarding motor vehicles. The act also gives states some financial protection regarding new industry costs by providing that the expenses from any additional actions required to regulate the emerging industry is paid by the entity needing the action. The manufacturing, equipment, software, and other safety concerns about automated

vehicles being on the road are all federal. The commission discussion included whether states would become responsible for verifying the road safety of aging automated vehicles and how the uniform act would work with existing law in Colorado. Existing automated vehicle law allows authorized automated vehicles on the roads and restricts state agencies and subdivisions from adopting policies or rules that sets standards that differ from the standards set from people-driven vehicles. The uniform act deals with the registering and insuring of automated vehicles, which are expected to become available and on the road starting in 2020. The commission observed, based on the floor discussions on Senate Bill 17-213, that the bill may be a heavy lift and that it would be helpful to try to address any legal concerns that may be raised in advance. The commission noted that the major concern from the 2017 bill was the impact of automated vehicles on commercial vehicles and labor and this act would go in the motor vehicle statutes regarding the ownership and registration of individual vehicle owners. It was observed that Colorado may already be behind the curve regarding this new industry and putting a bill on bill paper is the best way to bring out stakeholders and get the conversation started.

Commissioner Mielke moved to draft the **Uniform Automated Operation of Vehicles Act** as a commission bill for introduction during the 2020 legislative session. Commissioner Whitfield seconded and, after a roll call vote, the motion passed without objection. Commissioner Mielke will be the commission contact on the bill. The commission noted that a bill sponsor will need to be identified prior to the bill being introduced.

- g. **Revised Uniform Athlete Agents Act (2015) and 2019 Amendments** – There was no public testimony on this agenda item. Commissioner Tipper reported that she followed up with the Governor's office regarding the Governor's veto of last year's commission bill and the only path forward with this act requires a sunrise review. The sunrise review application was filed in November, but the results of the review will not be presented until October 2020. Logistically the commission cannot move forward with the 2015 act and 2019 amendments this session. Commissioner Mielke expressed distress that Colorado universities, student athletes, and their families will not have the same protections as other states that have already adopted the 2015 act and 2019 amendments.

Commissioner Tipper moved to table consideration of the **Revised Uniform Athlete Agents Act (2015) and 2019 Amendments** for this year and to consider it for the 2021 legislative session. Commissioner Whitfield seconded and the motion passed with one objection.

- h. **Revised Uniform Limited Liability Company Act** – *Steve Mulligan, Legislative Liaison for the CBA Business Law Section*, speaking for himself only. At the commission's request, the section did take a look at this act. In 1990, Colorado was the third state to pass a limited liability company act. The "Colorado Limited Liability Company Act" is located in article 80 of title 7, C.R.S. Colorado lawyers helped to draft the 1996 Uniform Limited Liability Company Act with language borrowed from Colorado's 1990 limited liability company act and to date, 22 states have adopted the uniform act. Colorado's act has been revised over the years, sometimes borrowing language from subsequent uniform acts. In addition, Colorado courts have generated considerable case law regarding this area of law and practitioners believe that Colorado's law and case law work well. Unfortunately, the uniform act does not reconcile well with Colorado law and there may be issues with trying to do so. There may be provisions in the revised act that may be beneficial for Colorado to incorporate and there is interest in forming a group to discuss possible amendments to Colorado law, but not necessarily to make Colorado law more

uniform. The CBA does not support moving forward with the revised act at this time. The commission asked whether Colorado is at a disadvantage for not having a uniform act regarding business law. Mr. Mulligan responded that the way Colorado law is written and has developed has actually become an enticement for entities to come into Colorado to do business. Commission consensus was to take this act off the commission's agenda until there is interest in moving forward on it in the future.

- i. **Revised Uniform Limited Partnership Act** – *Steve Mulligan, Legislative Liaison for the CBA Business Law Section*, speaking for himself only. Colorado's Limited Partnership Act of 1981 is in article 62 of title 7, C.R.S., and has strong provisions that go beyond those in the uniform act. Colorado does not have many limited partnerships and there is not a need to adopt this revised act. Commission consensus was to take this act off the commission's agenda until there is interest in moving forward on it in the future.

3. Proposed 2020 legislative agenda bill drafts:

- a. **LLS 20-0421: Uniform Criminal Records Accuracy Act** – There was no public testimony on this agenda item. Commissioner Whitfield shared some of the feedback that he received on the draft. Everyone agrees that these records should be accurate; some have shared concerns about whether the timelines were appropriate for all types of records and when the date count in the timelines start. For example, a traffic stop summons is immediately filed but a criminal investigation can be ongoing and some information should not be immediately shared publicly. Interested parties would like additional information regarding the timeline for requested record corrections and the corresponding notification requirements. There is concern that there is not enough time provided for the checking and correction of records or for the extensive notification requirements. The Colorado Bureau of Investigations, the presumed central depository referred to in the bill, has not yet had a chance to review the act and offer feedback. There was interest in streamlining the mistaken identity registry provisions by using the central registry database to simply flag duplicate or overlapping names for additional verification instead of creating a separate database. The commission discussed some of the details regarding timeline concerns and the need for more stakeholder involvement to work out some of the issues presented. The commission would like the act to be agency-friendly and may be able to set up, if necessary, qualification and exceptions to reach that goal. It was decided that introducing this act would be the best way to further discussion among stakeholders and get a fiscal note. Funding possibilities discussed included passing the act without funding to be implemented when funding became available or to allow for agencies to use the act to apply for grants for implementing the act. There was also discussion whether the act should have a petition or safety clause and what the effective date or dates would be. The commission suggested that ULC be asked about the need for a separate registry for mistaken identity during the drafting process.

Commissioner Gardner moved to introduce **LLS 20-0421: Uniform Criminal Records Accuracy** as a commission bill, as drafted and subject to the sponsor having latitude to determine the necessary enacting and effective date clauses. Commissioner Whitfield seconded and the motion passed without objection. Commissioners Tipper and Whitfield will continue to work on the act. Commissioner Tipper agreed to sponsor the bill.

- b. **LLS 20-0422: Uniform Registration of Canadian Money Judgments Act** – There was no public testimony on this agenda item. The commission does not believe that there is any controversy surrounding this bill and Commissioner Gardner noted that the United

States-Mexico-Canada (USMCA) trade agreement has been tentatively approved. The commission discussed whether Colorado would need to develop a new registration system under the act, but concluded that there would be no need to. The commission also discussed whether the bill should have a safety clause or a petition clause and consensus was to use a petition clause.

Commissioner Gardner moved to introduce **LLS 20-0422: Uniform Registration of Canadian Money Judgments** as a commission bill, as drafted and with a standard petition clause. Commissioner Tipper seconded and the motion passed without objection. Commissioner Gardner agreed to sponsor the bill.

4. **Other business.** There was a brief discussion on commission appointments to new ULC drafting committees:
 - a. Commissioner Tipper has been appointed to the Drafting Committee on Collection and Use of Personally Identifiable Data
 - b. Commissioners Tipper, Levy, and Duran have been appointed to the Study Committee on Default Judgments in Debt Collection Cases
 - c. Commissioner Mielke has been appointed to the Drafting Committee on the Common Interest Ownership Act and the Uniform Condominium Act
 - d. Commissioner Levy has been appointed to the Drafting Committee on the Third Party Funding of Litigation

5. **Next CCUSL meeting.**
 - a. There was discussion regarding whether another meeting prior to the end of session was necessary for bill approvals. The commission concluded that the bills requested in today's meeting for drafting are considered approved for introduction providing sponsorship is obtained.
 - b. The commission proceeded with the required annual election for Chair and Vice Chair. Commissioner Scott nominated Commissioner Levy to continue as Chair and Commissioner Gardner moved that nominations be closed. Both motions passed without objection. Commissioner Levy moved that Commissioner Gardner continue as Vice Chair and that nominations be closed. Both motions passed without objection.
 - c. It was determined that the next commission meeting will be during the 2020 ULC annual meeting, held from July 10 to 16, in Madison, Wisconsin.

UNIFORM COLLABORATIVE LAW RULES

and

UNIFORM COLLABORATIVE LAW ACT *(Last Revised or Amended in 2010)*

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-EIGHTEENTH YEAR
IN SANTA FE, NEW MEXICO
JULY 9-16, 2009

WITHOUT PREFATORY NOTE OR COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

October 7, 2010

Note for enacting states: The provisions for regulation of collaborative law are presented in two formats for enactment- by court rules or legislation. The substantive provisions of each format are identical with the exception of several standard form clauses typically found in legislation. Each state considering adopting the Uniform Collaborative Law Court Rules (UCLR) or the Uniform Collaborative Law Act (UCLA) should review its practices and precedent to first determine whether the substantive provisions are best adopted by court rule or statute. The decision may vary from state to state depending on the allocation of authority between the legislature and the judiciary for regulation of contracts, alternative dispute resolution and the legal profession. States may also decide to enact part of the substantive provisions by court rule and part by legislation. Specific comments following some particular rules or sections indicate whether the Drafting Committee recommends enactment by court rule or legislation. Drafting agencies may need to renumber sections and cross references depending on their decision concerning the appropriate method of enactment.

UNIFORM COLLABORATIVE LAW ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Collaborative Law Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Collaborative law communication” means a statement, whether oral or in a record, or verbal or nonverbal, that:

(A) is made to conduct, participate in, continue, or reconvene a collaborative law process; and

(B) occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is terminated or concluded. ~~concluded.~~

(2) “Collaborative law participation agreement” means an agreement by persons to participate in a collaborative law process.

(3) “Collaborative law process” means a procedure intended to resolve a collaborative matter, without intervention by a tribunal, in which persons:

(A) sign a collaborative law participation agreement; and

(B) are represented by collaborative lawyers.

(4) “Collaborative lawyer” means a lawyer who represents a party in a collaborative law

process.

(5) “Collaborative matter” means a dispute, transaction, claim, problem, ~~negotiation,~~ negotiation, or issue for resolution, including a dispute, claim, or issue in a proceeding, which

Alternative A

is described in a collaborative law participation agreement and arises under the family or domestic relations law of this state, including:

(A) marriage, divorce, dissolution of marriage, common law marriage, legal separation, annulment, and property distribution and asset and debt division, and civil union;

(B) Allocation of parental responsibilities, child custody, visitation, ~~and~~ parenting time, grandparent visitation, and modifications thereof;

(C) alimony, spousal maintenance, allocation of attorney fees and costs, ~~and~~ child ~~support~~ support, and modifications thereof;

(D) adoption;

(E) parentage; and

(F) premarital, marital, and post-marital agreements.

Alternative B

~~is described in a collaborative law participation agreement.~~

End of Alternatives

(6) “Law firm” means:

(A) lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association; and

(B) lawyers employed in a legal services organization, or the legal department of

a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

(7) “Nonparty participant” means a person, other than a party and the party’s collaborative lawyer, that participates in a collaborative law process.

(8) “Party” means a person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

(9) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, ~~government or governmental subdivision, agency, or instrumentality,~~ **instrumentality**, or any other legal or commercial entity.

(10) “Proceeding” means:

(A) a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and post-hearing motions, conferences, and discovery; or

(B) a legislative hearing or similar process.

(11) “Prospective party” means a person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.

(12) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) “Related to a collaborative matter” means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

(14) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(15) “Tribunal” means:

(A) a court, arbitrator, administrative agency, or other body acting in an adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party’s interests in a matter; or

(B) a legislative body conducting a hearing or similar process.

SECTION 3. APPLICABILITY. This [Act{aet}](#) applies to a collaborative law participation agreement that meets the requirements of Section 4 signed [on or] after [the effective date of this [Act{aet}](#)].

**SECTION 4. COLLABORATIVE LAW PARTICIPATION AGREEMENT;
REQUIREMENTS.**

(a) A collaborative law participation agreement must:

- (1) be in a record;
- (2) be signed by the parties;
- (3) state the parties’ intention to resolve a collaborative matter through a

collaborative law process under this [Act {aet}as enacted in Colorado, and informed consent concerning the consequences of the disqualification process;](#)

- (4) describe the nature and scope of the matter;
- (5) identify the collaborative lawyer who represents each party in the process; and
- (6) contain a statement by each collaborative lawyer confirming the lawyer’s

representation of a party in the collaborative law process.

(b) Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this [Act{aet}](#).

SECTION 5. BEGINNING AND CONCLUDING COLLABORATIVE LAW

PROCESS.

(a) A collaborative law process begins when the parties sign a collaborative law participation agreement.

(b) A tribunal may not order a party to participate in a collaborative law process over that party's objection.

(c) A collaborative law process is concluded by a:

(1) resolution of a collaborative matter as evidenced by a signed record;

(2) resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or

(3) termination of the process.

(d) A collaborative law process terminates:

(1) when a party gives notice to other parties in a record that the process is ended;

(2) when a party:

(A) begins a proceeding related to a collaborative matter without the agreement of all parties; or

(B) in a pending proceeding related to the matter:

(i) initiates a pleading, motion, order to show cause, or request for a conference with the tribunal;

(ii) requests that the proceeding be put on the tribunal's active calendar; or

(iii) takes similar action requiring notice to be sent to the parties; or

(3) except as otherwise provided by subsection (g), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

(e) A party's collaborative lawyer shall give prompt notice to all other parties in a record of a discharge or withdrawal.

(f) A party may terminate a collaborative law process with or without cause.

(g) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues, if not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection (e) is sent to the parties:

(1) the unrepresented party engages a successor collaborative lawyer; and

(2) in a signed record:

(A) the parties consent to continue the process by reaffirming the collaborative law participation agreement;

(B) the agreement is amended to identify the successor collaborative lawyer; and

(C) the successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.

(h) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.

(i) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

SECTION 6. PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS REPORT.

(a) Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. The

parties shall file promptly with the tribunal a notice of the Collaborative Law participation agreement after it is signed. Subject to subsection (c) and Sections 7 and 8, and the parties and the collaborative lawyers informing the court that the parties are engaging in good faith in the collaborative law process, any pending proceeding in the action filed by the parties shall be continued to a date certain. the filing operates as an application for a stay of the proceeding.

(b) The parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes. The stay of the proceeding under subsection (a) is lifted when the notice is filed. The notice may not may not specify any reason for termination of the process.

(c) A tribunal in which a proceeding is stayed under subsection (a) may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative law matter.

(d) A tribunal may not consider a communication made in violation of subsection (c).

(e) A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative process is filed based on delay or failure to prosecute.

aLegislative Note: In enacting this Section, states should review existing provisions concerning stays of pending proceedings when the parties agree to engage in alternative dispute resolution. As noted in the comment to Section 6, some states treat party entry into an alternative dispute resolution procedure such as collaborative law or mediation as an application for a stay, which the court has discretion to grant or deny, while other states make the stay mandatory. Enacting states may wish to duplicate the practice currently applicable to collaborative law, mediation, or other forms of alternative dispute resolution.

SECTION 7. EMERGENCY ORDER. During a collaborative law process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party or a minor

~~child of either of the parties. [insert term for family or household member as defined in [state civil protection order statute]].~~

SECTION 8. APPROVAL OF AGREEMENT BY TRIBUNAL. A tribunal may approve an agreement resulting from a collaborative law process.

SECTION 9. DISQUALIFICATION OF COLLABORATIVE LAWYER AND LAWYERS IN ASSOCIATED LAW FIRM.

(a) Except as otherwise provided in subsection (c), a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.

(b) Except as otherwise provided in subsection (c) and Sections 10 and 11, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (a).

(c) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

(1) to ask a tribunal to approve an agreement resulting from the collaborative law process; or

(2) to seek or defend an emergency order to protect the health, safety, welfare, or interest of a party, or a minor child of either of the parties ~~[insert term for family or household member as defined in C.R.S. §13-14-103 et.sec. and C.R.S. §18-1-1001 et.sec. [state civil protection order statute]]~~ if a successor lawyer is not immediately available to represent that person.

(d) If subsection (c)(2) applies, a collaborative lawyer, or lawyer in a law firm with which the collaborative lawyer is associated, may represent a party or minor child of either of the

~~parties or [insert term for family or household member] for a limited time~~ only until the person ~~or minor child~~ is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of the person.

~~SECTION 10. LOW INCOME PARTIES.~~

~~(a) The disqualification of Section 9(a) applies to a collaborative lawyer representing a party with or without fee.~~

~~(b) After a collaborative law process concludes, another lawyer in a law firm with which a collaborative lawyer disqualified under Section 9(a) is associated may represent a party without fee in the collaborative matter or a matter related to the collaborative matter if:~~

~~(1) the party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation;~~

~~(2) the collaborative law participation agreement so provides; and~~

~~(3) the collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation.~~

~~SECTION 11. GOVERNMENTAL ENTITY AS PARTY.~~

~~(a) The disqualification of Section 9(a) applies to a collaborative lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.~~

~~(b) After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a government or governmental subdivision, agency, or instrumentality in the collaborative matter or a matter related to the collaborative matter if:~~

~~(1) the collaborative law participation agreement so provides; and~~

~~(2) the collaborative lawyer is isolated from any participation in the collaborative~~

~~matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation.~~

— **SECTION 12. DISCLOSURE OF INFORMATION.** Except as provided by law other than this ~~Act~~, during the collaborative law process, on the request of **one party made to the other** ~~another~~ party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery. A party also shall update promptly previously disclosed information that has materially changed. The parties may define the scope of disclosure during the collaborative law process, ~~however,~~ **at a minimum,** the disclosure shall include the documents, required to be disclosed pursuant to Colorado Rule of Civil Procedure 16.2 (e) (2).

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SECTION 13. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND MANDATORY REPORTING NOT AFFECTED. This ~~Act~~ does not affect:

(1) the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or

(2) the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the law of this state.

SECTION 14. APPROPRIATENESS OF COLLABORATIVE LAW PROCESS. Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

(1) assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;

(2) provide the prospective party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a

collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, ~~or~~ expert evaluation, and other alternative dispute resolution options; and

(3) advise the prospective party **in writing** that:

(A) after signing an agreement if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates;

(B) participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause; and

(C) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by Section 9(c), ~~10(b), or~~

~~11(b).~~ (D) of the privileged nature of Collaborative communications as reflected in this Article.

SECTION 15. COERCIVE OR VIOLENT RELATIONSHIP.

(a) Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry whether the prospective party has a history of a coercive or violent relationship with another prospective party.

(b) Throughout a collaborative law process, a collaborative lawyer reasonably and continuously shall assess whether the party the collaborative lawyer represents has a history of a coercive or violent relationship with another party.

(c) If a collaborative lawyer reasonably believes that the party the lawyer represents or the prospective party who consults the lawyer has a history of a coercive or violent relationship with another party or prospective party, the lawyer may not begin or continue a collaborative law

process unless:

(1) the party or the prospective party requests beginning or continuing a process;

and

(2) the collaborative lawyer reasonably believes that the safety of the party or prospective party can be protected adequately during a process.

SECTION 16. CONFIDENTIALITY OF COLLABORATIVE LAW

COMMUNICATION. A collaborative law communication is confidential to the extent agreed by the parties in a signed record ~~and~~ as provided by law of this state ~~and the provisions of this other than this Act.~~ ~~fact~~. **Nothing herein modifies the confidentiality provisions contained in C.R.S. 13-22-301 et. Sec.**

SECTION 17. PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW COMMUNICATION; ADMISSIBILITY; DISCOVERY.

(a) Subject to Sections 18 and 19, a collaborative law communication is privileged under subsection (b), is not subject to discovery, and is not admissible in evidence in any proceeding except as agreed by the parties in a signed participation agreement or later agreement signed by both parties and except as noted in this Act.

(b) In a proceeding, the following privileges apply:

(1) A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication.

(2) A nonparty participant or a collaborative law attorney may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication except as agreed by both parties in writing. ~~of the nonparty participant.~~

(c) Evidence or information, **including but not limited to disclosures made pursuant to C.R.C.P. 16.2 (as amended)** that is otherwise admissible to a tribunal or subject to discovery does

not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process.

SECTION 18. WAIVER AND PRECLUSION OF PRIVILEGE.

(a) A privilege under Section 17 may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

(b) A person that makes a disclosure or representation about a collaborative law communication which prejudices another person in a proceeding may not assert a privilege under Section 17, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

SECTION 19. LIMITS OF PRIVILEGE.

(a) There is no privilege under Section 17 for a collaborative law communication that is:

(1) available to the public under ~~{state open records act;} or made during a session of a collaborative law process that is open, or is required by law to be open, to the public;~~

(2) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(3) intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity; or

(4) in an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the agreement.

(b) The privileges under Section 17 for a collaborative law communication do not apply to the extent that a communication is:

(1) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process or matter; or

(2) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult, ~~unless the [child protective services agency or adult protective services agency] is a party to or otherwise participates in the process.~~

(c) There is no privilege under Section 17 if a tribunal finds, after a hearing *in camera*, that the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative law communication is sought or offered in:

(1) a court proceeding involving a felony ~~[or misdemeanor]~~; or

(2) a proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense to avoid liability on the contract is asserted.

(d) If a collaborative law communication is subject to an exception under subsection (b) or (c), only the part of the communication necessary for the application of the exception may be disclosed or admitted.

(e) Disclosure or admission of evidence excepted from the privilege under subsection (b) or (c) does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(f) The privileges under Section 17 do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection does not apply to a collaborative law communication made by a person that did not receive actual notice of the agreement before the communication was made.

SECTION 20. AUTHORITY OF TRIBUNAL IN CASE OF NONCOMPLIANCE.

(a) If an agreement fails to meet the requirements of Section 4, or a lawyer fails to comply with Section 14 or 15, a tribunal may nonetheless find that the parties intended to enter

into a collaborative law participation agreement if they:

(1) signed a record indicating an intention to enter into a collaborative law participation agreement; and

(2) reasonably believed they were participating in a collaborative law process.

(b) If a tribunal makes the findings specified in subsection (a), and the interests of justice require, the tribunal may:

(1) enforce an agreement evidenced by a record resulting from the process in which the parties participated;

(2) apply the disqualification provisions of Sections 5, 6, 9, 10, and 11; and

(3) apply a privilege under Section 17.

SECTION 21. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 22. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [Act{aet}](#) modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 23. SEVERABILITY. If any provision of this [Act{aet}](#) or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act{aet}](#) which can be given effect without the invalid provision or application, and to this end the provisions of this [Act{a_et}](#) are severable.}

Legislative Note: Include this section only if the state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.

SECTION 24. EFFECTIVE DATE. This [Act](#) ~~fact~~ takes effect.....

Legislative Note: States should choose an effective date for the act that allows substantial time for notice to the bar and the public of its provisions and for the training of collaborative lawyers.



Steven C. Lass ■ Marie Avery Moses ■ Jeremy M. Ramp ■ Patricia A. Cooper
Katharine Elena Lum ■ MariaJose Delgado ■ Terrance R. Kelly, *Of Counsel*

MEMORANDUM

To: Colorado Uniform Law Commission
From: Marie Avery Moses
Date: December 9, 2019
Re: Analysis of Uniform Parentage Act (2017)

I am writing this memo in my individual capacity, as the Colorado Bar Association has not taken a formal position on the UPA (2017). Rather, this memo reflects concerns regarding the Uniform Parentage Act (2017) as have been expressed within the Family Law Section's Legislative Committee and Executive Council.

I have been asked to address the following general questions regarding the UPA (2017).

- a) Identify which goals of the UPA (2017) are already covered by existing case law and note whether such case law is subject to challenge or conflicting interpretation.
- b) Which policy provisions of UPA (2017) are problematic or harmful?

I will analyze these questions with respect to each of the stated goals of the UPA, as stated with respect to both the 2002 and 2017 versions of the Uniform Act because there is overlap between those two versions.

At the conclusion of this memo, I will address the separate question of:

Does Colorado's existing law regarding parentage adequately balance competing interests and set forth clear standards for resolving conflicting presumptions of parentage?

ANALYSIS OF STATED GOALS OF THE UPA (2002 & 2017)

- 1) **Permitting a non-judicial acknowledgment of paternity procedure that is the equivalent of an adjudication of parentage in a court. (2002)**

Question: Is this Goal already adequately covered by Colorado law?

Answer: YES. See C.R.S. §19-4-105(1)(e) and §19-4-105(2)(b).

Under existing Colorado law, individuals are able to establish parentage by the following avenues:

- 1) By the mother by proof of her having given birth to the child or by any other proof specified in the UPA; (§19-4-104)
- 2) By the father pursuant to the provisions of the UPA (§19-4-104)
- 3) By an adoptive parent by proof of adoption. (§19-4-104)

The UPA (as it presently exists in Colorado) establishes the following “**presumptions of parentage**”—which permit those individuals to make a legal claim of parentage. If there are “competing presumptions of parentage” (meaning that there are more than 2 individuals that claim to be the child’s legal parent), the court resolves those competing presumptions to select the child’s two legal parents. (C.R.S. §19-4-105)

1) the party and the child’s natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated; (NOTE: This “marriage” presumption would apply to same sex couples.)

2) After the child’s birth, the party and the child’s natural mother have married each other, **and**

a) the party has **acknowledged parentage** of the child in writing filed with the court or registrar of vital statistics; OR

b) with the party’s consent, the party is **named as the child’s parent on the child’s birth certificate**; OR

c) the party is **obligated to support the child** under a written voluntary promise or by court order.

3) While the child is under the age of majority, the party receives the child into his home and openly holds out the child as his natural child;

4) **The party acknowledges his or her parentage of the child in a writing filed with the court or registrar of vital statistics**, which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the court or registrar of vital statistics, if such acknowledgment has not previously become a legal finding. If another party is presumed under this section to be the child's parent, acknowledgment may be effected only with the written consent of the presumed parent or after the presumption has been rebutted.
Acknowledgments become legal findings of parentage 60 days after their execution.

5) The genetic tests results show that the alleged parent is not excluded as the probable parent and that the probability of his parentage is ninety-seven percent or higher.

2) **Creates a paternity registry. (2002)**

Question: Is this policy provision of the UPA (2017) problematic or harmful?

Answer: YES.

According to the UPA (2017) official comments, "signing a registry entitles the registrant to notice of and a right to oppose the adoption of an infant child; signing a paternity registry is *not* a means of establishing parentage."

However, the provisions of Section 4 of the UPA (2017) go further than just providing an avenue for receiving notice of potential adoption of infants.

Specifically, a man who desires to be notified of a proceeding for adoption of, or termination of parental rights regarding, his genetic child **MUST REGISTER** in the registry of paternity established by Section 401 not later than 30 days after the birth of the child.

If the man **DOES NOT REGISTER**, he is **not entitled to notice** of a potential termination of parental rights or adoption of his genetic child under 1 year of age. (See UPA (2017) Section 404 and Section 410).

This Registry places far too great a burden on unsuspecting biological fathers and serves as a mechanism to deny biological parents rights to their children without notice. This is denial of due process to the parent and the child. Further, this is contrary to existing Colorado law, which requires notice, reasonable efforts to locate and identify parents before terminating parental rights, and an opportunity to be heard in termination and adoption proceedings. (See, e.g., C.R.S. §19-3-603; C.R.S. §19-3-604(1)(a)(II); C.R.S. §19-5-105).

3) Includes provisions governing genetic testing. (2002)

Question: Is this Goal already adequately covered by Colorado law?

Answer: YES. See C.R.S. §19-4-105(1)(f), §19-4-112 and §19-4-117.

I am unaware of any deficiencies in this area of existing Colorado law.

4) Includes rules for determining the parentage of children whose conception was not the result of sexual intercourse (assisted reproduction). (2002)

Question: Is this Goal already adequately covered by Colorado law?

Answer: NO. While Colorado Law does currently address assisted reproduction (C.R.S. §19-4-106), this is an area that could be improved. I do not believe that the FLS has any specific concerns regarding Section 7 of UPA (2017).

It is my understanding that due to technological changes, an update to this area of Colorado law may be warranted. In addition, current Colorado law only recognizes “assisted reproduction” which is undertaken with a doctor’s supervision. I am aware of children that have been born through assisted reproduction which was not supervised by a doctor. Colorado law should be updated to address non-medical forms of assisted reproduction.

- 5) **Authorizes surrogacy agreements (2002) and updates those provisions (2017).**

Question: Is this Goal already adequately covered by Colorado law?

Answer: NO. It is my understanding that practitioners that specialize in surrogacy work believe that it would be helpful to enact Sections 801 to 812.

Question: Is this policy provision of the UPA (2017) problematic or harmful?

Answer: YES. It is my understanding that practitioners that specialize in surrogacy work have significant concerns with Sections 813 to 818 governing “genetic surrogacy” also known as “traditional surrogacy.”

I am unable to provide more specific feedback on these points, but understand that Laura Koupal (303-861-3020) and Seth Grob (303-679-8266) are experts in this area of practice.

- 6) **Seeks to ensure the equal treatment of children born to same-sex couples. These changes include broadening the presumption, acknowledgment, genetic testing, and assisted reproduction articles to make them gender-neutral.**

Question: Is this Goal already adequately covered by Colorado law?

Answer: YES. See C.R.S. §19-4-105 (broad presumptions) and C.R.S. §19-4-122 and §19-4-125 (gender neutral).

It is established law in Colorado that a child may have two legal parents that are both of the same gender. See In re Parental Responsibilities of A.R.L., 318 P.3d 581, 582 (Colo. App. 2013) which held, “in the context of a same-sex relationship, a child may have two mothers under the UPA—a biological mother and a presumptive mother.”

I am attaching *A.R.L.* to this memo, because it is the case which most clearly pronounces the following regarding Colorado’s existing UPA:

- 1) UPA extends the parent-child relationship to all children equally, regardless of the parents' marital status.
- 2) The parent-child relationship includes the mother and child relationship and the father and child relationship.

- 3) UPA reflects the legislature's intent to allow a man or woman to prove paternity or maternity based upon considerations other than biology or adoption.
- 4) And while most of the reported decisions focus on presumed fathers, the §19-4-105(1)(d) "holding out" provision applies with equal force to women seeking to demonstrate presumptive mother status.
- 5) Nothing in the UPA prohibits a child from having two same-sex parents.
- 6) The prerogative of a child to claim the love and support of two parents does not evaporate simply because the parents are the same sex. It applies to all children, regardless of whether they were conceived during a heterosexual or same-sex relationship. Thus, we conclude that a child who is born during a same-sex relationship can have two legal parents of the same sex, if the nonbiological parent can demonstrate presumptive parenthood under the UPA.

Although Colorado's current version of the UPA does speak in terms of "mothers" and "fathers," C.R.S. §19-4-122 and §19-4-125 provide that those terms should be used interchangeably and that the provisions for the establishment of the father-child relationship should also apply to the establishment of the mother-child relationship.

Question: Is this policy provision of the UPA (2017) problematic or harmful?

Answer: YES.

First, the UPA (2017) has a more narrow definition of "presumptive parents" in two respects:

- 1) Current Colorado law's "holding out" presumption only requires that "[w]hile the child is under the age of majority, the party receives the child into his home and openly holds out the child as his natural child."

By contrast, UPA 2017 has a more restrictive definition: "the individual resided in the same household with the child for the first two years of the life of the child, including any period of temporary absence, and openly held out the child as the individual's child."

In other words, an individual can only take advantage of the “holding-out” presumption if the individual lived with the child for the first two years of the child’s life.

Under current Colorado law, there are no such age or duration requirements for “holding out.”

The FLS strongly disagrees with narrowing this holding-out presumption in this manner.

- 2) Under the UPA (2017), there is no “presumption” based on genetics. While parentage can certainly be established based on genetics (See UPA (2017) Section 607), genetic parentage is on different footing than the other types of parentage. Colorado law currently does not treat a presumption based on genetics any differently than a presumption based on marriage or holding-out. The FLS is concerned that genetic parents would be placed in a different category under the UPA (2017).

Second, the UPA (2017) has a two-year statute of limitation for a “presumed parent” to be removed as a child’s legal parent. This is contrary to existing Colorado law which allows a spouse to contest his or her parentage as part of divorce proceedings. In other words, a husband only has 2 years to challenge his parentage of a child. If he waits until after the child is 2 years old, he is unable to escape being forever held to be the child’s legal parent.

Third, Colorado law currently allows for a child to have only two “legal” parents. A child may also have numerous “psychological” parents with parenting time and decision-making rights (pursuant to C.R.S. §14-10-123) if the child has established bonded parent-child relationships with other individuals, but a child can only have two “legal” parents. It is not known whether the Colorado Uniform Law Commission is recommending “Alternative A” (only 2 legal parents) or “Alternative B” (more than 2 legal parents) to Section 613. Without this information, it is difficult to appreciate additional public policy concerns regarding the UPA (2017).

- 7) **Includes a provision for the establishment of a de facto parent as a legal parent of a child.**

Question: Is this Goal already adequately covered by Colorado law?

Answer: YES. C.R.S. §19-4-105(1)(d) (hold child out as your own) and C.R.S. §14-10-123 and In the Interest of E.L.M.C., 100 P.3d 546 (Colo. App. 2004) (establishing rights of psychological parents to exercise parenting time and decision-making authority).

Under Colorado's current version of the UPA, an individual has a presumption of legal parentage if that person has ever held the child out as that individual's natural child and the child has lived in that person's home. This is a very broad presumption of parentage, available to many individuals.

In contrast, to be entitled to claim legal parentage as a "de facto" parent, an individual must establish **all** of the following:

- 1) the individual resided with the child as a regular member of the child's household for a significant period;
- 2) the individual engaged in consistent caretaking of the child;
- 3) the individual undertook full and permanent responsibilities of a parent of the child without expectation of financial compensation;
- 4) the individual held out the child as the individual's child;
- 5) the individual established a bonded and dependent relationship with the child which is parental in nature;
- 6) another parent of the child fostered or supported the bonded and dependent relationship; **and**
- 7) continuing the relationship between the individual and the child is in the best interest of the child.

Accordingly, eligibility for *de facto* parentage is much narrower than eligibility for "holding-out" parentage under C.R.S. §19-4-104(1)(d) and eligibility for "psychological" parentage under C.R.S. §14-10-123. Thus, it is not clear what this factor adds to Colorado's existing law (particularly if Colorado maintains the existing scheme of only allowing a child to have two legal parents).

- 8) **Precludes establishment of a parent-child relationship by the perpetrator of a sexual assault that resulted in the conception of the child.**

Question: Is this Goal already adequately covered by Colorado law?

Answer: YES. See C.R.S. §14-10-124(4) and C.R.S. §19-5-105.5.

Colorado Law (C.R.S. §14-10-124(4)) expressly requires the court to consider whether a child was conceived through sexual assault when allocating parenting time and decision-making authority.

When a claim of conception by sexual assault has been made to the court, prior to allocating parenting time and decision-making responsibility, the court shall consider:

“whether one of the parties has committed an act of sexual assault resulting in the conception of the child, which factor must be supported by a preponderance of the evidence. If the court finds by a preponderance of the evidence that one of the parties has committed sexual assault and the child was conceived as a result of the sexual assault, there is a rebuttable presumption that it is not in the best interests of the child to allocate sole or split decision-making authority to the party found to have committed sexual assault or to allocate mutual decision-making between a party found to have committed sexual assault and the party who was sexually assaulted with respect to any issue.

And, if one of the parties is found by a preponderance of the evidence to have committed sexual assault resulting in the conception of the child, whether it is in the best interests of the child to prohibit or limit the parenting time of that party with the child.

And, the court shall consider, as the primary concern, the safety and well-being of the child and the abused party.

In formulating or approving a parenting plan in sexual assault cases, the court shall consider imposing numerous conditions on parenting time that ensure the safety of the child and of the abused party.

Additionally, in 2013 & 2014, the Colorado General Assembly passed C.R.S. §19-5-105.5 which provides for the **termination of parent-child legal relationship** upon a finding that the child was conceived as a result of sexual assault

Question: Is this policy provision of the UPA (2017) problematic or harmful?

Answer: POTENTIALLY.

The UPA (2017) only contains one section which addresses orders regarding children conceived through sexual assault (Section 614). That section provides:

In a proceeding in which a woman alleges that a man committed a sexual assault that resulted in the woman giving birth to a child, the woman may seek to preclude the man from establishing parentage.

But, this section does not apply if the man had previously been adjudicated the father or if the man has developed a bonded relationship with the child. The UPA (2017) requires that the sexual assault be established by **clear and convincing evidence**. This is a higher standard than Colorado's existing best interest statute (C.R.S. §14-10-124(4)). Additionally, a woman must file a pleading making an allegation of sexual assault conception not later than two years after the birth of the child.

It is possible that these provisions could be seen as limiting the ability of a woman to TERMINATE the parental rights of the father pursuant to C.R.S §19-5-105.5.

- 9) **Includes Article 9 – that addresses the right of children born through assisted reproductive technology to access medical and identifying information regarding any gamete providers.**

Question: Is this Goal already adequately covered by Colorado law?

Answer: NO. It is my understanding that such provisions would be useful.

CONCLUSION:

Question: Does Colorado's existing law regarding parentage adequately balance competing interests and set forth clear standards for resolving conflicting presumptions of parentage?

Answer: Colorado’s existing law regarding parentage does a *better* job of balancing competing interests and providing clear standards for resolving competing presumptions of parentage than the procedures created under the UPA (2017).

Discussion:

Colorado’s existing UPA treats all presumptions of parentage as having equal weight before the court. There is no presumption that is superior to other presumptions. In other words, there is no preference given to individuals that claim parentage based on genetics, marriage, acknowledgment, adoption, or “holding-out.” And, because Colorado’s “holding-out” presumption is broader than the “holding-out” presumption in the UPA (2017), it is preferred.

In contrast, the UPA (2017) creates different systems of resolving parentage claims that differ based on whether the claims of parentage are based on a(n):

- Genetic Parent (Section 607);
- Presumed Parent (Section 608);
- De Facto Parent (Section 609);
- Acknowledged Parent (Section 610);
- Adjudicated Parent (Section 611);
- Child of Assisted Reproduction (Section 612); or
- Parent Failed to Register (Section 402).

It is of concern that the UPA (2017) provides different requirements (burdens of proof and statutes of limitation) for resolving parentage disputes which depend on the types of individuals involved.

For example, a presumed (or acknowledged) parent cannot be removed as a legal parent after the child is 2 years old. Does that mean that, in a state with only 2 legal parents, a biological father cannot assert parentage to a 3 year old child? Children under the age of 1 year old can be adopted without notice to the “non-registered” biological parent. Additionally, a *de facto* parent must establish the child’s best interests by “clear and convincing” evidence. This is a greater burden of proof than that required by a spouse, or “holding-out” parent.

Section 613 of the UPA (2017) provides standards for resolving competing parentage claims, but it is very difficult to understand. For example, it is nearly impossible to determine how Section 613 would apply to a 6 year old child if there is a birth mother (who lived with the child for the first two years—thereby also becoming a presumed

parent), a genetic father and the genetic father's wife that has also lived with and held the child out as her own for ages 3 to 6. Under existing Colorado law, these three competing presumptions of parentage would be resolved under a "best interests" standard. We honestly do not know how the presumptions would be resolved under the UPA (2017), particularly given the different statutes of limitation.

Colorado law (C.R.S. §19-4-105 and interpreting cases—specifically *N.A.H. v. S.L.S.*, 9 P.3d 354 (Colo. 2000), *People ex rel. C.L.S.*, 313 P.3d 662 (Colo. App. 2011) and *In the Interests of S.N.L.*, 284 P.3d 147 (Colo. App. 2011) is clear.

Competing presumptions of parentage are resolved, regardless of gender or marriage status, based on the following set of factors:

If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. . . . In determining which of two or more conflicting presumptions should control, based upon the weightier considerations of policy and logic, the court shall consider all pertinent factors, including but not limited to the following:

- (I) The length of time between the proceeding to determine parentage and the time that the presumed parent was placed on notice that he/she might not be the genetic parent;
- (II) The length of time during which the presumed parent has assumed the role of parent of the child;
- (III) The facts surrounding the presumed parent's discovery of his/her possible non-parentage;
- (IV) The nature of the parent-child relationship;
- (V) The age of the child;
- (VI) The relationship of the child to any presumed parent;
- (VII) The extent to which the passage of time reduces the chances of establishing the parentage of another individual and a child support obligation in favor of the child; and

- (VIII) Any other factors that may affect the equities arising from the disruption of the parent-child relationship between the child and the presumed parent(s) or the chance of other harm to the child.

The current statutory scheme, as developed by established and non-ambiguous case law, establishes a gender-neutral, balanced, and easy to understand process for determining competing claims of parentage in Colorado. To the extent that the General Assembly has any concerns regarding the use of gendered terms such as mother, father, man, woman, paternity or maternity, those concerns can be resolved by maintaining the existing statutory scheme, while utilizing gender neutral terms such as individual, spouse and parentage.

318 P.3d 581
Colorado Court of Appeals, Division IV.

IN RE the PARENTAL RESPONSIBILITIES OF
A.R.L., a Child,
and
Concerning Elizabeth Limberis, Appellant,
and
Sabrina Havens, Appellee.

Court of Appeals No. 13CA0342

Announced December 5, 2013

Synopsis

Background: Biological mother's former same-sex partner filed petition for maternity to establish parent-child relationship under Uniform Parentage Act (UPA), based on allegation that she had received child into her home and held child out as her own. Biological mother moved to dismiss petition. The District Court, Logan County, Charles M. Hobbs, J., dismissed petition, and same-sex partner appealed.

Holdings: The Court of Appeals, Dunn, J., held that:

[1] former same-sex partner had capacity, as interested party, to bring maternity action under UPA;

[2] dismissal of petition for maternity based on trial court's finding that child already had biological mother and biological father was reversible error;

[3] petition was not impermissible attempt by former partner to substitute herself as child's legal parent as against purported biological father who relinquished his parental rights;

[4] state constitutional provision defining marriage as between man and woman had no bearing on whether child could have both biological mother and presumed mother; and

[5] child's conception by sexual intercourse rather than artificial insemination had no bearing on former partner's capacity to establish herself as child's presumed mother.

Procedural Posture(s): On Appeal; Motion to Dismiss.

West Headnotes (12)

[1] **Parent and Child**
⇌ Spouses or other partners of donors and carriers

Biological mother's former same-sex partner had capacity, as interested party, to bring maternity action under Uniform Parentage Act, to determine existence of mother and child relationship. Colo. Rev. Stat. Ann. § 19-4-122

[2] **Parent and Child**
⇌ Parentage and legitimacy in general

At the heart of any parentage decision under the Uniform Parentage Act is the child's best interests. Colo. Rev. Stat. Ann. § 19-4-101 et seq.

[3] **Parent and Child**
⇌ Parentage and legitimacy in general
Parent and Child
⇌ Paternity in general
Parent and Child
⇌ Maternity in general

The Uniform Parentage Act (UPA) does not define the parent-child relationship based only on biological or adoptive connections to a child, but reflects the legislature's intent to allow a man or woman to prove paternity or maternity based upon considerations other than biology or adoption. Colo. Rev. Stat. Ann. § 19-4-101 et seq.

Reversed and remanded.

- ^[4] **Parent and Child**
⇨Parentage and legitimacy in general
- The determination of parentage under the Uniform Parentage Act (UPA) is not limited to genetics. Colo. Rev. Stat. Ann. § 19-4-101 et seq.
- ^[5] **Parent and Child**
⇨Presumptions and Burden of Proof
- Depending upon the evidence presented, under the Uniform Parentage Act (UPA), a person may be a “presumed parent” without being a biological or adoptive parent. Colo. Rev. Stat. Ann. § 19-4-101 et seq.
- ^[6] **Parent and Child**
⇨Number of parents
Parent and Child
⇨Spouses or other partners of donors and carriers
- Dismissal of petition for maternity brought by biological mother’s former same-sex-partner based on trial court’s finding that child already had biological mother and father was reversible error; father was, at most, alleged biological father, in that no blood or other genetic tests conclusively established his biological connection to child, he was not presumptive father as defined under Uniform Parentage Act, and grant of same-sex partner’s petition would not have created three legal parents even if father filed petition to establish paternity, but rather, would have required trial court to rule on competing parentage petitions as between alleged father and partner. Colo. Rev. Stat. Ann. § 19-4-105(1)(d)
- ^[8] **Parent and Child**
⇨Donors of biological material; status, rights, duties, and liabilities
Parent and Child
⇨Spouses or other partners of donors and carriers
- Alleged biological father who had relinquished all rights to child and who had not admitted paternity was not child’s legal father, and thus, petition for maternity to establish parent-child relationship filed by biological mother’s former same-sex partner was not impermissible attempt to substitute herself for father, under Uniform Parentage Act (UPA). Colo. Rev. Stat. Ann. § 19-4-105(1)(d)
- 1 Cases that cite this headnote
- ^[9] **Parent and Child**
⇨Number of parents
Parent and Child
⇨Spouses or other partners of donors and carriers
- Uniform Parentage Act (UPA) was gender neutral and did not prohibit child from having two legal mothers, namely both biological mother and presumptive mother who was biological mother’s former same-sex partner. Colo. Rev. Stat. Ann. § 19-4-125
- ^[7] **Parent and Child**
⇨Parentage and legitimacy in general
- ^[10] **Constitutional Law**
⇨Avoidance of constitutional questions
- A court will not construe a statute in a manner

that invites questions about its constitutionality.

Opinion

Opinion by JUDGE DUNN

^[11] Parent and Child

☞Number of parents

Parent and Child

☞Spouses or other partners of donors and carriers

State constitutional provision defining marriage as between man and woman had no bearing on whether child born during biological mother's relationship with former same-sex partner could have both biological mother and presumed mother under Uniform Parentage Act (UPA).

☑ Colo. Const. art. 2, § 31; Colo. Rev. Stat. Ann. § 19-4-101 et seq.

1 Cases that cite this headnote

^[12] Parent and Child

☞Spouses or other partners of donors and carriers

Biological mother's former same-sex partner who allegedly held herself out as child's mother was not precluded from establishing herself as child's presumed mother simply by virtue of child's conception by sexual intercourse rather than artificial insemination. Colo. Rev. Stat. Ann. § 19-4-105(1)(d)

1 Cases that cite this headnote

*582 Logan County District Court Nos. 11DR107 & 12JV42, Honorable Charles M. Hobbs, Judge

Attorneys and Law Firms

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Bauer & Furman, PC, Steven M. Furman, Fort Morgan, Colorado, for Appellee.

¶ 1 Can a child have a biological mother and a presumptive mother under the Colorado Uniform Parentage Act, sections 19-4-101 to -130, C.R.S.2013 (UPA)? The trial court implicitly answered this question "no," when it denied Elizabeth Limberis' petition for maternity for A.R.L., a child conceived during Limberis' relationship with her former partner, Sabrina Havens. Thus, the trial court did not consider and determine whether Limberis was the child's presumed mother under the UPA.

¶ 2 We conclude that, in the context of a same-sex relationship, a child may have two mothers under the UPA—a biological mother and a presumptive mother. We therefore reverse the trial court's denial of Limberis' petition for maternity and remand for a determination of her petition on the merits.

I. Background

¶ 3 Limberis and Havens began living together in 2000. Several years into their relationship, Havens and Limberis decided to have a child. Havens underwent one round of artificial insemination, but did not conceive.

¶ 4 After this failed attempt, Havens' friend, Marc Bolt, agreed to inseminate her through sexual intercourse. Neither Havens nor Bolt revealed their sexual encounter to Limberis. Havens later conceived.

*583 ¶ 5 Havens gave birth to A.R.L. in 2008.¹ Limberis was present at A.R.L.'s birth. She and Havens agreed to give the child Limberis' last name. A.R.L.'s birth certificate identifies Havens as A.R.L.'s mother, but does not identify a father.

¶ 6 Havens, Limberis, and A.R.L. lived in Limberis' home, and together the couple parented A.R.L. Beginning in 2009, however, Limberis and Havens went through a series of separations and reconciliations. Although Havens initially had primary care of A.R.L., Limberis gradually began exercising regular parenting time. Eventually, she and Havens shared equal parenting time for A.R.L.

¶ 7 In 2010, Limberis petitioned for a second-parent adoption of A.R.L. Havens consented to the petition, representing to the court that A.R.L. was conceived through assisted reproduction, and had no other parent. The court ultimately dismissed the adoption petition. Limberis did not appeal that ruling.

¶ 8 In 2011, Limberis and Havens separated for the last time, and Limberis filed a petition for parental responsibilities under section 14–10–123(1), C.R.S.2013. After their separation, Havens and Limberis continued to co-parent. Eventually, however, Havens terminated all contact between Limberis and A.R.L.

¶ 9 Havens contested Limberis' request for allocation of parental responsibilities and joined Bolt as a party. Bolt responded, describing himself as a sperm donor. He later filed a petition to relinquish his parental rights. In his relinquishment counseling interview, Bolt confirmed that he was not part of A.R.L.'s life and did not want to be.

¶ 10 Limberis then petitioned for maternity under the UPA. She alleged, among other things, that because she had received A.R.L. into her home and held A.R.L. out as her own, she was a presumed parent under the UPA. *See* § 19–4–105(1)(d), C.R.S.2013 (the holding out provision). Attached to her petition was Bolt's sworn "admission of nonpaternity," in which he confirmed that he (1) is not A.R.L.'s legal parent; (2) never intended to be A.R.L.'s legal parent; (3) only acted as a sperm donor; (4) did not wish to claim any legal rights to A.R.L.; (5) always understood that Limberis and Havens would be A.R.L.'s natural parents; and (6) did not object to an adjudication of Limberis as A.R.L.'s mother.

¶ 11 Havens moved to dismiss Limberis' maternity petition for failure to state a claim upon which relief could be granted. Havens argued that because A.R.L. had a father and a mother, Limberis could not be a second mother and third parent under the UPA. The trial court summarily dismissed Limberis' petition "for the reasons set forth in the motion to dismiss." Limberis moved for reconsideration, arguing, as relevant here, that she had the capacity to bring a maternity claim under the UPA, and that she could present evidence that she was A.R.L.'s presumptive parent under the UPA's holding out provision.

¶ 12 The trial court consolidated the parental responsibilities proceedings with the maternity proceedings and held a hearing. The court stated it would also consider Limberis' motion for reconsideration. After the hearing, the court denied Limberis' maternity petition

on the basis that the case did not present a surrogacy or sperm donor situation. Rather, the court explained that because A.R.L. had two biological parents, it was "not willing to create a new legal category." As a result, the court did not determine whether Limberis had presented sufficient evidence to establish that she is A.R.L.'s presumptive mother. The court then allocated all parental responsibilities to Havens, based primarily on the testimony and report of the child and family investigator.

¶ 13 Twelve days later, the court granted Bolt's petition to relinquish his parental rights, leaving A.R.L. with only one legal parent.

¶ 14 Limberis appeals the trial court's denial of her maternity petition, and the order allocating parental responsibilities entirely to Havens.

*584 II. Limberis' Maternity Petition

¶ 15 Limberis contends that the trial court erred in denying her maternity petition on legal grounds, without considering the merits of the petition. We agree.

A. Standard of Review

¶ 16 Whether Limberis may bring a maternity petition under the UPA as a second legal mother to A.R.L. is an issue of statutory interpretation that we review de novo. *See In re Parental Responsibilities of M.D.E.*, 2013 COA 13, ¶ 9, 297 P.3d 1058; *cf. In Interest of S.N.V.*, 284 P.3d 147, 149 (Colo.App.2011) (conducting de novo review of trial court's decision that biological father's wife did not have the legal capacity to seek a declaration of maternity under the UPA).

B. Capacity or Standing to Bring a Maternity Action

¶ 17 Under the UPA, "[a]ny interested party may bring an action to determine the existence or nonexistence of a mother and child relationship." § 19–4–122, C.R.S.2013.

Limberis alleged facts in her maternity petition that, taken as true, demonstrate that she is an interested party. Havens does not contest that Limberis is an interested party. Accordingly, to the extent the trial court's denial of Limberis' petition was based on a conclusion that Limberis lacked capacity to bring an action under the UPA, we disagree. *See S.N.V.*, 284 P.3d at 149 (holding that child's biological father's wife had the capacity as an interested party under the UPA to bring a maternity action).

C. Presumptive Parentage Under the UPA

¹²¶ 18 The purpose of the UPA is to establish and protect the parent-child relationship. *See id.* at 150. The UPA extends the parent-child relationship to all children equally, regardless of the parents' marital status. § 19-4-103, C.R.S.2013. And at the heart of any parentage decision is the child's best interests. *See People In Interest of C.L.S.*, 313 P.3d 662, 666-68, 2011 WL 5865898 (Colo.App. No. 10CA1980, Nov. 23, 2011).

¹³ ¹⁴ ¹⁵¶ 19 The parent-child relationship includes the mother and child relationship and the father and child relationship. § 19-4-102, C.R.S.2013. The UPA does not define the parent-child relationship based only on biological or adoptive connections to a child. *N.A.H. v. S.L.S.*, 9 P.3d 354, 360-62 (Colo.2000) (recognizing that biology is not conclusive in establishing parentage under UPA); *see also Lehr v. Robertson*, 463 U.S. 248, 261-62, 103 S.Ct. 2985, 77 L.Ed.2d 614 (1983) (approving state law requiring more than existence of a mere biological link to establish parentage). To the contrary, the UPA reflects the legislature's intent to allow a man or woman to prove paternity or maternity based upon considerations other than biology or adoption. *See* § 19-4-105, C.R.S.2013 (parent-child relationship may be demonstrated by, among other things, marriage, a written acknowledgment of paternity, consent to be named on the birth certificate, a promise to pay child support, or receiving the child into one's home and holding the child out as a natural child); *see also* § 19-4-104, C.R.S.2013 (recognizing that parent-child relationship may be established by "any other proof specified in this article" and based on proof other than adoption or natural birth). Thus, the determination of parentage is not limited to genetics. Depending upon the evidence presented, a person may be a presumed parent without being a biological or adoptive parent. *E.g., In re Parental*

Responsibilities of A.D., 240 P.3d 488, 491 (Colo.App.2010) (affirming finding of presumptive parentage of nonbiological father and rejecting argument that under the UPA a biological or adoptive relationship is required to establish parent-child relationship).

¶ 20 Under the UPA's holding out provision, a man is presumed to be the father of a child if "he receives the child into his home and openly holds out the child as his natural child." § 19-4-105(1)(d). And while most of the reported decisions focus on presumed fathers, the holding out provision applies with equal force to women seeking to demonstrate presumptive mother status. *See* § 19-4-122 (the provisions of this article applicable to determine the father and child relationship also apply, when practicable, to determine the existence of a mother and child relationship); *585 § 19-4-125, C.R.S.2013 ("In case of a maternity suit against a purported mother, where appropriate in the context, the word 'father' shall mean 'mother.' "); *see also S.N.V.*, 284 P.3d at 149 (noting that under the UPA, the terms "mother" and "father" are interchangeable, and therefore, paternity presumptions apply equally to petitions for maternity).

¶ 21 A division of this court has considered whether a biological mother's parentage claim conclusively precluded a parallel claim by the biological father's wife. *S.N.V.*, 284 P.3d 147. There, the wife alleged that she and her husband had entered into a surrogacy agreement with the child's biological mother. *Id.* at 149-51. The wife petitioned for status as the child's natural mother under the UPA over the objection of the biological mother. *Id.* The division concluded that the wife could maintain a claim as a presumptive mother, and in doing so found that a woman may gain status as a child's legal mother even if she has no biological ties to the child. *Id.* at 151 (proof that a woman received a child into her home and held the child out as her own may establish the mother-child relationship). The division thus confirmed that presumptive parenthood applies equally to men and women. *Id.*

¶ 22 Even so, Havens argues that *S.N.V.* does not stand for the proposition that a child can have two legal mothers under the UPA, and she further contends a child cannot. She specifically asserts that the trial court correctly dismissed Limberis' maternity petition because (1) when it dismissed the petition, Bolt was A.R.L.'s biological father, and a child cannot have three legal parents; and (2) a court may not substitute a second legal mother in place of a child's biological father. We reject both assertions in turn.

1. There Are Not Three Legal Parents

¹⁶¶ 23 Relying on the purported biological connection between Bolt and A.R.L., Havens argues that granting Limberis' maternity petition would have impermissibly left A.R.L. with three legal parents. We reject this argument for five reasons.

¶ 24 First, based on the facts presented here, Bolt was, at most, an alleged father. The record contains no blood or other genetic tests that verify his supposed biological link to A.R.L. While Havens and Bolt assume that Bolt is the biological father, a statutory presumption of biological paternity requires more. § 19-4-105(1)(f), C.R.S.2013 (a presumption of paternity is established if genetic tests indicate that the alleged father's probability of parentage is ninety-seven percent or higher); *see also* *N.A.H.*, 9 P.3d at 360 (a man is entitled to biological presumption if genetic testing reveals that he is the biological father). Accordingly, Bolt was not entitled to the statutory presumption of biological paternity.

¶ 25 Second, no other statutory presumptions apply. Bolt did not marry or try to marry Havens, he is not identified as A.R.L.'s parent on her birth certificate, he did not acknowledge paternity in any writing filed with the court, he did not offer to pay child support, he did not hold A.R.L. out as his own, and he did not adopt A.R.L. *See* §§ 19-4-104, 19-4-105(1)(a)(d), C.R.S.2013. Thus, Bolt was not entitled to a non-biological presumption of paternity.

¶ 26 Third, suppose that Bolt could be A.R.L.'s presumed legal father based on the belief that he is the biological father. Even so, that presumption is rebuttable. § 19-4-105 (biology is one of many rebuttable presumptions of parentage); *see also* *N.A.H.*, 9 P.3d at 360-62 (biology is not a conclusive presumption of parentage). And Bolt presented unequivocal evidence to rebut it.² In contrast, nothing was presented to support the presumption that Bolt is A.R.L.'s legal father. Nor was evidence presented to rebut Limberis' maternity petition in which she alleged that she took A.R.L. into her home and held A.R.L. out as her own child. *See* *id.*; *see also* *A.D.*, 240 P.3d at 491 (mere existence of purported biological father, who did not claim paternity, did not raise a conflicting *586 paternity presumption to rebut presumed father's claim under the holding out provision).³

¹⁷¶ 27 Fourth, suppose that Bolt actually filed a petition

for parentage based on his alleged biological connection with A.R.L. So too did Limberis, based on her allegations under the UPA's holding out provision. This would not create a possibility of three legal parents. Rather, there would be two competing petitions for parentage based on different presumptions. When confronted with competing petitions, the trial court determines which presumed parent prevails based on the weightier considerations of policy and logic and the child's best interests. *N.A.H.*, 9 P.3d at 359-65.

¶ 28 Fifth, and finally, three people were never vying to be A.R.L.'s legal parents. Bolt never claimed paternity. Rather, he denied his paternity and filed a petition to relinquish his parental rights. Neither Limberis nor Havens contested Bolt's renunciation of paternity. Nor did anyone request that the trial court adjudicate Bolt a legal parent. In light of this record, the court was never faced with three parentage claims or the possibility of finding the existence of three legal parents.⁴

¶ 29 Accordingly, the trial court erred in dismissing Limberis' petition for maternity based on its conclusion that A.R.L. already had two "biological parents."

2. Limberis Did Not Seek to Substitute Herself in Place of Bolt

¹⁸¶ 30 In the alternative, Havens argues that there is no authority in Colorado to support substituting a second legal mother for a child's legal father. This assertion again hinges on the assumption that Bolt was A.R.L.'s legal father, an assumption which the evidence does not support.

¶ 31 In any event, Limberis did not seek to "substitute" herself in place of Bolt. Even ascribing some biological presumption to Bolt, the trial court was faced with, at most, two competing presumptions to consider. *E.g.*, *N.A.H.*, 9 P.3d at 359 (considering competing presumptions of paternity). The trial court was not asked to substitute a presumptive parent for a legal parent.

¶ 32 Havens' substitution argument therefore does not present a basis to support the trial court's denial of Limberis' maternity petition.

D. A Child May Have Two Legal Mothers Under the UPA

¹⁹¶ 33 Underlying Havens' arguments and the trial court's ruling is the implicit premise that a child may not have two legal mothers under the UPA. We disagree.

¶ 34 Nothing in the UPA prohibits a child from having two same-sex parents. Rather, the plain language of the UPA is gender-neutral and specifically allows the terms "father" and "mother" to be used interchangeably, where practicable. § 19–4–125. Had the legislature intended to limit parentage to one female and one male, it could have done so. See *In re Marriage of Hartley*, 886 P.2d 665, 673 (Colo.1994) (if the legislature intended a statute to include a provision, it would have expressly included the provision). It did not. We will not engraft such a limitation into the statute. See *Scoggins v. Unigard Ins. Co.*, 869 P.2d 202, 205 (Colo.1994) ("We will not judicially legislate by reading a *587 statute to accomplish something the plain language does not suggest, warrant or mandate.")⁵

¶ 35 This interpretation is supported not just by the language of the UPA, but also by the compelling interest children have in the love, care, and support of two parents, rather than one, whenever possible.⁶ See *Elisa B. v. Superior Court*, 37 Cal.4th 108, 33 Cal.Rptr.3d 46, 117 P.3d 660, 669 (2005) (there is value in children having two parents, rather than one, as a source of both financial and emotional support); accord *Frazier v. Goudschaal*, 296 Kan. 730, 295 P.3d 542, 557–58 (2013). The prerogative of a child to claim the love and support of two parents does not evaporate simply because the parents are the same sex. It applies to all children, regardless of whether they were conceived during a heterosexual or same-sex relationship. Thus, we conclude that a child who is born during a same-sex relationship can have two legal parents of the same sex, if the nonbiological parent can demonstrate presumptive parenthood under the UPA.

¶ 36 Recognizing that a child can have two legal mothers under the UPA—though new to Colorado—is consistent with other jurisdictions' interpretations of similar UPA provisions. See, e.g., *Elisa B.*, 33 Cal.Rptr.3d 46, 117 P.3d at 670 (woman was a presumed second mother to twins born to her same-sex partner during the parties' relationship where she had received the children into her home and openly held them out as her own); *St. Mary v. Damon*, — Nev. —, 309 P.3d 1027 (2013) (holding that Nevada Parentage Act and its policies do not preclude a child born to a same-sex couple from having two legal mothers); *Frazier*, 295 P.3d at 553 (woman

who was in a same-sex relationship with a child's biological mother "can make a colorable claim to being a presumptive mother of [the] child without claiming to be the biological or adoptive mother."); *Chatterjee v. King*, 280 P.3d 283, 285–89, 292 (2012) (finding that a former same-sex partner could assert a claim as a second mother to the other partner's adoptive child based on the holding out provision); see also *Smith v. Gordon*, 968 A.2d 1 (Del.2009) (under the holding out provision, lesbian partner of a woman who adopted a child could petition for legal parent-child relationship).⁷

¹⁰¶ 37 Against these interpretations, Havens proposes construing the UPA based upon a person's gender. That is, where a biological mother exists, another woman could not seek to be a presumptive mother. But a man, or more than one man, could seek presumptive father status. So, here, if Elizabeth Limberis was instead Eric Limberis, under Havens' interpretation, there would be no barrier to him seeking presumptive parent status notwithstanding Bolt's alleged biological connection to A.R.L. Such a construction treats presumptive parents differently based on their gender, thus raising equal protection concerns. See Nancy D. Polikoff, *Response: And Baby Makes ... How Many? Using In re M.C. to Consider Parentage of a Child Conceived Through Sexual Intercourse and Born to a Lesbian Couple*, 100 Geo. L.J. 2015, 2031 (2012) (a gender-neutral reading of the UPA's holding out provision may prevent creating an unconstitutional gender-based classification). We will not construe a statute in a manner that invites questions about its constitutionality. See *Comm. for Better Health Care for All Colo. Citizens v. Meyer*, 830 P.2d 884, 894 (Colo.1992) (statutory terms are to be construed in a manner that avoids potential constitutional infirmities).

*588 ¹¹¶ 38 Havens further argues that article II, section 31 of the Colorado Constitution, which defines marriage as a union between one man and one woman, indicates a preference for Colorado children to have one mother and one father, rather than two parents of the same sex. This provision, however, did not modify the UPA or Colorado's parentage laws, which are different from its marriage laws. Indeed, the definition of marriage in the constitution says nothing about parentage or who may become a presumptive parent under the UPA. And the UPA expressly does not require parents to be married to establish a parent-child relationship. See § 19–4–103 (parent-child relationship extends equally to all children regardless of the marital status of the parents). We therefore do not agree that article II, section 31 of the Colorado Constitution bars Limberis' petition for maternity.⁸

^[12]¶ 39 We also reject Havens' argument that Limberis may not be a presumptive second mother because A.R.L. was conceived through sexual intercourse rather than through artificial insemination. The holding out provision does not address method of conception. See § 19-4-105(1)(d). And nothing in that provision limits its application to those children conceived only through artificial reproduction. See *id.* Had the legislature intended to limit the holding out provision to children conceived only through artificial insemination, it would have done so, as it expressly did in another provision of the UPA. See § 19-4-106(9), C.R.S.2013 (expressly excluding application of section to a child "conceived by means of sexual intercourse"); see also *Sinclair Mktg. Inc. v. City of Commerce City*, 226 P.3d 1239, 1243 (Colo.App.2009) (it is presumed that the legislature acts intentionally when it includes particular language in one section of a statute but omits it in another). Because the legislature did not limit the holding out provision to children conceived through artificial insemination, neither will we. See *In re N.B.*, 199 P.3d 16, 20 (Colo.App.2007) (court may not create an exception to a statute when the legislature has not done so). Thus, A.R.L.'s method of conception does not limit Limberis' ability to establish that she is A.R.L.'s presumptive mother.

¶ 40 In sum, we hold that in the context of a same-sex relationship, a child may have two legal mothers under the UPA. Whether Limberis satisfies the statutory criteria to be a presumptive mother, however, is a distinctly factual question properly resolved by the trial court. See *S.N.V.*, 284 P.3d at 151 (directing the district court to determine the mother and child relationship). Because the trial court denied Limberis' maternity petition on legal grounds, it never considered the merits of her petition, and thus must do so on remand.

III. Alternative Contentions

¶ 41 Limberis raises two alternative contentions, in the event that she does not prevail on her argument that she may bring a maternity petition under the UPA. First, she contends that the trial court erred in not adopting a common law "de facto parent" theory. Second, she contends that the trial court abused its discretion in allocating parental responsibilities entirely to Havens. Because we conclude that the trial court erred in denying

Limberis' maternity petition, we do not reach these arguments.

IV. Conclusion

¶ 42 Nothing in the UPA limits a parent's fundamental liberty interest in the care, custody, and control of their children to heterosexual parents. Nor does the UPA strip a child of the right to a loving, nurturing parent-child relationship because the child was conceived during a same-sex relationship. Accordingly, parentage determinations under the UPA are not based on the sexual orientation of the parents.

¶ 43 Because we conclude that in the context of a same-sex relationship a child may have two mothers—a biological mother and a presumed mother—we reverse the trial court's order denying Limberis' maternity *589 petition. On remand, the trial court is instructed to determine whether Limberis is A.R.L.'s presumptive mother under the UPA's holding out provision, section 19-4-105(1)(d).

¶ 44 If the court determines that Limberis is A.R.L.'s presumptive mother, it must then enter appropriate orders regarding, among other things, the duty of child support, and the allocation of parental responsibilities. See §§ 19-4-116(3), 14-10-124(1.5), C.R.S.2013. In this regard, the best interests of A.R.L.—at the time of remand—are paramount in entering any such orders. See *In re Parental Responsibilities of M.W.*, 2012 COA 162, ¶¶ 26-27, 292 P.3d 1158 (on remand of parental responsibilities determination, trial court must provide the parties an opportunity to present additional evidence concerning the child's current circumstances). The existing parental responsibilities allocation shall remain in effect pending any new orders by the trial court. See *id.* at ¶ 27.

JUDGE WEBB and JUDGE BERNARD concur.

All Citations

318 P.3d 581, 2013 COA 170

Footnotes

- 1 A.R.L.'s birth predates the Colorado Civil Union Act, sections 14–15–101 to –119, C.R.S.2013. The Act provides that parties to a civil union shall have the same rights, under the UPA, regarding children as if they were spouses. See§ 14–15–107(6), C.R.S.2013.
- 2 The trial court recognized the weight of evidence rebutting the presumption that Bolt was A.R.L.'s legal parent. Indeed, the court acknowledged that "Bolt had no relationship to the child; made no financial support; offered no emotional support; did not acknowledge the child as his own; [and] did not in any way, shape, or form, act as a parent to the child."
- 3 Havens essentially asks us to conclude that a biological connection to a child is a conclusive presumption of parentage; not a rebuttable presumption. In addition to being contrary to precedent of our supreme court, Havens' argument permits the existence of an uninterested biological father to preclude a child from the benefit of a loving, nurturing relationship with a willing presumed mother. It is hard to see how a court could find such a result consistent with a child's best interests. See *People in Interest of C.L.S.*, 313 P.3d 662, 671, 2011 WL 5865898 (Colo.App. No. 10CA1980, Nov. 23, 2011) (interpreting UPA in light of child's best interests).
- 4 Nor do we share Havens' concern, expressed at oral argument, that allowing Limberis to present evidence that she is a presumptive mother will open the door to unending claims of parentage by any person remotely involved in a child's life. A presumed parent is someone who demonstrates an enduring commitment to a child and can present evidence of a familial relationship with a child. See§ 19–4–105(1)(d). It is not a showing that a casual friend, a fond relative, or even a parent's significant other can necessarily satisfy.
- 5 To be sure, some states have enacted versions of the UPA that limit those who may establish parentage by eliminating provisions that allow for certain presumptions of paternity. See, e.g., Mo. Ann. Stat. § 210.822 (2013) (omitting the presumption of paternity available for holding a child out as one's own). Colorado did not so limit its holding out provision.
- 6 In denying Limberis' maternity petition, the court left A.R.L. with only one legal parent.
- 7 *Michael H. v. Gerald D.* does not change our analysis. 491 U.S. 110, 131, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989). In that case, the Supreme Court concluded a child could not have two fathers in light of a California statute establishing a "conclusive presumption" of legitimacy to a birth mother's husband. *Id.* at 119–20, 109 S.Ct. 2333. That case involved a conclusive parentage presumption that is not at issue here. And it did not involve a holding out provision. Thus, it is inapposite.
- 8 Nothing in this opinion should be read as expressing a view upon the constitutionality of article II, section 31 of the Colorado Constitution.

UNIFORM AUTOMATED OPERATION OF VEHICLES ACT

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-EIGHTH YEAR
ANCHORAGE, ALASKA
JULY 12-18, 2019



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ON UNIFORM STATE LAWS

December 3, 2019

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**DRAFTING COMMITTEE ON UNIFORM AUTOMATED OPERATION
OF VEHICLES ACT**

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UNIFORM AUTOMATED OPERATION OF VEHICLES ACT

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UNIFORM AUTOMATED OPERATION OF VEHICLES ACT

Prefatory Note

The Automated Operation of Vehicles Act addresses a narrow but foundational set of the many legal and policy issues raised by automated driving. It is intended to explicitly accommodate and specifically regulate the automated operation of automated vehicles. Colloquially, these vehicles may also be described as autonomous, driverless, or self-driving. Under at least some circumstances, they can steer, brake, accelerate, and signal by themselves while monitoring the road so that a human driver need not do so.

This act covers the deployment of these automated vehicles on roads held open to the public. It does not cover testing of aspirational automated vehicles for the purposes of research and development, which is the primary focus of many of the automated driving laws that states have already enacted. It does not cover remote driving, during which a human drives a vehicle while outside of or far from it. It also does not cover vehicle features that merely assist a human driver; even if these features brake, steer, and accelerate, they are still designed with the expectation that a human driver will monitor the road.

What the act does cover is still vast, for automated driving encompasses a wide range of technologies, applications of those technologies, business models for those applications, and participants in those business models. See Bryant Walker Smith, *How Governments Can Promote Automated Driving*, 47 N.M. L. Rev. 99 (2017), newlypossible.org.

For example, a vehicle capable of automated operation may or may not be designed for all roads, communities, and travel conditions; be capable of automated operation for an entire trip; include a traditional steering wheel, throttle, and brake pedal; need a human who can resume driving when requested to do so; need this human to be physically present in the vehicle; rely on a human located far from the vehicle to provide instructions and information; use specific sensor technologies, including camera, radar, lidar, sonar, inertial motion, and GPS; use highly detailed maps that are created in advance; communicate electronically with other vehicles; be originally manufactured as an automated vehicle; be retrofitted by a developer other than the vehicle manufacturer; be modified by third parties without the involvement of that developer; be sold to individual consumers; be deployed only as part of a fleet; carry passengers, deliver goods, provide services, or perform novel functions; and so on.

Because there could be so many different forms of automated driving, legislating for a singular vision of “driverless cars” is neither practical nor productive. Instead, it is more helpful to identify and explore assumptions in contemporary legal rules as well as in contemporary discussions of automated driving. This act is a product of this collective exploration.

The act accordingly attempts to reconcile automated driving with a typical state motor vehicle code. For this reason, in some ways the structure of the draft mirrors such a code: Many of its sections—including definitions, driver licensing, vehicle registration, equipment, and rules of the road—correspond to, refer to, and can be incorporated into some existing sections of a typical vehicle code. However, because existing codes vary widely in both substance and structure, the work of carefully codifying this act is left to each state that adopts it.

One key aspect of this act—automated driving providers—is not part of a traditional vehicle code but has parallels in how some states have approached automated vehicle testing, see, e.g., Cal. Veh. Code 38750; Ohio Executive Order 2018-04K, and in how both the National Transport Commission of Australia and the Law Commission of England and Wales envision automated vehicle deployment, see NTC Australia, Changing driving laws to support automated vehicles, ntc.gov.au/current-projects/changing-driving-laws-to-support-automated-vehicles (“automated driving system entity”); Law Commission, Automated Vehicles: A joint preliminary consultation paper, lawcom.gov.uk/project/automated-vehicles (same).

The automated driving provider is Automated Operation of Vehicles Act’s answer to the question of who or what drives an automated vehicle when it is under automated operation. States have a strong interest in regulating conventional driving, which they do in part by regulating human drivers: In general, these drivers must obtain driving licenses issued by states, must follow rules of the road set by states, and are subject to enforcement by the states. States likewise have a strong interest in regulating automated driving, which they can do in part by regulating the legal entities that effectively act as drivers.

Under the act, a qualified entity declares to the state that it will be the legal driver for certain automated vehicles. Provided that it meets certain qualifications, this “automated driving provider” might be an automated driving system developer, a vehicle manufacturer, a component supplier, a data provider, a fleet operator, an insurer, an affiliated firm, or another kind of market participant that has yet to emerge. The automated driving provider is primarily defined not by a specific role in the stream of commerce but, rather, by a willingness to self-identify and an ability to meet the technical and legal requirements specified in the act.

The act uses the motor vehicle registration framework that already exists in states—and that already applies to both conventional and automated vehicles—to encourage automated driving providers to self-identify. Existing law generally requires the registration of a motor vehicle that is operated on a public road, and the vehicle’s owner or lessee typically obtains this registration. Under this act, however, an owner or lessee may register an automated vehicle only if an automated driving provider has designated that vehicle as an associated automated vehicle. If the automated vehicle is not “associated” in this way with an automated driving provider, then it may not be registered and therefore may not be operated on public roads.

By harnessing an existing framework, the act seeks to respect and empower state motor vehicle agencies. Among other functions, such an agency typically licenses drivers and registers motor vehicles. Under this act, the agency does not register an automated driving provider in the same way that it licenses a traditional human driver. But the agency does ensure that every automated vehicle that it registers will have a legal driver—the automated driving provider—that meets basic requirements. The agency has the flexibility to adapt this process to its existing registration procedures and the authority to intervene decisively when the credibility of an automated driving provider or the roadworthiness of an automated vehicle is in doubt.

The act’s registration-centered approach is also intended to complement both current and potential federal motor vehicle legislative and regulatory law. The federal government plays an important role—but not an exclusive role—in regulating the design of motor vehicles. Although the U.S. National Highway Transportation Safety Administration (NHTSA) does not approve

motor vehicle designs, it does set specific standards for the performance of certain systems on these vehicles, and manufacturers then self-certify that the vehicles they produce meet these standards. Such standards currently exist for brakes, lights, and many other conventional systems but not for advanced driver assistance systems or automated driving systems. See U.S. Department of Transportation, Automated Vehicles, transportation.gov/AV. Federal law preempts incompatible state design standards, and bills in the 2017-18 Congress would have ambiguously expanded this federal preemption, see H.R.3388 (115th Congress); S.1885 (115th Congress).

Regardless, states are—and even under these federal bills would remain—largely responsible for ensuring that individual noncommercial vehicles are appropriately registered, maintained, and operated. For example, a motor vehicle that met federal standards when it was first sold may not be roadworthy if it has parts that are no longer functioning, defects that have not been remedied, or modifications that create new hazards. And even a roadworthy vehicle can be operated irresponsibly. Motor vehicle agencies, law enforcement, and courts at the state and local levels must routinely address these unfortunate operational realities. For all these reasons, states play critical roles in motor vehicle safety.

This act is likewise about safety—encouraging the responsible deployment of automated vehicles in a way that seeks to balance concerns about the current safety of conventional driving with concerns about the potential safety of automated driving. As existing automated driving laws and policies demonstrate, states approach this balancing act in different ways. The Automated Operation of Vehicles Act draws from and builds on these approaches.

UNIFORM AUTOMATED OPERATION OF VEHICLES ACT

Legislative Note: *This act should be codified in accordance with state practice into the state’s vehicle code or the equivalent law of the state. The codification could amend provisions of the state’s vehicle code, insert provisions in the state’s vehicle code, or add new provisions to the state’s vehicle code. The act should be codified so that, in relation to automated vehicles, it supplements, modifies, and clarifies but does not wholly displace generally applicable state vehicle law.*

Comment

As stated in the legislative note, the Automated Operation of Vehicles Act is intended to supplement, modify, and clarify—but not wholly displace—generally applicable state motor vehicle law. This law, which is referred to in this act as the “vehicle code,” typically addresses vehicle titling, vehicle registration, driver licensing, rules of the road, and similar topics. However, states are not consistent in the substance or the structure of their vehicle law. For example, many states use the term “vehicle code” to refer to motor vehicle law generally (as does this act), but others use the term to refer to only a subset of this law, and others do not use the term at all. The Uniform Vehicle Code and Model Traffic Ordinance, last published in 2000 by an organization that is now defunct, is as helpful in illustrating divergence as commonality.

It is against this backdrop that some states have enacted legislation specific to automated driving. This legislation has been codified in various ways, including as a standalone chapter, see, e.g., NRS Chapter 482A, as new sections within the state’s vehicle code or its equivalent, see, e.g., Cal. Veh. Code div. 16.6, as new provisions within existing sections of the state’s vehicle code, see, e.g., M.C.L.A. 257.36, and as amendments to existing provisions of the state’s vehicle code, see, e.g., T.C.A. § 55-8-101. Some states have taken multiple approaches. Compare, e.g., Col. Rev. Stat. Ann. § 42-1-102 with § 42-4-110 with § 42-4-242.

Regardless of how this legislation has been codified, state motor vehicle law still generally applies with respect to automated driving. In some cases, legislation expressly excludes the application of specified provisions of the state’s vehicle code, see, e.g., Fla. Stat. Ann. § 316.305, expressly excludes the application of unspecified inconsistent provisions, see, e.g., Col. Revised Stat. Ann. § 42-4-242, or would seem to implicitly exclude the application of inconsistent provisions, see, e.g., Cal. Vehicle Code § 38755. In no case, however, does legislation wholly or even largely remove automated driving from the state’s vehicle code.

This act takes a similar approach. Early in the process, the Committee considered whether to (1) create a new legal framework for automated vehicles to wholly supplant existing vehicle codes, (2) adopt a model vehicle code applicable to all motor vehicles and then amend it to explicitly address automated vehicles, or (3) draft a hybrid act to map an existing vehicle code onto automated vehicles. After determining the first two options to be impractical if not undesirable, the Committee concluded that only a hybrid act could effectively address the complexity and diversity of existing motor vehicle law.

UNIFORM AUTOMATED OPERATION OF VEHICLES ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Automated Operation of Vehicles Act.

Comment

This act uses the term “automated vehicle” to describe a motor vehicle that can—under at least some circumstances—steer, brake, and accelerate by itself while monitoring the road so that the human driver need not do so. This definition excludes a vehicle that has only a driver assistance system, because such a system is designed with the expectation that a human driver will still monitor the road even as the system steers, brakes, and accelerates. A vehicle is an automated vehicle even if it is not currently under “automated operation”—that is, even if a human driver rather than the vehicle itself is currently steering, braking, accelerating, or simply monitoring the road.

This ambiguity is one of the reasons why the leading definitional document for automated driving, SAE J3016 (2018), eschews the term “automated vehicle” in favor of lengthier and more specific alternatives. See SAE J3016 (2018), sae.org/standards/content/j3016_201806. However, the U.S. National Highway Traffic Safety Administration, many U.S. states, and even the United Nations use “automated vehicle” or a similar term. See, e.g., US Department of Transportation, Automated Vehicles, transportation.gov/AV; Global Forum for Road Traffic Safety (WP.1) resolution on the deployment of highly and fully automated vehicles in road traffic, unece.org/fileadmin/DAM/trans/doc/2018/wp1/ECE-TRANS-WP1-165e.pdf. Accordingly, this act likewise refers to automated vehicles as well as to the automated driving systems equipped on these vehicles and to the automated operation of these vehicles. These terms and others are explained in the next section.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Associated automated vehicle” means an automated vehicle that an automated-driving provider designates under Section 7.

(2) “Automated-driving provider” means a person that makes a declaration recognized by [the relevant state agency] under Section 6.

(3) “Automated-driving system” means the hardware and software collectively capable of performing the entire dynamic driving task on a sustained basis.

(4) “Automated operation” means the performance of the entire dynamic driving task by an automated-driving system. Automated operation begins on the performance of the entire

dynamic driving task by the automated-driving system and continues until a human driver or human operator other than the automated-driving provider terminates the automated operation.

(5) “Automated vehicle” means a motor vehicle with an automated-driving system.

(6) “Completely automated trip” means travel in an automated vehicle that, from the point of departure until the point of arrival, is under automated operation by means of an automated-driving system designed to achieve a minimal-risk condition.

(7) “Dedicated automated vehicle” means an automated vehicle designed for exclusively automated operation when used for transportation on a [road open to the public].

(8) “Drive” has the meaning in [the state’s vehicle code], except that an automated-driving provider that designates an associated automated vehicle under Section 7 exclusively drives the vehicle under automated operation.

(9) “Driver” has the meaning in [the state’s vehicle code], except that an automated-driving provider that designates an associated automated vehicle under Section 7 is the exclusive driver of the vehicle under automated operation.

(10) “Dynamic driving task” means controlling lateral and longitudinal vehicle motion, monitoring the driving environment, executing responses to objects and events, planning vehicle maneuvers, and enhancing vehicle conspicuity, as required to operate a vehicle in on-road traffic.

(11) “Minimal-risk condition” means a condition to which a vehicle user or an automated-driving system may bring a vehicle to reduce the risk of a crash when a trip cannot or should not be continued.

(12) “Operate” has the meaning in [the state’s vehicle code], except that an automated-driving provider that designates an associated automated vehicle under Section 7 exclusively operates the vehicle under automated operation.

(13) “Operator” has the meaning in [the state’s vehicle code], except that an automated-driving provider that designates an associated automated vehicle under Section 7 is the exclusive operator of the vehicle under automated operation.

(14) “Person” [has the meaning in the state’s vehicle code] [means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity].

Legislative Note: *If the state merges this act with the state’s vehicle code, these definitions should be merged with the general definitions.*

The “relevant state agency” referred to in paragraph (2) may be a department or division of motor vehicles or another state agency responsible for the registration of motor vehicles or the licensing of drivers.

States use a variety of terms to describe a “road open to the public” as used in paragraph (7), including road, roadway, and highway. The term also may encompass some privately or publicly operated parking facilities. If the state uses a term to refer to such a road, the state should use that term here.

“The state’s vehicle code” as used in paragraphs (8), (9), (12), (13), and (14) refers to a state’s laws on, inter alia, the licensing of drivers and the titling, registration, and operation of motor vehicles. These laws generally are statutory but may be regulatory. They generally include and are broader than the rules of the road.

Paragraphs (8), (9), (12), and (13) provide definitions for terms that already may be used in state vehicle law and, if so, may or may not already be defined statutorily. If a term is not used in statute or case law, it may be omitted, although a state may wish to retain all four terms to reduce future interpretive ambiguity and increase interstate consistency. If a term already is defined statutorily, that definition may be amended directly rather than by reference.

In paragraph (14), the second bracketed definition for “person” should be used only if the term is not already defined statutorily for the purpose of state vehicle law or is defined statutorily to mean only a natural person.

Comment

Although the 14 terms defined in this section are best understood in context, some points of introduction and clarification may be helpful.

First, consistent with the practice of the U.S. National Highway Traffic Safety Administration and several U.S. states, this section adapts some terms and definitions from the leading definitional document for automated driving, SAE J3016 (2018), sae.org/standards/content/j3016_201806. In particular, paragraphs (3), (7), (10), (11), and (12)

borrow from SAE J3016 but incorporate changes for legal or functional clarity. These are essential definitions, and J3016 may be helpful in their interpretation. For example, as J3016 explains, an “automated driving system” is defined by its asserted capabilities rather than by its successful realization of those capabilities: An automated driving system that fails is still an automated driving system. The five elements of “dynamic driving task” listed in paragraph (10) come from J3016 and are finite under this act. Consistent with J3016, an automated driving system or automated driving provider might also perform “strategic functions of driving” even though these functions are not part of the “dynamic driving task.” As in J3016, the definition of “minimal risk condition” is necessarily open; it is often illustrated by a vehicle parked on the shoulder with its hazard signals activated, but circumstances may demand more or less.

Second, this section references some terms that may already be used in state motor vehicle law, including those in paragraphs (8), (9), (12), (13), and (14). These terms are used inconsistently across and even within states. See generally Bryant Walker Smith, *Automated Vehicles Are Probably Legal in the United States*, 1 *Tex. A&M L. Rev.* 411, 463-74 (2014), newlypossible.org. Because interpretation of these terms can have dramatic consequences under state vehicle law—even if they are not defined statutorily—these paragraphs clarify the definitions in the context of automated driving without disrupting the more general definitions.

Third, the “automated driving provider” concept referenced in paragraph (2) is foundational to the Automated Operation of Vehicles Act. As explained in the comments accompanying sections 5 through 7, this act permits the owner (or lessee) of an automated vehicle to register it only if some qualified entity vouches for that vehicle by designating it as an “associated automated vehicle.” This entity may be the same as or different than the entity that registers the vehicle. For example, the developer of an automated driving system might be the automated driving provider for an automated vehicle that is owned and accordingly registered by an individual consumer. The definitions of automated driving provider and associated automated vehicle should also be read in conjunction with subsection 3(e), which contemplates interstate comity.

Fourth, under paragraph (4), “automated operation” can be terminated only by a human driver or human operator. This natural person initiates this termination through a command or other deliberate act that is inconsistent with the continued performance of the entire dynamic driving task by the automated driving system. This means that a vehicle with an automated driving system that has stopped functioning—whether by or despite its design—can still be under automated operation for the purposes of this act even if it is not under automated operation in a technical sense. Remote driving is outside the scope of this act, but this definition does contemplate that in some scenarios a remote human driver—even one who is working as an agent of the automated driving provider—might terminate automated operation. And, upon the successful completion of a trip, a vehicle may no longer have any operator because it is no longer being operated. As a technical and conceptual matter, a transition from automated driving can be complex, and this definition does not explicitly address certain edge cases that are left to the courts for development. For example, if a human reasonably terminates automated operation to avoid a risk of imminent harm proximately caused by the automated driving system, then automated operation may be deemed to continue until the risk is avoided, realized, or enhanced.

Fifth, several definitions contain other nuances that may not be immediately obvious. A vehicle equipped with an automated driving system is considered an “automated vehicle” under

paragraph (5) regardless of whether the vehicle is under automated operation. A “completely automated trip” under paragraph (6) requires an automated vehicle that can achieve a minimal risk condition without intervention by a human. Finally, a vehicle is still a “dedicated automated vehicle” under paragraph (7) even if it can or must be driven by a human in certain terminal situations such as those involving maintenance, storage, inspection, and post-incident removal.

SECTION 3. SCOPE; CONSTRUCTION; GOVERNING LAW.

(a) This [act] applies to the ownership, registration, and operation of an automated vehicle, even if the ownership, registration, and operation of the vehicle complied with law of [this state] other than this [act] before [the effective date of this [act]].

(b) Except as otherwise provided in this [act], [the state’s vehicle code] applies with respect to an automated vehicle.

(c) [The state’s vehicle code] must be interpreted to accommodate the development and deployment of automated vehicles in a way that maintains or improves traffic safety.

[(d) The [relevant state agency or agencies] may [make rules, issue interpretations, conduct investigations, and take other actions to] administer and enforce this [act] in accordance with [[this state’s] administrative law].]

(e) If the applicable law of a jurisdiction other than [this state] is substantially similar to this [act], then with respect to an automated vehicle that is registered in that jurisdiction:

(1) an automated-driving provider in that jurisdiction is an automated-driving provider under this [act]; and

(2) an associated automated vehicle in that jurisdiction is an associated automated vehicle under this [act].

(f) This [act] does not preclude remedies under law other than this [act].

Legislative Note: *If the state merges this act with the state’s vehicle code, this section should be inserted into a new provision on automated driving generally.*

Subsection (b) clarifies that state vehicle law, including rules for vehicle ownership, registration, insurance, and operation, still applies with respect to automated vehicles. This act should be

merged accordingly.

The agencies in subsection (d) may include those responsible for registration of motor vehicles, licensing of drivers, and enforcement of rules of the road. Because this subsection is intended to confer the authority that the adopting state typically confers on its agencies to administer its statutes, the subsection may be omitted or modified if it is unnecessary or inconsistent with state practice.

In enacting this act, a state may wish to identify, review, and consider modifying or repealing statutes that address automated driving.

The state should adhere to its requirements and conventions for codifying violations and punishments to ensure that they are legally enforceable.

Comment

The Automated Operation of Vehicles Act is intended to clarify, modify, and supplement—but not replace—a state’s existing vehicle code in relation to automated vehicles.

Accordingly, this section clarifies that the state’s vehicle code continues to apply with respect to automated vehicles. For example, an automated vehicle must still be insured in accordance with the state’s requirements for vehicle insurance: If it is unlawful to register or drive a motor vehicle without proper insurance, then so too is it unlawful to register or drive an automated vehicle without proper insurance. Other legal provisions—such as rules for commercial passenger services—may also apply even if they are not in the state’s vehicle code. These are just two examples of the many legal and policy topics that fall outside the scope of this act and that may be appropriate for further study by states.

At the same time, this section clarifies that the state’s vehicle code must be interpreted in a way that is not necessarily inconsistent with automated operation of automated vehicles. This act specifically addresses provisions common to many vehicle codes, such as a prohibition on unattended vehicles, that might otherwise be construed in a way that is incompatible with automated driving. However, the general instruction of subsection (c) (as well as its companions in later sections of this act) is intended to account for unique aspects of a state’s law that may not be specifically addressed by this act and that may not be identified in conjunction with the state’s adoption of this act.

This section also explicitly empowers relevant state agencies to administer and enforce this act. As in other sections of this act, this authorization is intended to give these agencies the authority and flexibility to effectively address unexpected developments in automated driving. If a state determines that this authorization is unnecessary, duplicative, or undesirable, it may adapt or omit subsection (d).

The interstate nature of motor vehicle travel motivates subsection (e). An automated vehicle under automated operation in state X might be lawfully registered in state Y. If state Y has also adopted this act, then in both states the driver of the vehicle while under automated operation is the automated driving provider that has made a declaration in state Y. (These states may therefore wish to develop a process to share this information.) However, if state Y has not

adopted this act, then the vehicle is not an associated automated vehicle and does not have an automated driving provider in either state. In that case, state X identifies the driver(s) or operator(s) using the general definitions of drive, driver, operate, and operator that it has developed over decades. Because these definitions tend to be written and interpreted broadly, see Bryant Walker Smith, *Automated Vehicles Are Probably Legal in the United States*, 1 Tex. A&M L. Rev. 411, 463-74 (2014), newlypossible.org, many natural or legal persons—an occupant, the owner, or the manufacturer, among others—might be subject to enforcement action. By adopting this act, a state could accordingly provide more certainty for its residents when they or their automated vehicles travel out of state.

Finally, as the legislative note recognizes, many states have already enacted legislation explicitly addressing automated driving. In some of these states, the legislation relates exclusively or primarily to testing for the purposes of research and development, which is not specifically addressed by this act. In others, the legislation may address or implicate topics within the scope of this act. For example, some states have defined the driver or operator of an automated vehicle in a way that may be inconsistent with this act’s treatment of that question. In such a case, the state may wish to clarify the status of this prior legislation in conjunction with its adoption of this act.

SECTION 4. [DRIVER] LICENSING.

(a) An individual is not required to hold a [driving license] to take a completely automated trip.

(b) An automated-driving provider is not required to hold a [driving license] to drive or operate an automated vehicle under automated operation.

Legislative Note: If the state merges this act with the state’s vehicle code, this section should be merged into the driver licensing provisions.

The particular term used by the state should be substituted for “driving license” in this section.

Comment

Under existing state law, an individual who drives generally needs to hold a valid driving license. Conversely, an individual who does not drive generally does not need to hold such a license. The Automated Operation of Vehicles Act does not change these existing rules. However, its definitions of drive, driver, operate, and operator do remove automated driving from this existing framework.

This section clarifies that an individual who takes a completely automated trip (in which an automated driving system capable of achieving a minimal risk condition performs the dynamic driving task from the beginning through the end of the trip) does not need a driving license, even if the individual sits in the conventional driving position, turns on the vehicle, or performs other actions that may constitute driving in more conventional contexts. (Indeed, a vehicle may even

be wholly unoccupied during a completely automated trip.) Conversely, because a state's existing vehicle code continues to apply, an individual who drives or may need to drive for part of a trip does need a driving license, even if the individual relies on an automated driving system for part of the trip.

This act does not define a trip, which is generally understood to be a journey from an origin to a destination. The driveway of a house, the curb outside an office building, and a space in a parking garage are possible destinations. A freeway shoulder generally is not. This means that, for example, an automated vehicle capable of automated operation only on freeways needs a licensed driver, because pulling off to the side of the road before the freeway ends does not complete the trip. However, an automated vehicle does not need a licensed driver solely because its automated driving system achieves a minimal risk condition in response to a hardware failure, a severe blizzard, or another condition that unforeseeably delays the trip's completion.

Finally, even though an automated driving provider is the driver of an automated vehicle under automated operation for the purpose of the state's vehicle code, the provider is not required to hold a conventional license. However, the state may investigate and decline to recognize an automated driving provider under Section 6 (and may decline to register associated automated vehicles under Section 5). Individually or in concert, states may also wish to develop a system to track and sanction automated driving providers that is comparable to the one for human drivers.

SECTION 5. VEHICLE REGISTRATION.

(a) The [owner] of an automated vehicle shall comply with [the state's requirements for registration of motor vehicles].

(b) If a motor vehicle that is not registered as an automated vehicle becomes an automated vehicle, the [owner] shall obtain a new registration for the vehicle, under the requirements for an automated vehicle, before automated operation.

(c) At registration of a motor vehicle, the [owner] shall indicate to [the relevant state agency] whether the vehicle is an automated vehicle. This indication does not bind [the relevant state agency] to register the vehicle as an automated vehicle.

(d) [The relevant state agency] may grant, maintain, or renew the registration of an automated vehicle only if an automated-driving provider designates the vehicle under Section 6 as an associated automated vehicle.

(e) [The relevant state agency] may decline, suspend, revoke, or decline to renew the

registration of an automated vehicle that is not:

- (1) an associated automated vehicle;
- (2) associated with an automated-driving provider recognized by [the relevant state agency];
- (3) properly maintained;
- (4) lawfully insured;
- (5) compliant with a registration requirement; or
- (6) fit to be operated.

(f) If [the relevant state agency] declines, suspends, revokes, or declines to renew the registration of an automated vehicle under subsection (e), [the relevant state agency] may grant a temporary registration that applies to the vehicle only when it is not under automated operation.

(g) [The relevant state agency] may grant, maintain, or renew the registration of a motor vehicle that is no longer an automated vehicle only if the registrant represents under penalty of perjury to [the relevant state agency] that the vehicle cannot presently and will not be used under automated operation on a [road open to the public].

(h) Registration of an automated vehicle does not create a presumption as to the safety of the vehicle or its equipment.

Legislative Note: *If the state merges this act with the state’s vehicle code, this section should be merged into the vehicle registration provisions.*

This section applies to each person required to register a vehicle under state law. If the state requires or allows a motor vehicle to be registered by a person other than the owner of the vehicle, such as the lessee of the vehicle, references to “owner” should be modified accordingly. Existing rules for determining whether a motor vehicle must be registered in the state also apply to an automated vehicle.

The state may wish to modify language in this section to be consistent with existing usage of “registration”, which, depending on the state, could refer to a request by a person to register a vehicle or to the issuance of that registration by the relevant state agency.

The state may wish to compare and reconcile the language in subsection (e) with similar language used in the state's vehicle code.

Comment

Sections 5, 6, and 7 of the Automated Operation of Vehicles Act complement each other and a state's generally applicable rules for motor vehicle registration.

Under existing law, the owner (or lessee) of a motor vehicle must generally register that vehicle with a state in accordance with that state's place of registration rules. This act retains this same obligation for the owner (or lessee) of an automated vehicle, who must likewise register the vehicle with the state.

This act also adds a new condition of registration: Under Section 5, an automated vehicle may be registered only if some entity has both declared itself to be an automated driving provider under Section 6 and designated the particular automated vehicle as one of its associated automated vehicles under Section 7. The vehicle owner and the automated driving provider may or may not be the same legal person. Consider two examples:

- Company X is an automaker that manufactures automated vehicles and sells them to individual consumers. Company X declares itself to be the automated driving provider for these vehicles. However, these vehicles are owned and therefore registered by their individual buyers.
- Company Y is a startup that buys conventional vehicles, converts them into automated vehicles, and provides rides to the public in a downtown area. Company Y declares itself to be the automated driving provider for these vehicles. It also owns and therefore registers these vehicles.

As long as the automated vehicle is associated with an automated driving provider recognized by the state motor vehicle agency, the automated vehicle's owner may register it just as that person would register a conventional motor vehicle. This is consistent with the primary purpose of this new condition: ensuring that every automated vehicle is associated with a credible entity against which the state can enforce relevant portions of the vehicle code.

Accordingly, if an automated vehicle is not—or is no longer—associated with an automated driving provider, then the owner may not register it and therefore may not use it on public roads. This significant restriction under Section 5 incentivizes entities to act as automated driving providers under Section 6 and to designate associated automated vehicles under Section 7. In short: A person is unlikely to buy an automated vehicle that they are not allowed to actually use.

This act provides some flexibility to the state motor vehicle agency in applying this rule to address situations where automated operation is temporarily or permanently imprudent or impossible. If the agency suspends the registration of an automated vehicle, it may nonetheless authorize the non-automated operation of that vehicle through a temporary license. If the owner ensures and represents that automated operation is no longer possible, then the vehicle is no longer an automated vehicle and may be registered consistent with generally applicable registration requirements.

Conversely, a motor vehicle might become an automated vehicle through modifications to its hardware or software, in which case the vehicle's owner must obtain a new registration for the vehicle. But the vehicle is not an automated vehicle if modifications merely add or enhance driver assistance features that still require human supervision, an automated driving provider is unlikely to designate that vehicle as an associated automated vehicle, and the motor vehicle agency would neither require nor permit reregistration as an automated vehicle.

SECTION 6. AUTOMATED-DRIVING PROVIDER.

(a) To qualify as an automated-driving provider, a person must:

(1) have participated in a substantial manner in the development of an automated-driving system;

(2) have submitted to the United States National Highway Traffic Safety Administration a safety self-assessment or equivalent report for the automated-driving system as required or permitted by the United States National Highway Traffic Safety Administration; or

(3) be registered as a manufacturer of motor vehicles or motor-vehicle equipment under the requirements of the United States National Highway Traffic Safety Administration.

(b) A person is an automated-driving provider only if the person makes a declaration recognized by [the relevant state agency] that the person is an automated-driving provider and pays a fee specified by [the relevant state agency] for processing the declaration.

(c) To make a declaration under subsection (b), a person must in a manner acceptable to [the relevant state agency]:

(1) represent under penalty of perjury that the person qualifies as an automated-driving provider under this [act];

(2) represent under penalty of perjury that the person is capable of undertaking the responsibilities of an automated-driving provider;

(3) represent under penalty of perjury that sufficient evidence demonstrates that the automated-driving system of each associated automated vehicle is capable of complying with

[the state's rules of the road]; and

(4) irrevocably appoint [the relevant state agency] as a lawful agent for service of process in an action arising from the automated operation of an associated automated vehicle.

(d) A person that makes a declaration under subsection (b):

(1) has the burden of proving the qualifications and representations made under subsection (c) to the satisfaction of [the relevant state agency];

(2) shall submit to an investigation under subsection (e);

(3) shall provide the information requested by [the relevant state agency];

(4) shall pay the actual costs incurred by [the relevant state agency] in the investigation; and

(5) does not have a vested right in the recognition of the declaration.

(e) [The relevant state agency] at any time may:

(1) decline, delay, or rescind recognition of a declaration made under subsection (b); or

(2) investigate the qualifications or representations of a person that makes a declaration under subsection (b).

Legislative Note: *If the state merges this act into the state's vehicle code, this section should be inserted into a new provision on automated-driving providers.*

Comment

Section 5 of the Automated Operation of Vehicles Act provides that a person may register an automated vehicle only if that vehicle is associated with an automated driving provider. This Section 6 specifies how an entity declares itself to be an automated driving provider. Section 7 specifies how that entity then designates an automated vehicle to be an associated automated vehicle.

The potential diversity of automated driving compels a flexible definition of automated driving provider. An automated vehicle's automated driving system may be installed by the developer of the system, the manufacturer of the vehicle, or another entity altogether. The vehicle may be owned by a sophisticated technology company, by a fleet operator with some familiarity with

automation, or by an individual with no technical knowledge whatsoever. Regardless of ownership, the continued safety of automated operation is likely to require the ongoing involvement of a technically competent entity that facilitates data transfers, software updates, and technical support. The automated driving provider concept recognizes that automated vehicles will be driven not by individuals or even computers but by companies involved in the development and deployment of these vehicles.

To become an automated driving provider, an entity must make an affirmative declaration that includes specific representations. This means that, first, an entity does not become an automated driving provider against its will and, second, not every entity can become an automated driving provider. Subsection (a) identifies three basic qualifications, at least one of which a provider must satisfy, and subsection (c) identifies four key requirements, all of which the provider must satisfy.

Among these, the automated driving provider must represent that sufficient evidence demonstrates that the automated driving system of each associated automated vehicle is capable of complying with the rules of the road. The phrase “sufficient evidence” is intended to provide flexibility to those automated driving providers that act in good faith and consequences to those providers that act in bad faith. It may be informed by other legal standards of proof and review that are familiar to courts and agencies.

Although the automated driving provider may not need to provide this evidence in its initial declaration, the state motor vehicle agency may investigate the entity, may decline to recognize the entity’s declaration (even if the agency has previously recognized the declaration), and may revoke the registrations of associated automated vehicles. (However, the state may still consider the entity to be the driver or operator of an associated automated vehicle for the purpose of enforcing the rules of the road.) Moreover, other laws may provide a basis for the state to prosecute an entity that misrepresents the existence or sufficiency of this evidence.

The state motor vehicle agency may flexibly administer automated driving provider declarations. For example, it may charge fees to fund investigations, renewals, and other administrative activities associated with declarations.

SECTION 7. ASSOCIATED AUTOMATED VEHICLE.

(a) An automated vehicle is an associated automated vehicle only if an automated-driving provider designates the automated vehicle under subsection (b).

(b) To designate an associated automated vehicle, an automated-driving provider must provide notice in a form acceptable to [the relevant state agency].

(c) Once designated under subsection (b), an automated vehicle remains an associated automated vehicle unless:

(1) under Section 6(e), [the relevant state agency] declines, delays, or rescinds recognition of the declaration of the automated-driving provider;

(2) the automated-driving provider dissolves its business; or

(3) the automated-driving provider disassociates the automated vehicle.

(d) To disassociate an associated automated vehicle, an automated-driving provider must provide notice in a manner acceptable to [the relevant state agency].

Legislative Note: *If the state merges this act with the state's vehicle code, this section should be inserted into a new provision on associated automated vehicles.*

Comment

Section 5 of the Automated Operation of Vehicles Act provides that a person may register an automated vehicle only if that vehicle is associated with an automated driving provider. Section 6 specifies how an entity declares itself to be an automated driving provider. This Section 7 specifies how that entity then designates an automated vehicle to be an associated automated vehicle.

An automated driving provider designates its associated automated vehicles by giving acceptable notice to the relevant state motor vehicle agency. The language of subsection (b) was chosen over more precise formulations to provide flexibility to this agency, to avoid financial, technical, or procedural burdens, and to facilitate without requiring cooperation among states and with the federal government. A state might require notice directly from a provider, indirectly through the vehicle registrant, or collectively through a public or private database, among other possibilities.

Once an automated driving provider has designated an associated automated vehicle, the association remains until the provider is not recognized by the state agency, ceases to exist under principles of corporate law, or affirmatively withdraws the designation. The language of subsection (d) was chosen to provide flexibility to the relevant state agency. For example, the agency might require the automated driving provider to give advance notice both to the agency and to the owner of the automated vehicle.

This comment concludes by reiterating the relationship among motor vehicle registrations (Section 5), associated automated vehicle designations (Section 6), and automated driving provider declarations (Section 7): Existing state law generally requires the registration of a motor vehicle that is operated on a public road. If an automated vehicle qualifies as such a motor vehicle, it too must be registered. The person seeking that registration—typically the vehicle owner—must comply with all conditions of registration under existing law. Section 5 of this act adds a further condition: For the owner of an automated vehicle to register the vehicle, an automated driving provider must have designated that vehicle as an associated automated vehicle. Section 6 specifies how an entity declares that it is an automated driving provider, and Section 7 specifies how that entity then designates its associated automated vehicles. These three

sections work together with existing law to ensure that a properly registered automated vehicle has a legal driver when it is under automated operation. In general, only if an automated vehicle is associated with an automated driving provider may it be registered and operated on public roads.

The following table illustrates this process by comparing it to processes for conventional driver licensing and vehicle registration:

Automated vehicle	<i>Declaration by an automated driving provider (Section 6):</i> A company or other entity declares that it is an automated driving provider	<i>Designation by the automated driving provider (Section 7):</i> An automated driving provider designates its associated automated vehicles	<i>Registration by the vehicle owner (Section 5):</i> The owner of an associated automated vehicles registers the vehicle
Conventional vehicle	A person obtains a driving license	A person drives a vehicle	The owner of a vehicle registers the vehicle

In other words: A human driver must obtain a license, whereas an automated driving provider must make a declaration. A human becomes a driver by driving a vehicle, whereas an automated driving provider becomes a driver by designating an associated automated vehicle that is then used under automated operation. Both conventional and automated vehicles are typically registered by their owners. The owner (or lessee) of a conventional vehicle may or may not be its driver, and the owner (or lessee) of an automated vehicle may or may not be its automated driving provider.

SECTION 8. EQUIPMENT.

[(a) [The state’s vehicle equipment requirements] must be interpreted to accommodate the development and deployment of automated vehicles in a way that maintains or improves traffic safety.]

(b) An automated vehicle must be properly maintained. A violation of this subsection is a violation [as specified in the state’s vehicle code].

(c) A provision of [the state’s vehicle equipment requirements] requiring equipment that is necessary only for the performance of the dynamic driving task by a human driver or human operator does not apply to a dedicated automated vehicle.

(d) A provision of [the state’s vehicle equipment requirements] prohibiting an electronic device in a vehicle, other than a device used to evade law enforcement, does not apply with respect to a dedicated automated vehicle.

(e) A provision of [this state’s vehicle equipment requirements] prohibiting an electronic device in a vehicle, other than a device used to evade law enforcement, may not be enforced with respect to an automated vehicle under automated operation.

Legislative Note: *Because of Section 3(c), subsection (a) should be included only if the state’s vehicle equipment requirements are not codified in the state’s vehicle code.*

If the state merges this act with the state’s vehicle code, this section should be merged into the provisions pertaining to the condition of and equipment on vehicles.

The state may wish to compare and reconcile the language in subsection (b) with similar language used in the state’s vehicle code.

If the state merges this act with the state’s vehicle code, the existing vehicle code provisions addressed in subsections (c), (d), and (e) can be directly amended.

Comment

Many state vehicle codes include provisions related to the equipment on motor vehicles. Most of these provisions primarily contemplate the continued roadworthiness of individual motor vehicles rather than the design of new motor vehicles. This Section 8 of the Automated Operation of Vehicles Act is intended in part to clarify the application of these provisions to automated vehicles. In contrast, the next section is intended in part to clarify the application of similar provisions to the operation of these vehicles.

For example, under this section, a prohibition on the installation of a television screen visible from the driver’s seat would not apply in the case of a dedicated automated vehicle (i.e., one that cannot be operated by a conventional human driver) and would otherwise not apply in the case of an automated vehicle under automated operation. Under the next section, a related but distinct prohibition on actually using such a screen would not apply during automated operation. However, prohibitions on installing and using products intended to evade law enforcement (such as radar detectors) would continue to apply.

Subsection (b) requires that an automated vehicle be properly maintained but does not identify the legal subject to which this obligation applies. This passive provision may nonetheless be used to deny or revoke a vehicle’s registration, to remove a vehicle from the road, to impound a vehicle, or to cite a driver or operator. The violation language can be adapted for the enacting state, which might identify an appropriate violation provision in its existing law, reference a residual violation provision, or create a new violation provision applicable to automated vehicles.

SECTION 9. RULES OF THE ROAD.

[(a) [The state's rules of the road] must be interpreted to accommodate the development and deployment of automated vehicles in a way that maintains or improves traffic safety.]

(b) An automated-driving provider shall take reasonable steps to comply with [the state's rules of the road] during automated operation of an associated automated vehicle.

(c) An automated-driving provider is responsible for a violation of [the state's rules of the road] during automated operation of an associated automated vehicle.

(d) A violation of this subsection is a violation under [cite to the state's vehicle code]. A person may not operate an automated vehicle on a [road open to the public] if the vehicle is not:

- (1) properly maintained;
- (2) lawfully insured;
- (3) compliant with a registration requirement; or
- (4) fit to be operated.

(e) A provision of [the state's vehicle code] prohibiting unattended or abandoned vehicles does not apply to an automated vehicle under automated operation solely because an individual is not in or near the vehicle, unless the vehicle is not lawfully registered, poses a risk to public safety, or unreasonably obstructs other road users.

[(f) A child, individual who is incapacitated, or animal in an automated vehicle is not considered attended solely because the automated vehicle is under automated operation.]

(g) A provision of [the state's vehicle code] restricting the use of an electronic device in a vehicle, other than a device used to evade law enforcement, does not apply to an automated vehicle under automated operation.

[(h) A provision of [the state's vehicle code] imposing a minimum following distance

other than a reasonable and prudent distance does not apply to the automated operation of an automated vehicle.]

Legislative Note: *Because of Section 3(c), subsection (a) should be included only if the state's vehicle equipment requirements are not codified in the state's vehicle code.*

If the state merges this act with the state's vehicle code, this section should be merged into the provisions containing the rules of the road.

The phrase "the state's rules of the road" refers to state laws on the operation of motor vehicles.

The state may wish to compare and reconcile the language in subsection (d) with similar language already used in the state's vehicle code.

The state may wish to reconsider the laws referred to in subsection (f) in light of automated driving. States use different terms to describe duties and prohibitions relating to leaving a child, an individual who is incapacitated, or an animal unattended in a vehicle. The state should conform subsection (f) to the state's terms.

If the state merges this act with the state's vehicle code, the existing vehicle provisions addressed in subsections (e), (f), (g), and (h) can be directly amended.

If the state's vehicle code does not specify numerical minimums for following distance or following time, subsection (h) may be omitted.

Comment

This section of the Automated Operation of Vehicles Act clarifies how a state's rules of the road apply in the context of automated driving. With respect to automated driving providers, it establishes two important and complementary principles.

First, an automated driving provider must take reasonable steps to comply with the rules of the road during automated operation of an associated automated vehicle. This prospective principle requires an automated driving provider to act reasonably rather than to ensure absolute compliance with the rules of the road, particularly when absolute compliance may not be definable, achievable, or even desirable. It means, for example, that an automated driving provider does not necessarily violate the state's vehicle code merely by deploying an automated vehicle that is capable of crossing a double-yellow centerline or of momentarily exceeding a speed limit in the interest of safety. This is important because some rules of the road as written can be contradictory, inconsistent with expected practice, and tempered through enforcement discretion. An automated driving provider does not intend to violate these rules merely by declining to unequivocally foreclose the possibility of violation.

Second, notwithstanding the first principle, an automated driving provider is responsible for a violation of the rules of the road by an associated automated vehicle under automated operation. This retrospective principle merely recognizes that the automated driving provider is the legal driver in these circumstances and is therefore subject to corresponding sanctions under the state's

vehicle code. In other words, the automated driving provider should receive the speeding ticket when an associated automated vehicle under automated operation is caught speeding. At the same time, this section does not address the appropriate level of enforcement. It is expected that federal, state, and local authorities will continue to evaluate the role of various forms of automated enforcement (including self-reporting obligations) in improving road traffic safety.

Under this act, all of the rules of the road that apply to the human driver or operator of a conventional vehicle also apply to the automated driving provider of an associated automated vehicle under automated operation. In contrast, some approaches attempt a more granular application of these rules. For example, the Law Commission of England and Wales tentatively proposed that certain rules, including those related to roadworthiness, the use of child restraints, and post-crash conduct, should apply to a new category of “user-in-charge.” See Law Commission, Automated Vehicles: A joint preliminary consultation paper, lawcom.gov.uk/project/automated-vehicles. This thoughtful approach, however, could complicate a clean division between the established obligations of a human driver during conventional operation and the equivalent obligations of an automated driving provider during automated operation.

Subsection (d) makes explicit the power of road authorities to remove automated vehicles that may pose unreasonable risks to road safety. The language of this subsection is similar to more general language already included in the vehicle codes of some states.

Like the previous section, this section also clarifies how specific rules should be understood in the context of automated driving. Under subsection (e), an automated vehicle is not unattended or abandoned merely because it is unoccupied. Conversely, under bracketed subsection (f), a young child left alone in a vehicle is unattended even though that vehicle is under automated operation. However, each state may wish to resolve the policy questions of whether a child, incapacitated person, or pet should be able to use an automated vehicle without in-vehicle human supervision.

Finally, this section provides that a numerical minimal following-distance requirement does not apply to the automated operation of automated vehicles. These numerical minimums may be unnecessarily large for automated vehicles that react faster than human drivers. However, the common “reasonable and prudent” following-distance requirement continues to apply. This bracketed subsection (h) differs in scope from following-distance legislation enacted in some states to facilitate the platooning of vehicles, particularly commercial trucks, that use advanced technologies but may not necessarily qualify as automated vehicles.

SECTION 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Legislative Note: If the state merges this act with the state’s vehicle code, this section should be inserted into a new provision on automated driving generally.

[SECTION 11. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

***Legislative Note:** Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.*

If the state merges this act with the state's vehicle code, this section should be inserted into a new provision on automated driving generally.

SECTION 12. EFFECTIVE DATE. This [act] takes effect



SAE J3016™ LEVELS OF DRIVING AUTOMATION

	SAE LEVEL 0	SAE LEVEL 1	SAE LEVEL 2	SAE LEVEL 3	SAE LEVEL 4	SAE LEVEL 5
What does the human in the driver's seat have to do?	You <u>are</u> driving whenever these driver support features are engaged – even if your feet are off the pedals and you are not steering			You <u>are not</u> driving when these automated driving features are engaged – even if you are seated in “the driver's seat”		
	You must constantly supervise these support features; you must steer, brake or accelerate as needed to maintain safety			When the feature requests, you must drive	These automated driving features will not require you to take over driving	
What do these features do?	These are driver support features			These are automated driving features		
	These features are limited to providing warnings and momentary assistance	These features provide steering OR brake/acceleration support to the driver	These features provide steering AND brake/acceleration support to the driver	These features can drive the vehicle under limited conditions and will not operate unless all required conditions are met	This feature can drive the vehicle under all conditions	
	<ul style="list-style-type: none"> • automatic emergency braking • blind spot warning • lane departure warning 	<ul style="list-style-type: none"> • lane centering OR • adaptive cruise control 	<ul style="list-style-type: none"> • lane centering AND • adaptive cruise control at the same time 	<ul style="list-style-type: none"> • traffic jam chauffeur 	<ul style="list-style-type: none"> • local driverless taxi • pedals/steering wheel may or may not be installed 	<ul style="list-style-type: none"> • same as level 4, but feature can drive everywhere in all conditions
Example Features						

For a more complete description, please download a free copy of SAE J3016: https://www.sae.org/standards/content/J3016_201806/



THE UNIFORM AUTOMATED OPERATION OF VEHICLES ACT (2019)

- A Summary -

The Uniform Automated Operation of Vehicles Act addresses a narrow but foundational set of the many legal and policy issues raised by automated driving. The act covers the deployment of automated vehicles (colloquially referred to as autonomous, driverless, or self-driving) on roads held open to the public. This act does not cover automated vehicle testing, remote driving, or vehicles with features that merely assist a human driver.

The Society of Automotive Engineers (SAE) International published a report titled “J3016 Levels of Driving Automation” in 2016 to define six levels of driving automation and establish international engineering standards. The six levels of driving automation defined in J3016 have become the industry standard, and can be summarized as follows:

- **Level 0** – No Driving Automation
- **Level 1** – Driver Assistance (adaptive cruise control OR lane centering)
- **Level 2** – Partial Driving Automation (adaptive cruise control AND lane centering)
- **Level 3** – Conditional Driving Automation (traffic jam chauffeur – automated driving system can drive vehicle with the expectation that the human driver will be ready to respond to a request to intervene when issued by the automated driving system)
- **Level 4** – High Driving Automation (local driverless taxi, pedals/steering wheel may or may not be installed)
- **Level 5** – Full Automation (automated driving system can drive the vehicle everywhere in all conditions)

The Uniform Automated Operation of Vehicles Act only applies to vehicles that fall within SAE Levels 3 to 5 and leaves vehicles that fall within SAE Levels 0 to 2 to existing law. Despite the limited application, what the act does cover is still vast because automated driving encompasses a wide range of technologies, applications of those technologies, business models for those applications, and participants in those business models. In other words, because there are so many forms of automated driving, picturing and attempting to legislate for the singular “driverless car” can be both impractical and counterproductive.

This act attempts to reconcile automated driving with a typical state motor vehicle code. Many of the sections—including definitions, driver licensing, vehicle registration, equipment, and rules of the road—correspond to, refer to, and can be incorporated into existing sections of a typical vehicle code. However, because existing codes vary widely in both substance and structure, the work of carefully codifying this act is left to each state that adopts it.

This act also answers a foundational question about the deployment of automated vehicles – who is considered the “driver” when an automated vehicle is under automated operation? Under the Uniform Automated Operation of Vehicles Act, the “driver” in these situations is the automated driving provider (ADP).

Under this act, an automated driving provider declares itself to the state and designates the automated vehicles for which it will act as the legal driver. The ADP is not defined by a specific role in the stream of commerce but, rather, by a willingness to self-identify and an ability to meet the technical and legal requirements specified in the act. To encourage participation, the act requires an automated vehicle to be associated with an ADP before the vehicle can be registered in the state. In this way, the act uses the motor vehicle registration framework that already exists in states—and that applies to both conventional and automated vehicles—to incentivize self-identification by automated driving providers.

Fundamentally, this act is about the safe and responsible deployment of a revolutionary new technology. Automated vehicles have the potential to drastically reduce traffic fatalities while making motor vehicle travel more accessible to many different populations. Enacting the Uniform Automated Operation of Vehicles Act is the first step to ensuring that your state will be at the forefront of this technological revolution.

For further information about the UAOVA, please contact ULC Legislative Counsel Libby Snyder at lsnyder@uniformlaws.org or (312) 450-6619.



WHY YOUR STATE SHOULD ADOPT THE UNIFORM AUTOMATED OPERATION OF VEHICLES ACT (2019)

Automated vehicles have the potential to drastically reduce traffic fatalities and make motor vehicle travel more accessible. The Uniform Automated Operation of Vehicles Act (UAOVA) provides a technology neutral framework for the safe and responsible deployment of automated vehicles. Enacting the UAOVA is the first step to ensuring that your state will be at the forefront of this technological revolution.

- ***What does the act cover?*** The UAOVA applies to the deployment of automated vehicles (colloquially referred to as autonomous, driverless, or self-driving) on roads held open to the public. This act does not cover testing of aspirational automated vehicles for the purposes of research and development. It does not cover remote driving, in which a human drives a vehicle while outside of or far from it. And it does not cover vehicle features that merely assist a human driver; even if these features brake, steer, and accelerate, they are still designed with the expectation that a human driver will monitor the road.
- ***What types of vehicles does the act cover?*** The UAOVA applies to vehicles that fall within SAE Levels 3 to 5 as defined in the Society of Automotive Engineers (SAE) International report titled J3016 Levels of Driving Automation. Vehicles that fall within SAE Levels 0 to 2 do not fall within the scope of the UAOVA and will be subject to existing law in each state.
- ***Who is the legal driver when the automated vehicle is under automated operation?*** The legal driver when an automated vehicle is under automated operation will be the “automated driving provider” or “ADP”. Under UAOVA, an automated driving provider declares itself to the state and designates the automated vehicles for which it will act as the legal driver. This provider might be an automated driving system developer, a vehicle manufacturer, a data provider, a fleet operator, or another kind of market participant that has yet to emerge.
- ***How do I register an automated vehicle in a state that adopts UAOVA?*** Only an automated vehicle that is associated with an automated driving provider (ADP) may be registered. Once the automated vehicle has been associated with an ADP, the UAOVA adopts a state’s existing motor vehicle registration process. In this way, the act uses the motor vehicle registration framework that already exists in states—and that applies to both conventional and automated vehicles—to incentivize self-identification by automated driving providers. By harnessing an existing framework, the act also seeks to respect and empower state motor vehicle agencies.

- ***Do I need a driver's license to sit in the conventional driver's seat of an automated vehicle?*** It depends. An individual who takes a “completely automated trip” as defined in the act does not need a driver's license, even if the individual sits in the conventional driving position, turns on the vehicle, or performs other actions that may constitute driving in more conventional contexts. Conversely, because a state's existing vehicle code continues to apply, an individual who drives for part of a trip does need a driver's license, even if the individual relies on an automated driving system for a portion of the trip.
- ***Who gets the ticket if an automated vehicle is pulled over by a police officer for violating the rules of the road?*** It depends. An automated driving provider is responsible for a violation of the rules of the road by an associated automated vehicle under automated operation. If the associated automated vehicle under automated operation is pulled over for speeding, the ADP would receive the speeding ticket. If, however, the automated vehicle is not under automated operation when it is pulled over for speeding, the human driver would receive the speeding ticket.

For further information about the UAOVA, please contact ULC Legislative Counsel Libby Snyder at lsnyder@uniformlaws.org or (312) 450-6619.

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

DRAFT
10.9.19

DRAFT

LLS NO. 20-0421.01 Michael Dohr x4347

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Uniform Criminal Records Accuracy Act"

A BILL FOR AN ACT

101 CONCERNING CREATION OF THE "UNIFORM CRIMINAL RECORDS
102 ACCURACY ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Colorado Commission on Uniform State Laws. The bill imposes duties on governmental law enforcement agencies and courts that collect, store, and use criminal history records to ensure the accuracy of the criminal history record information. The bill provides that Colorado create a central repository and mandates that any criminal history record information be submitted to the central repository no later than 5 days

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

after the information is collected.

The bill requires the collection of biometric information, such as fingerprints, for purposes of identification when permitted or required by other law. The use of biometric information may help ensure more complete and accurate records.

The bill limits the dissemination of criminal history record information only as permitted by the bill or by other law. A dissemination log must be maintained to record all disclosures.

The bill gives individuals the right to see their criminal history record information. Individuals have the right to correct errors in their criminal history record information. The bill requires the creation and maintenance of a mistaken identity prevention registry. The mistaken identity prevention registry can give an individual whose name is similar to and confused with a person who is the subject of criminal history record information a certification to minimize the possibility of a mistaken arrest.

The bill establishes procedures for conducting periodic audits of criminal history record information. The bill includes remedies for enforcement for noncompliance.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** article 72.2 to
3 title 24 as follows:

4 **ARTICLE 72.2**

5 **Uniform Criminal Records Accuracy Act**

6 PART 1

7 GENERAL PROVISIONS

8 **24-72.2-101. Short title.** THIS ARTICLE 72.2 MAY BE CITED AS THE
9 "UNIFORM CRIMINAL RECORDS ACCURACY ACT".

10 **24-72.2-102. Definitions.** IN THIS ARTICLE 72.2:

11 (1) "ACCURATE CRIMINAL HISTORY RECORD INFORMATION" MEANS
12 CRIMINAL HISTORY RECORD INFORMATION THAT CORRECTLY REFLECTS
13 ALL REPORTABLE EVENTS RELATING TO A SUBJECT.

14 (2) "ADMINISTRATION OF CRIMINAL JUSTICE" MEANS DETECTION,

1 APPREHENSION, DETENTION, PRETRIAL RELEASE, POST-TRIAL RELEASE,
2 PROSECUTION, ADJUDICATION, CORRECTIONAL SUPERVISION, OR
3 REHABILITATION OF A SUBJECT. THE TERM INCLUDES CRIMINAL
4 IDENTIFICATION ACTIVITIES AND COLLECTION, STORAGE, MAINTENANCE,
5 SUBMISSION, AND DISSEMINATION OF CRIMINAL HISTORY RECORD
6 INFORMATION.

7 (3) "BIOMETRIC INFORMATION" MEANS FINGERPRINTS AND OTHER
8 UNIQUE BIOLOGICAL OR PHYSICAL CHARACTERISTICS OF AN INDIVIDUAL
9 THAT A CONTRIBUTING JUSTICE AGENCY IS REQUIRED OR PERMITTED BY
10 LAW OTHER THAN THIS ARTICLE 72.2 TO USE FOR IDENTIFICATION.

11 (4) "CENTRAL REPOSITORY" MEANS THE COLORADO BUREAU OF
12 INVESTIGATION.

13 (5) "CONTRIBUTING JUSTICE AGENCY" MEANS A COURT, POLITICAL
14 SUBDIVISION OR AGENT OF A POLITICAL SUBDIVISION, GOVERNING ENTITY
15 OF THIS STATE, OR ANY GOVERNMENTAL AGENCY DESIGNATED BY THE
16 COLORADO BUREAU OF INVESTIGATION THAT IS AUTHORIZED TO ENGAGE
17 IN THE ADMINISTRATION OF CRIMINAL JUSTICE. THE TERM DOES NOT
18 INCLUDE THE CENTRAL REPOSITORY.

19 (6) "CRIMINAL HISTORY RECORD INFORMATION" MEANS
20 INFORMATION, CONSISTING OF A DESCRIPTION OF A SUBJECT AND
21 NOTATION OF A REPORTABLE EVENT, COLLECTED, RECEIVED, STORED,
22 MAINTAINED, SUBMITTED, OR DISSEMINATED BY A CONTRIBUTING JUSTICE
23 AGENCY OR THE CENTRAL REPOSITORY. THE TERM INCLUDES BIOMETRIC
24 INFORMATION. THE TERM DOES NOT INCLUDE NONCRIMINAL HISTORY
25 RECORD INFORMATION.

26 (7) "DISSEMINATION" OR "DISSEMINATE" MEANS ORAL, WRITTEN,
27 OR ELECTRONIC TRANSMISSION OR OTHER DISCLOSURE OF CRIMINAL

1 HISTORY RECORD INFORMATION TO A PERSON OTHER THAN THE CENTRAL
2 REPOSITORY.

3 (8) "NONCRIMINAL HISTORY RECORD INFORMATION" MEANS
4 INFORMATION COLLECTED:

5 (a) AS A RESULT OF AN INQUIRY ABOUT AN ACTIVITY, HABIT,
6 PRACTICE, POSSESSION, ASSOCIATION, OR FINANCIAL STATUS OF AN
7 INDIVIDUAL; AND

8 (b) TO ANTICIPATE, PREVENT, MONITOR, OR INVESTIGATE
9 CRIMINAL ACTIVITY.

10 (9) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR
11 NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR
12 GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER
13 LEGAL ENTITY.

14 (10) "REPORTABLE EVENT" MEANS ANY OF THE FOLLOWING
15 RELATING TO A FELONY OR MISDEMEANOR, OTHER THAN A NONCRIMINAL
16 OFFENSE, PETTY OFFENSE, TRAFFIC VIOLATION, OR JUVENILE
17 ADJUDICATION:

18 (a) ARREST RESULTING IN BOOKING INTO A DETENTION FACILITY
19 OR COLLECTION OF BIOMETRIC INFORMATION;

20 (b) DISPOSITION AFTER AN ARREST DESCRIBED IN SUBSECTION
21 (10)(a) OF THIS SECTION WITHOUT INITIATION OF A CRIMINAL PROCEEDING;

22 (c) INITIATION OF A CRIMINAL PROCEEDING;

23 (d) DISPOSITION OF A CRIMINAL PROCEEDING, INCLUDING
24 DIVERSION, DISMISSAL, INDEFINITE POSTPONEMENT, ACQUITTAL, GUILTY
25 PLEA, CONVICTION, SENTENCING, MODIFICATION, REVERSAL, AND
26 REVOCATION OF THE DISPOSITION;

27 (e) COMMITMENT TO OR RELEASE FROM A PLACE OF DETENTION OR

1 CUSTODIAL SUPERVISION;

2 (f) COMMENCEMENT OR CONCLUSION OF NONCUSTODIAL
3 SUPERVISION;

4 (g) COMPLETION OF A SENTENCE;

5 (h) EXPUNGEMENT, SEALING, OR SETTING ASIDE OF CRIMINAL
6 HISTORY RECORD INFORMATION;

7 (i) GRANT OF CLEMENCY, INCLUDING PARDON OR COMMUTATION,
8 OR RESTORATION OF RIGHTS; OR

9 (j) FINDING OF LEGAL INCAPACITY BY A COURT AT ANY STAGE OF
10 A CRIMINAL PROCEEDING.

11 (11) "STATE" MEANS A STATE OF THE UNITED STATES, THE
12 DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN
13 ISLANDS, OR ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE
14 JURISDICTION OF THE UNITED STATES. THE TERM INCLUDES A FEDERALLY
15 RECOGNIZED INDIAN TRIBE.

16 (12) "SUBJECT" MEANS AN INDIVIDUAL ABOUT WHOM CRIMINAL
17 HISTORY RECORD INFORMATION IS COLLECTED, STORED, MAINTAINED,
18 SUBMITTED, OR DISSEMINATED AS REQUIRED OR PERMITTED BY THIS
19 ARTICLE 72.2 OR LAW OTHER THAN THIS ARTICLE 72.2.

20 **24-72.2-103. Public records.** EXCEPT AS OTHERWISE PROVIDED
21 BY LAW OTHER THAN THIS ARTICLE 72.2 OR COURT RULE OR ORDER, THE
22 COURT DOCKET, COURT FILE, AND INFORMATION CONTAINED IN A DOCKET
23 OR FILE ARE PUBLIC RECORDS.

24 **24-72.2-104. Dissemination log.** (1) A DISSEMINATION LOG
25 REQUIRED BY SECTION 24-72.2-205 OR 24-72.2-304 MUST INCLUDE EACH
26 CRIMINAL HISTORY RECORD INFORMATION REQUEST AND DISSEMINATION
27 TO A PERSON IDENTIFIABLE BY THE CONTRIBUTING JUSTICE AGENCY OR

1 CENTRAL REPOSITORY.

2 (2) A DISSEMINATION LOG REQUIRED BY SECTION 24-72.2-205 OR
3 24-72.2-304 MUST BE SEPARATE FROM NONCRIMINAL HISTORY RECORD
4 INFORMATION AND CRIMINAL HISTORY RECORD INFORMATION. THE LOG
5 MUST INCLUDE AT LEAST:

6 (a) THE NAME OF THE SUBJECT ABOUT WHOM CRIMINAL HISTORY
7 RECORD INFORMATION IS REQUESTED;

8 (b) THE NAME OF THE PERSON MAKING THE REQUEST AND THE
9 PERSON'S ASSOCIATED ADDRESS;

10 (c) THE NAME OF THE INDIVIDUAL MAKING THE DISSEMINATION;

11 (d) THE DATE OF THE REQUEST;

12 (e) THE DATE OF THE DISSEMINATION; AND

13 (f) A STATEMENT WHETHER THE INFORMATION WAS DISSEMINATED
14 FOR A PURPOSE OTHER THAN THE ADMINISTRATION OF CRIMINAL JUSTICE.

15 (3) A DISSEMINATION LOG REQUIRED BY SECTION 24-72.2-205 OR
16 24-72.2-304 IS AVAILABLE TO THE PUBLIC ONLY AS PROVIDED BY LAW
17 OTHER THAN THIS ARTICLE 72.2.

18 (4) AN ENTRY IN A DISSEMINATION LOG REQUIRED BY SECTION
19 24-72.2-205 OR 24-72.2-304 MUST BE MAINTAINED AS LONG AS THE
20 ASSOCIATED CRIMINAL HISTORY RECORD INFORMATION IS MAINTAINED.

21 **24-72.2-105. Establishment of procedures.** THE RULE-MAKING
22 REQUIREMENTS OF PART 1 OF ARTICLE 4 OF THIS TITLE 24 DO NOT APPLY
23 TO ESTABLISHMENT OF PROCEDURES UNDER THIS ARTICLE 72.2.

24 PART 2

25 CONTRIBUTING JUSTICE AGENCY

26 **24-72.2-201. Collection and submission of information to**
27 **central repository.** A CONTRIBUTING JUSTICE AGENCY THAT HAS

1 CUSTODY OF, OR CONTROL, AUTHORITY, OR JURISDICTION OVER, AN
2 INDIVIDUAL FOR A REPORTABLE EVENT SHALL COLLECT, STORE, AND
3 MAINTAIN CRIMINAL HISTORY RECORD INFORMATION ON THE EVENT. NOT
4 LATER THAN FIVE DAYS AFTER THE AGENCY COLLECTS THE INFORMATION,
5 THE AGENCY SHALL SUBMIT THE INFORMATION TO THE CENTRAL
6 REPOSITORY IN COMPLIANCE WITH PROCEDURES ESTABLISHED BY THE
7 CENTRAL REPOSITORY.

8 **24-72.2-202. Collection and submission of biometric**
9 **information.** (1) A CONTRIBUTING JUSTICE AGENCY THAT HAS CUSTODY
10 OF, OR CONTROL, AUTHORITY, OR JURISDICTION OVER, AN INDIVIDUAL AS
11 A RESULT OF THE INDIVIDUAL'S INVOLVEMENT IN A REPORTABLE EVENT
12 SHALL DETERMINE WHETHER BIOMETRIC INFORMATION ABOUT THE
13 INDIVIDUAL HAS BEEN COLLECTED AND SUBMITTED TO THE CENTRAL
14 REPOSITORY FOR THE EVENT. IF THE CONTRIBUTING JUSTICE AGENCY IS A
15 COURT, THE CONTRIBUTING JUSTICE AGENCY REPRESENTING THIS STATE
16 BEFORE THE COURT SHALL MAKE THE DETERMINATION AND REPORT THE
17 RESULTS OF ITS DETERMINATION TO THE COURT.

18 (2) IF A CONTRIBUTING JUSTICE AGENCY DETERMINES UNDER
19 SUBSECTION (1) OF THIS SECTION THAT BIOMETRIC INFORMATION HAS NOT
20 BEEN COLLECTED AND SUBMITTED TO THE CENTRAL REPOSITORY, THE
21 AGENCY, USING ANY PROCEDURE AVAILABLE TO IT UNDER LAW OTHER
22 THAN THIS ARTICLE 72.2, SHALL COLLECT THE MISSING BIOMETRIC
23 INFORMATION. NOT LATER THAN FIVE DAYS AFTER COLLECTION, THE
24 AGENCY SHALL SUBMIT THE INFORMATION TO THE CENTRAL REPOSITORY
25 IN COMPLIANCE WITH PROCEDURES ESTABLISHED BY THE CENTRAL
26 REPOSITORY.

27 **24-72.2-203. Accuracy and correction of information.** (1) A

1 CONTRIBUTING JUSTICE AGENCY SHALL COLLECT, STORE, MAINTAIN,
2 SUBMIT, AND DISSEMINATE ACCURATE CRIMINAL HISTORY RECORD
3 INFORMATION IN COMPLIANCE WITH PROCEDURES ESTABLISHED BY THE
4 CENTRAL REPOSITORY.

5 (2) NOT LATER THAN FOURTEEN DAYS AFTER A CONTRIBUTING
6 JUSTICE AGENCY DISCOVERS THAT IT POSSESSES INACCURATE CRIMINAL
7 HISTORY RECORD INFORMATION, THE AGENCY SHALL:

8 (a) CORRECT ITS RECORDS;

9 (b) NOTIFY THE CENTRAL REPOSITORY OF THE INACCURACY AND
10 CORRECTION; AND

11 (c) IF ANOTHER CONTRIBUTING JUSTICE AGENCY RECEIVED THE
12 INFORMATION UNDER SECTION 24-72.2-204 (2) WITHIN ONE YEAR BEFORE
13 THE DISCOVERY, NOTIFY THE AGENCY OF THE INACCURACY AND
14 CORRECTION.

15 **24-72.2-204. Dissemination of criminal history record**
16 **information.** (1) A CONTRIBUTING JUSTICE AGENCY MAY DISSEMINATE
17 CRIMINAL HISTORY RECORD INFORMATION ONLY AS REQUIRED OR
18 PERMITTED BY THIS ARTICLE 72.2 OR BY LAW OTHER THAN THIS ARTICLE
19 72.2.

20 (2) A CONTRIBUTING JUSTICE AGENCY MAY DISSEMINATE
21 CRIMINAL HISTORY RECORD INFORMATION TO ANOTHER CONTRIBUTING
22 JUSTICE AGENCY ON REQUEST OF THE OTHER AGENCY IN CONNECTION
23 WITH THE DUTIES OF THE REQUESTING AGENCY.

24 **24-72.2-205. Dissemination log of contributing justice agency.**
25 A CONTRIBUTING JUSTICE AGENCY SHALL CREATE, STORE, AND MAINTAIN
26 A DISSEMINATION LOG COMPLYING WITH SECTION 24-72.2-104. NOT LATER
27 THAN FOURTEEN DAYS AFTER THE AGENCY DISSEMINATES CRIMINAL

1 HISTORY RECORD INFORMATION, THE AGENCY SHALL ENTER THE
2 INFORMATION REQUIRED BY SECTION 24-72.2-104 IN THE DISSEMINATION
3 LOG.

4 PART 3

5 CENTRAL REPOSITORY

6 **24-72.2-301. Duty of central repository.** (1) THE CENTRAL
7 REPOSITORY SHALL RECEIVE, STORE, MAINTAIN, AND DISSEMINATE
8 CRIMINAL HISTORY RECORD INFORMATION REPORTED TO THE CENTRAL
9 REPOSITORY UNDER THIS ARTICLE 72.2.

10 (2) THE CENTRAL REPOSITORY MAY DISSEMINATE CRIMINAL
11 HISTORY RECORD INFORMATION ONLY AS REQUIRED OR PERMITTED BY THIS
12 ARTICLE 72.2 OR LAW OTHER THAN THIS ARTICLE 72.2.

13 (3) THE CENTRAL REPOSITORY SHALL RECEIVE, STORE, MAINTAIN,
14 AND DISSEMINATE ACCURATE CRIMINAL HISTORY RECORD INFORMATION
15 IN COMPLIANCE WITH PROCEDURES ESTABLISHED BY THE COLORADO
16 BUREAU OF INVESTIGATION UNDER SECTION 24-72.2-702.

17 (4) THE CENTRAL REPOSITORY SHALL ESTABLISH PROCEDURES TO
18 RESOLVE DATA CONFLICTS AND DISCOVER MISSING DATA FOR ACCURATE
19 CRIMINAL HISTORY RECORD INFORMATION.

20 **24-72.2-302. Dissemination of information to subject.** (1) NOT
21 LATER THAN FOURTEEN DAYS AFTER THE CENTRAL REPOSITORY RECEIVES
22 A REQUEST FROM A SUBJECT FOR THE SUBJECT'S CRIMINAL HISTORY
23 RECORD INFORMATION, THE CENTRAL REPOSITORY SHALL SEARCH ITS
24 RECORDS AND:

25 (a) IF THE SEARCH DISCLOSES CRIMINAL HISTORY RECORD
26 INFORMATION ABOUT THE SUBJECT, DISSEMINATE THE INFORMATION TO
27 THE SUBJECT; OR

1 (b) IF THE SEARCH DOES NOT DISCLOSE CRIMINAL HISTORY RECORD
2 INFORMATION ABOUT THE SUBJECT, NOTIFY THE SUBJECT OF THE FACT.

3 (2) CRIMINAL HISTORY RECORD INFORMATION DISSEMINATED
4 UNDER THIS SECTION MUST INCLUDE A CONSPICUOUS NOTICE THAT IT IS
5 PROVIDED FOR REVIEW BY THE SUBJECT AND MAY NOT BE RELIED ON OR
6 CONSIDERED CURRENT FOR USE BY ANOTHER PERSON.

7 **24-72.2-303. Dissemination of information to person**
8 **authorized by subject.** (1) A SUBJECT MAY AUTHORIZE ANOTHER
9 PERSON TO RECEIVE THE SUBJECT'S CRIMINAL HISTORY RECORD
10 INFORMATION FROM THE CENTRAL REPOSITORY.

11 (2) BEFORE THE CENTRAL REPOSITORY DISSEMINATES CRIMINAL
12 HISTORY RECORD INFORMATION UNDER SUBSECTION (1) OF THIS SECTION,
13 THE CENTRAL REPOSITORY SHALL DETERMINE WHETHER THE INFORMATION
14 CONTAINS:

15 (a) A DISPOSITION AFTER AN ARREST WITHOUT INITIATION OF A
16 CRIMINAL PROCEEDING; OR

17 (b) A DISPOSITION OF A CRIMINAL PROCEEDING, INCLUDING
18 DIVERSION, DISMISSAL, INDEFINITE POSTPONEMENT, ACQUITTAL, GUILTY
19 PLEA, CONVICTION, SENTENCING, MODIFICATION, REVERSAL, OR
20 REVOCATION OF THE DISPOSITION, FOR EVERY ARREST OR INITIATION OF A
21 CRIMINAL PROCEEDING.

22 (3) IF THE CENTRAL REPOSITORY DETERMINES UNDER SUBSECTION
23 (2) OF THIS SECTION THAT THE INFORMATION DOES NOT CONTAIN A
24 DISPOSITION, THE CENTRAL REPOSITORY SHALL ATTEMPT TO DETERMINE
25 THE DISPOSITION AND, IF THE CENTRAL REPOSITORY DETERMINES THE
26 DISPOSITION, INCLUDE THAT DISPOSITION IN:

27 (a) THE RELEVANT RECORDS MAINTAINED BY THE CENTRAL

1 REPOSITORY; AND

2 (b) THE INFORMATION TO BE DISSEMINATED.

3 (4) AFTER COMPLYING WITH SUBSECTION (3) OF THIS SECTION, AND
4 BEFORE THE CENTRAL REPOSITORY DISSEMINATES INFORMATION UNDER
5 THIS SECTION, THE CENTRAL REPOSITORY SHALL REMOVE FROM THE
6 INFORMATION TO BE DISSEMINATED ANY NOTATION OF AN ARREST OR
7 INITIATION OF CRIMINAL PROCEEDINGS IF:

8 (a) EIGHTEEN MONTHS HAVE ELAPSED SINCE THE LATER OF THE
9 DATE OF THE ARREST OR INITIATION OF CRIMINAL PROCEEDINGS;

10 (b) A DISPOSITION HAS NOT BEEN IDENTIFIED WITH RESPECT TO THE
11 ARREST;

12 (c) A WARRANT IS NOT OUTSTANDING WITH RESPECT TO THE
13 ARREST; AND

14 (d) A PROCEEDING IS NOT PENDING WITH RESPECT TO THE ARREST
15 THAT MAY RESULT IN A CONVICTION.

16 (5) SUBSECTION (4) OF THIS SECTION DOES NOT APPLY IF LAW
17 OTHER THAN THIS ARTICLE 72.2 REQUIRES THAT THE PERSON RECEIVE ALL
18 CRIMINAL HISTORY RECORD INFORMATION ABOUT THE SUBJECT.

19 (6) NOT LATER THAN FIVE DAYS AFTER THE CENTRAL REPOSITORY
20 DISSEMINATES INFORMATION UNDER THIS SECTION, THE CENTRAL
21 REPOSITORY SHALL SEND THE SAME INFORMATION TO THE SUBJECT, BASED
22 ON THE CONTACT INFORMATION PROVIDED BY THE PERSON REQUESTING
23 THE INFORMATION.

24 **24-72.2-304. Dissemination log of central repository.** THE
25 CENTRAL REPOSITORY SHALL CREATE, STORE, AND MAINTAIN A
26 DISSEMINATION LOG COMPLYING WITH SECTION 24-72.2-104. NOT LATER
27 THAN FOURTEEN DAYS AFTER THE CENTRAL REPOSITORY DISSEMINATES

1 CRIMINAL HISTORY RECORD INFORMATION, THE CENTRAL REPOSITORY
2 SHALL ENTER THE INFORMATION REQUIRED BY SECTION 24-72.2-104 IN
3 THE DISSEMINATION LOG.

4 **24-72.2-305. Correction of inaccurate information.** NOT LATER
5 THAN FOURTEEN DAYS AFTER THE CENTRAL REPOSITORY DETERMINES
6 THAT IT POSSESSES INACCURATE CRIMINAL HISTORY RECORD
7 INFORMATION, THE CENTRAL REPOSITORY SHALL FOLLOW THE
8 PROCEDURES IN SECTION 24-72.2-403 (1).

9 **24-72.2-306. Establishment of procedures.** (1) THE CENTRAL
10 REPOSITORY SHALL ESTABLISH PROCEDURES:

11 (a) NECESSARY TO CARRY OUT ITS POWERS AND DUTIES UNDER
12 THIS ARTICLE 72.2;

13 (b) FOR THE MANNER AND FORM IN WHICH A CONTRIBUTING
14 JUSTICE AGENCY COLLECTS, STORES, MAINTAINS, SUBMITS, AND
15 DISSEMINATES CRIMINAL HISTORY RECORD INFORMATION, INCLUDING
16 BIOMETRIC INFORMATION;

17 (c) TO ENSURE THAT ALL CRIMINAL HISTORY RECORD
18 INFORMATION FOR THE SAME SUBJECT IS LINKED; AND

19 (d) FOR REPORTING, EXCHANGING, AND SEEKING CORRECTION OF
20 CRIMINAL HISTORY RECORD INFORMATION UNDER THIS ARTICLE 72.2,
21 INCLUDING FORMS.

22 **24-72.2-307. Dissemination of information for statistical or**
23 **research purposes.** (1) CONSISTENT WITH LAW OF THIS STATE OTHER
24 THAN THIS ARTICLE 72.2 AND THE UNITED STATES, THE CENTRAL
25 REPOSITORY MAY:

26 (a) SUBJECT TO SUBSECTION (1)(b) OF THIS SECTION, DISSEMINATE
27 CRIMINAL HISTORY RECORD INFORMATION, INCLUDING PERSONALLY

1 IDENTIFIABLE INFORMATION, FOR A STATISTICAL OR RESEARCH PURPOSE;
2 AND

3 (b) LIMIT THE USE AND SUBSEQUENT DISSEMINATION OF
4 INFORMATION DISSEMINATED UNDER THIS SECTION AND THE PROCEDURES
5 ESTABLISHED BY THE CENTRAL REPOSITORY.

6 **24-72.2-308. Public information.** (1) THE CENTRAL REPOSITORY
7 SHALL INFORM THE PUBLIC OF THE EXISTENCE AND ACCESSIBILITY OF
8 CRIMINAL HISTORY RECORD INFORMATION COLLECTED, STORED,
9 MAINTAINED, AND DISSEMINATED BY CONTRIBUTING JUSTICE AGENCIES
10 AND THE CENTRAL REPOSITORY.

11 (2) THE CENTRAL REPOSITORY SHALL INFORM THE PUBLIC, AT
12 LEAST ANNUALLY, CONCERNING THE:

13 (a) EXTENT AND GENERAL NATURE OF CRIMINAL HISTORY RECORD
14 INFORMATION COLLECTED, STORED, MAINTAINED, AND DISSEMINATED IN
15 THIS STATE;

16 (b) NUMBER OF CORRECTIONS TO CRIMINAL HISTORY RECORD
17 INFORMATION MADE BY THE CENTRAL REPOSITORY;

18 (c) RESULTS OF AUDITS UNDER SECTION 24-72.2-602 AND THE
19 STATUS OF ANY CORRECTION OF DEFICIENCIES IDENTIFIED; AND

20 (d) REQUIREMENTS AND FORMS FOR A SUBJECT TO ACCESS,
21 REVIEW, AND SEEK CORRECTION OF CRIMINAL HISTORY RECORD
22 INFORMATION RECEIVED, STORED, OR MAINTAINED BY THE CENTRAL
23 REPOSITORY, INCLUDING THE RIGHT TO APPEAL AN ADVERSE
24 DETERMINATION.

25 **24-72.2-309. Training.** (1) THE CENTRAL REPOSITORY
26 REGULARLY SHALL PROVIDE TRAINING TO CONTRIBUTING JUSTICE
27 AGENCIES CONCERNING SUBMITTING INFORMATION ON A REPORTABLE

1 EVENT AND THE IMPORTANCE OF THE INFORMATION TO SUBJECTS, THE
2 PUBLIC, AND THE CRIMINAL JUSTICE SYSTEM.

3 (2) THE CENTRAL REPOSITORY PERIODICALLY SHALL IDENTIFY,
4 AND PROVIDE REMEDIAL TRAINING TO, ANY CONTRIBUTING JUSTICE
5 AGENCY THAT DOES NOT MEET THE REQUIREMENTS OF THIS ARTICLE 72.2.

6 PART 4

7 CORRECTION OF CRIMINAL HISTORY

8 RECORD INFORMATION

9 **24-72.2-401. Request to correct.** A SUBJECT MAY SEEK
10 CORRECTION OF CRIMINAL HISTORY RECORD INFORMATION BY SENDING
11 THE CONTRIBUTING JUSTICE AGENCY STORING THE INFORMATION OR THE
12 CENTRAL REPOSITORY A REQUEST FOR CORRECTION, SPECIFYING THE
13 INFORMATION ALLEGED TO BE INACCURATE AND PROVIDING THE
14 ALLEGEDLY CORRECT INFORMATION. A CONTRIBUTING JUSTICE AGENCY
15 THAT RECEIVES THE REQUEST SHALL INFORM THE SUBJECT THAT ONLY THE
16 CENTRAL REPOSITORY CAN ACT ON THE SUBJECT'S REQUEST AND THAT THE
17 CONTRIBUTING JUSTICE AGENCY SHALL FORWARD THE REQUEST TO THE
18 CENTRAL REPOSITORY. NOT LATER THAN FIVE DAYS AFTER RECEIVING THE
19 REQUEST, THE CONTRIBUTING JUSTICE AGENCY SHALL FORWARD TO THE
20 CENTRAL REPOSITORY THE REQUEST AND ANY CRIMINAL HISTORY RECORD
21 INFORMATION RELATING TO THE SUBJECT.

22 **24-72.2-402. Review of request.** (1) NOT LATER THAN FORTY
23 DAYS AFTER RECEIPT OF A REQUEST UNDER SECTION 24-72.2-401, THE
24 CENTRAL REPOSITORY SHALL REVIEW AND APPROVE OR DENY THE
25 REQUEST. THE DIRECTOR OF THE CENTRAL REPOSITORY MAY EXTEND THE
26 TIME TO REVIEW AND ACT ON THE REQUEST FOR UP TO TWENTY-ONE DAYS
27 IF THE DIRECTOR CERTIFIES THAT THERE IS GOOD CAUSE FOR AN

1 EXTENSION AND NOTIFIES THE SUBJECT. THE EXTENSION MAY NOT BE
2 RENEWED UNLESS THE SUBJECT AGREES.

3 (2) IF THE CENTRAL REPOSITORY DOES NOT ACT WITHIN THE
4 PERIOD PROVIDED IN SUBSECTION (1) OF THIS SECTION, THE REQUEST IS
5 DEEMED DENIED.

6 (3) SECTION 24-4-106 GOVERNS REVIEW OF ACTION OR NONACTION
7 BY THE CENTRAL REPOSITORY CONCERNING A REQUEST UNDER SECTION
8 24-72.2-401. NOTWITHSTANDING SECTION 24-4-106, IF THE REQUEST IS
9 DEEMED DENIED UNDER SUBSECTION (2) OF THIS SECTION, THE CENTRAL
10 REPOSITORY HAS THE BURDEN OF PROOF IN A SUBSEQUENT REVIEW.

11 **24-72.2-403. Correction of record.** (1) IF THE CENTRAL
12 REPOSITORY APPROVES A REQUEST UNDER SECTION 24-72.2-401, NOT
13 LATER THAN FOURTEEN DAYS AFTER THE DECISION UNDER SECTION
14 24-72.2-402 BECOMES FINAL AND NOT SUBJECT TO APPEAL, THE CENTRAL
15 REPOSITORY SHALL:

16 (a) CORRECT ITS RECORDS;

17 (b) DISSEMINATE NOTICE OF THE INACCURACY AND CORRECTION
18 TO THE SUBJECT AND EACH PERSON TO WHOM THE CENTRAL REPOSITORY
19 DISSEMINATED INACCURATE INFORMATION FOR A PURPOSE OF
20 ADMINISTRATION OF CRIMINAL JUSTICE WITHIN ONE YEAR BEFORE THE
21 DATE OF APPROVAL OF THE CORRECTION;

22 (c) NOTIFY THE CONTRIBUTING JUSTICE AGENCY THAT PROVIDED
23 THE INACCURATE INFORMATION OF THE INACCURACY AND CORRECTION;

24 AND

25 (d) ON REQUEST OF THE SUBJECT:

26 (I) DISSEMINATE NOTICE OF THE INACCURACY AND CORRECTION
27 TO EACH PERSON THE SUBJECT IDENTIFIES AS HAVING RECEIVED THE

1 INACCURATE INFORMATION UNDER SECTION 24-72.2-303; AND

2 (II) PROVIDE THE SUBJECT AT NO COST ONE CERTIFIED COPY OF
3 THE ACCURATE INFORMATION.

4 PART 5

5 MISTAKEN IDENTITY PREVENTION REGISTRY

6 **24-72.2-501. Creation and maintenance of registry.** (1) THE
7 CENTRAL REPOSITORY SHALL CREATE AND MAINTAIN A MISTAKEN
8 IDENTITY PREVENTION REGISTRY:

9 (a) CONSISTING OF INFORMATION VOLUNTARILY PROVIDED BY:

10 (I) A VICTIM OF MISTAKEN IDENTITY; OR

11 (II) AN INDIVIDUAL WHOSE NAME OR OTHER IDENTIFYING
12 CHARACTERISTIC IS SIMILAR TO THAT OF ANOTHER INDIVIDUAL WHO IS THE
13 SUBJECT OF CRIMINAL HISTORY RECORD INFORMATION; AND

14 (b) DESIGNED TO PREVENT:

15 (I) CREATION OF INACCURATE CRIMINAL HISTORY RECORD
16 INFORMATION;

17 (II) INACCURATE MODIFICATION OF CRIMINAL HISTORY RECORD
18 INFORMATION;

19 (III) MISTAKEN ARREST; AND

20 (IV) CONFUSION OF AN INDIVIDUAL WITH ANOTHER INDIVIDUAL
21 WHEN CRIMINAL HISTORY RECORD INFORMATION IS SEARCHED.

22 **24-72.2-502. Requirements for registry.** (1) THE CENTRAL
23 REPOSITORY SHALL ESTABLISH PROCEDURES FOR ENTRY OF INFORMATION
24 CONCERNING AN INDIVIDUAL IN THE MISTAKEN IDENTITY PREVENTION
25 REGISTRY. THE PROCEDURES MUST REQUIRE:

26 (a) SUBMISSION BY THE INDIVIDUAL OF A REQUEST TO BE ENTERED
27 IN THE REGISTRY; AND

1 (b) COLLECTION OF BIOMETRIC INFORMATION FROM THE
2 INDIVIDUAL.

3 (2) USING THE PROCEDURES UNDER SUBSECTION (1) OF THIS
4 SECTION, THE CENTRAL REPOSITORY SHALL DETERMINE WHETHER THE
5 INDIVIDUAL HAS A NAME OR OTHER IDENTIFYING CHARACTERISTIC SIMILAR
6 TO THAT OF ANOTHER INDIVIDUAL WHO IS THE SUBJECT OF CRIMINAL
7 HISTORY RECORD INFORMATION. IF THE CENTRAL REPOSITORY
8 DETERMINES THE INDIVIDUAL DOES HAVE SUCH A NAME OR
9 CHARACTERISTIC, THE CENTRAL REPOSITORY SHALL ENTER THE
10 INFORMATION CONCERNING THE INDIVIDUAL IN THE MISTAKEN IDENTITY
11 PREVENTION REGISTRY. IF THE CENTRAL REPOSITORY DETERMINES THE
12 INDIVIDUAL DOES NOT HAVE SUCH A NAME OR CHARACTERISTIC, THE
13 INDIVIDUAL MAY SEEK RELIEF UNDER SECTION 24-4-106.

14 **24-72.2-503. Certification.** NOT LATER THAN FOURTEEN DAYS
15 AFTER ENTERING INFORMATION CONCERNING AN INDIVIDUAL IN THE
16 MISTAKEN IDENTITY PREVENTION REGISTRY UNDER SECTION 24-72.2-502,
17 THE CENTRAL REPOSITORY SHALL PROVIDE THE INDIVIDUAL A
18 CERTIFICATION THAT THE INDIVIDUAL IS NOT A SPECIFIED INDIVIDUAL
19 WITH A SIMILAR NAME OR IDENTIFYING CHARACTERISTIC WHO IS THE
20 SUBJECT OF CRIMINAL HISTORY RECORD INFORMATION. THE
21 CERTIFICATION IS PRIMA FACIE EVIDENCE OF THE FACTS CERTIFIED. A
22 PERSON MAY RELY ON THE ACCURACY OF THE INFORMATION IN THE
23 CERTIFICATION.

24 **24-72.2-504. Dissemination of registry information.** (1) THE
25 CENTRAL REPOSITORY MAY NOT USE OR DISSEMINATE INFORMATION FROM
26 THE MISTAKEN IDENTITY PREVENTION REGISTRY, EXCEPT AS PROVIDED IN
27 THIS ARTICLE 72.2.

1 (2) THE CENTRAL REPOSITORY SHALL DISSEMINATE INFORMATION
2 FROM THE MISTAKEN IDENTITY PREVENTION REGISTRY TO A
3 CONTRIBUTING JUSTICE AGENCY IF THE CENTRAL REPOSITORY HAS REASON
4 TO BELIEVE THAT IDENTIFYING INFORMATION ON A REPORTABLE EVENT
5 MAY BE INACCURATE OR INCORRECTLY ASSOCIATED WITH AN INDIVIDUAL.

6 (3) THE CENTRAL REPOSITORY MAY DISSEMINATE INFORMATION
7 FROM THE MISTAKEN IDENTITY PREVENTION REGISTRY TO A NATIONAL
8 MISTAKEN IDENTITY PREVENTION REGISTRY IF THE NATIONAL REGISTRY IS
9 CREATED AND MAINTAINED BY A FEDERAL LAW ENFORCEMENT AGENCY
10 WITH A PURPOSE AND PROTECTIONS SIMILAR TO THE REGISTRY CREATED
11 IN THIS ARTICLE 72.2.

12 **24-72.2-505. Verification of identity.** IF A CONTRIBUTING JUSTICE
13 AGENCY SEEKS TO ESTABLISH THE IDENTITY OF AN INDIVIDUAL AND THE
14 INDIVIDUAL PRESENTS A CERTIFICATION ISSUED UNDER SECTION
15 24-72.2-503, THE AGENCY SHALL ACCEPT THE CERTIFICATION OF THE
16 INDIVIDUAL'S IDENTITY UNLESS THE AGENCY HAS A REASONABLE BASIS TO
17 DOUBT THE INDIVIDUAL'S IDENTITY OR THE AUTHENTICITY OF THE
18 CERTIFICATION, IN WHICH CASE THE AGENCY SHALL CONTACT THE
19 CENTRAL REPOSITORY TO VERIFY THE AUTHENTICITY OF THE
20 CERTIFICATION USING PROCEDURES ESTABLISHED BY THE CENTRAL
21 REPOSITORY.

22 **24-72.2-506. Limitation on use of registry information.** (1) A
23 CONTRIBUTING JUSTICE AGENCY AND THE CENTRAL REPOSITORY MAY
24 ACCESS OR USE INFORMATION FROM THE MISTAKEN IDENTITY PREVENTION
25 REGISTRY ONLY TO:

26 (a) IDENTIFY ACCURATELY AN INDIVIDUAL ABOUT WHOM THE
27 AGENCY HAS REQUESTED OR RECEIVED REGISTRY INFORMATION; OR

1 (b) INVESTIGATE, PROSECUTE, OR ADJUDICATE AN INDIVIDUAL FOR
2 AN OFFENSE RELATING TO PARTICIPATING IN, USING, OR OPERATING THE
3 REGISTRY.

4 (2) IF INFORMATION IN THE MISTAKEN IDENTITY PREVENTION
5 REGISTRY IS ACCESSED OR USED FOR A PURPOSE OTHER THAN PERMITTED
6 UNDER SUBSECTION (1) OF THIS SECTION:

7 (a) THE INFORMATION AND ANY INFORMATION ACQUIRED AS A
8 RESULT OF THE IMPROPER ACCESS OR USE IS NOT ADMISSIBLE IN ANY
9 CRIMINAL OR CIVIL ACTION; AND

10 (b) THE CENTRAL REPOSITORY SHALL NOTIFY THE INDIVIDUAL
11 WHOSE INFORMATION WAS ACCESSED OR USED IMPROPERLY NOT LATER
12 THAN FIVE DAYS AFTER IT DISCOVERS THE ACCESS OR USE.

13 **24-72.2-507. Removal of information from registry.** (1) THE
14 CENTRAL REPOSITORY SHALL ESTABLISH PROCEDURES REGARDING A
15 REQUEST TO REMOVE INFORMATION FROM THE MISTAKEN IDENTITY
16 PREVENTION REGISTRY.

17 (2) NOT LATER THAN FOURTEEN DAYS AFTER RECEIVING A
18 REQUEST COMPLYING WITH PROCEDURES ESTABLISHED UNDER
19 SUBSECTION (1) OF THIS SECTION FROM AN INDIVIDUAL FOR REMOVAL OF
20 INFORMATION THE INDIVIDUAL VOLUNTARILY SUBMITTED UNDER SECTION
21 24-72.2-502 (1), THE CENTRAL REPOSITORY SHALL REMOVE THE
22 INFORMATION FROM THE MISTAKEN IDENTITY PREVENTION REGISTRY.

23 PART 6

24 SYSTEMS SECURITY AND AUDIT

25 **24-72.2-601. Security requirements.** (1) TO PROMOTE THE
26 CONFIDENTIALITY AND SECURITY OF CRIMINAL HISTORY RECORD
27 INFORMATION COLLECTED, RECEIVED, STORED, MAINTAINED, SUBMITTED,

1 AND DISSEMINATED UNDER THIS ARTICLE 72.2, THE CENTRAL REPOSITORY
2 SHALL ESTABLISH PROCEDURES TO:

- 3 (a) PROTECT INFORMATION FROM LOSS OR DAMAGE;
- 4 (b) ALLOW ONLY AN AUTHORIZED PERSON ACCESS TO THE
5 INFORMATION;
- 6 (c) SELECT, SUPERVISE, AND TRAIN INDIVIDUALS AUTHORIZED TO
7 ACCESS THE INFORMATION;
- 8 (d) IF COMPUTERIZED DATA PROCESSING IS USED, MEET THE
9 TECHNICAL GUIDANCE FOR THE SECURITY OF SYSTEMS ESTABLISHED BY
10 THE COLORADO BUREAU OF INVESTIGATION; AND
- 11 (e) MAINTAIN AN INDEX OF EACH DATA BREACH.

12 **24-72.2-602. Audit.** (1) THE STATE AUDITOR SHALL CAUSE AN
13 AUDIT TO BE CONDUCTED ANNUALLY OF A SAMPLE OF CONTRIBUTING
14 JUSTICE AGENCIES AND AT LEAST ONCE EVERY THREE YEARS OF THE
15 CENTRAL REPOSITORY.

16 (2) IF THE STATE AUDITOR CERTIFIES THAT AN AUDIT REQUIRED BY
17 AN ENTITY OF THE UNITED STATES SATISFIES THE REQUIREMENTS OF THIS
18 SECTION, AN ADDITIONAL AUDIT IS NOT REQUIRED OF THE CENTRAL
19 REPOSITORY OR CONTRIBUTING JUSTICE AGENCY SUBJECT TO THE AUDIT.

20 (3) AN AUDIT UNDER THIS SECTION MUST:

- 21 (a) ASSESS OPERATIONAL PRACTICES OF THE CENTRAL REPOSITORY
22 FOR CONSISTENCY, EFFICIENCY, AND SECURITY;
- 23 (b) ASSESS THE INTEGRITY OF EACH COMPUTERIZED SYSTEM AND
24 DATABASE AND EACH PHYSICAL LOCATION WHERE CRIMINAL HISTORY
25 RECORD INFORMATION IS STORED;
- 26 (c) ASSESS ANY DATA BREACH IN THE CENTRAL REPOSITORY AND
27 THE RESPONSE TO THE BREACH; AND

1 (d) REVIEW A REPRESENTATIVE SAMPLE OF CRIMINAL HISTORY
2 RECORD INFORMATION STORED BY A CONTRIBUTING JUSTICE AGENCY OR
3 THE CENTRAL REPOSITORY AND DETERMINE THE NUMBER OF MISSING
4 REPORTABLE EVENTS AND AMOUNT AND NATURE OF MISSING BIOMETRIC
5 INFORMATION IN THE SAMPLE, IN PART BY EXAMINING PUBLIC RECORDS OF
6 THE COURTS OF THIS STATE.

7 (4) A CONTRIBUTING JUSTICE AGENCY AND THE CENTRAL
8 REPOSITORY SHALL GIVE THE STATE AUDITOR ACCESS TO THE RECORDS,
9 REPORTS, LISTINGS, AND INFORMATION REQUIRED TO CONDUCT AN AUDIT
10 UNDER THIS SECTION. AN OFFICER, EMPLOYEE, OR CONTRACTOR OF THIS
11 STATE OR A POLITICAL SUBDIVISION OF THIS STATE WITH RELEVANT
12 INFORMATION SHALL COOPERATE WITH THE STATE AUDITOR AND PROVIDE
13 INFORMATION REQUESTED FOR AN AUDIT.

14 (5) THE STATE AUDITOR SHALL PREPARE AND MAKE AVAILABLE A
15 PUBLIC REPORT CONTAINING THE RESULTS OF AUDITS UNDER THIS SECTION
16 AND A LIST OF ANY DEFICIENCIES AND RECOMMENDATIONS FOR
17 CORRECTION OF DEFICIENCIES.

18 PART 7

19 ENFORCEMENT AND IMPLEMENTATION

20 **24-72.2-701. Remedies.** (1) THE COLORADO BUREAU OF
21 INVESTIGATION, THE CENTRAL REPOSITORY, OR A SUBJECT, IN ADDITION TO
22 OTHER REMEDIES PROVIDED BY THIS ARTICLE 72.2 AND LAW OTHER THAN
23 THIS ARTICLE 72.2, MAY COMMENCE AN ACTION TO COMPEL COMPLIANCE
24 WITH OR ENJOIN A VIOLATION OF THIS ARTICLE 72.2. THE COURT MAY
25 AWARD TO A SUBJECT WHO PREVAILS IN THE ACTION REASONABLE FEES
26 AND EXPENSES OF ATTORNEYS AND COURT COSTS.

27 (2) A SUBJECT HAS A CAUSE OF ACTION FOR AN INTENTIONAL OR

1 RECKLESS VIOLATION OF THIS ARTICLE 72.2 OR PROCEDURES ESTABLISHED
2 UNDER THIS ARTICLE 72.2. THIS SUBSECTION (2) DOES NOT AFFECT OTHER
3 REMEDIES AS PROVIDED BY THIS ARTICLE 72.2 OR LAW OTHER THAN THIS
4 ARTICLE 72.2. IF THE COURT FINDS BY A PREPONDERANCE OF THE
5 EVIDENCE THAT THE SUBJECT WAS INJURED BY AN INTENTIONAL OR
6 RECKLESS VIOLATION, THE COURT SHALL AWARD:

7 (a) THE GREATER OF:

8 (I) ACTUAL DAMAGES; OR

9 (II) FIVE HUNDRED DOLLARS FOR EACH VIOLATION UP TO TWO
10 THOUSAND DOLLARS IN THE ACTION; AND

11 (b) REASONABLE FEES AND EXPENSES OF ATTORNEYS AND COURT
12 COSTS.

13 **24-72.2-702. Duties and authority of the Colorado bureau of**
14 **investigation.** (1) THE COLORADO BUREAU OF INVESTIGATION SHALL
15 ESTABLISH PROCEDURES TO IMPLEMENT THIS ARTICLE 72.2. THE
16 PROCEDURES MUST INCLUDE PROVISIONS THAT:

17 (a) GOVERN THE ACCURACY, DISSEMINATION, AND REVIEW OF,
18 AND INDIVIDUAL ACCESS TO, CRIMINAL HISTORY RECORD INFORMATION;

19 (b) ELECTRONIC DATA, INCLUDING BIOMETRIC INFORMATION,
20 MUST BE STORED IN A MANNER THAT COMPLIES WITH THE PROCEDURES
21 ESTABLISHED UNDER SECTION 24-72.2-601;

22 (c) ESTABLISH TECHNICAL GUIDANCE FOR THE SECURITY OF
23 SYSTEMS DESCRIBED IN SUBSECTIONS (1)(a) AND (1)(b) OF THIS SECTION;
24 AND

25 (d) SET A REASONABLE MAXIMUM FEE FOR THE COST OF
26 DISSEMINATING CRIMINAL HISTORY RECORD INFORMATION AND PROVIDE
27 A SUBJECT FREE ACCESS TO THE SUBJECT'S INFORMATION AT LEAST ONCE

1 EACH CALENDAR YEAR.

2 (2) THE COLORADO BUREAU OF INVESTIGATION MAY DESIGNATE
3 ANY GOVERNMENTAL AGENCY, OTHER THAN THE CENTRAL REPOSITORY OR
4 A COURT, AS A CONTRIBUTING JUSTICE AGENCY.

5 (3) THE COLORADO BUREAU OF INVESTIGATION MAY INVESTIGATE
6 ANY MATTER RELATING TO THE ADMINISTRATION AND ENFORCEMENT OF
7 THIS ARTICLE 72.2.

8 PART 8

9 MISCELLANEOUS PROVISIONS

10 **24-72.2-801. Uniformity of application and construction.** IN
11 APPLYING AND CONSTRUING THIS ARTICLE 72.2, CONSIDERATION MUST BE
12 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
13 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

14 **24-72.2-802. Transitional provision.** SECTIONS 24-72.2-203,
15 24-72.2-305, 24-72.2-401, 24-72.2-402, AND 24-72.2-403 APPLY TO
16 CRIMINAL HISTORY RECORD INFORMATION THAT IS IN EXISTENCE BEFORE,
17 ON, OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE 72.2 REGARDLESS OF
18 THE DATE THE INFORMATION WAS CREATED OR WHEN THE REPORTABLE
19 EVENT OCCURRED.

20 **24-72.2-803. Severability.** IF ANY PROVISION OF THIS ARTICLE
21 72.2 OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS HELD
22 INVALID, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OR
23 APPLICATIONS OF THIS ARTICLE 72.2, WHICH CAN BE GIVEN EFFECT
24 WITHOUT THE INVALID PROVISION OR APPLICATION, AND TO THIS END THE
25 PROVISIONS OF THIS ARTICLE 72.2 ARE SEVERABLE.

26 <*Do you want a safety clause or petition clause?*>

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

DRAFT
10.10.19

DRAFT

LLS NO. 20-0422.01 Jerry Barry x4341

COMMITTEE BILL

Colorado Commission on Uniform State Laws

BILL TOPIC: "Registration Of Canadian Money Judgments Act"

A BILL FOR AN ACT

101 **CONCERNING THE "UNIFORM REGISTRATION OF CANADIAN MONEY**
102 **JUDGMENTS ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Colorado Commission on Uniform State Laws. The bill enacts the "Uniform Registration of Canadian Money Judgments Act" as an alternative to the current "Uniform Foreign-country Judgments Registration Act".

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

1 ARTICLE 62.3.

2 **13-62.3-104. Registration of Canadian judgment.** (1) A PERSON
3 SEEKING RECOGNITION OF A CANADIAN JUDGMENT TO ENFORCE THE
4 JUDGMENT MAY REGISTER THE JUDGMENT IN THE OFFICE OF THE CLERK OF
5 A COURT IN WHICH AN ACTION FOR RECOGNITION OF THE JUDGMENT COULD
6 BE FILED UNDER SECTION 13-62-106.

7 (2) A REGISTRATION UNDER SUBSECTION (1) OF THIS SECTION
8 MUST BE EXECUTED BY THE PERSON REGISTERING THE JUDGMENT OR THE
9 PERSON'S ATTORNEY AND INCLUDE:

10 (a) A COPY OF THE CANADIAN JUDGMENT AUTHENTICATED AS
11 ACCURATE BY THE COURT THAT ENTERED THE JUDGMENT;

12 (b) THE NAME AND ADDRESS OF THE PERSON REGISTERING THE
13 JUDGMENT;

14 (c) IF THE PERSON REGISTERING THE JUDGMENT IS NOT THE PERSON
15 IN WHOSE FAVOR THE JUDGMENT WAS RENDERED, A STATEMENT
16 DESCRIBING THE INTEREST IN THE JUDGMENT OF THE PERSON REGISTERING
17 THE JUDGMENT THAT ENTITLES THE PERSON TO SEEK ITS RECOGNITION
18 AND ENFORCEMENT;

19 (d) THE NAME AND LAST-KNOWN ADDRESS OF THE PERSON
20 AGAINST WHOM THE JUDGMENT IS BEING REGISTERED;

21 (e) IF THE JUDGMENT IS OF THE TYPE DESCRIBED IN SECTION
22 13-62.3-103 (2) OR (3), A DESCRIPTION OF THE PART OF THE JUDGMENT
23 BEING REGISTERED;

24 (f) THE AMOUNT OF THE JUDGMENT OR PART OF THE JUDGMENT
25 BEING REGISTERED, IDENTIFYING:

26 (I) THE AMOUNT OF INTEREST ACCRUED AS OF THE DATE OF
27 REGISTRATION ON THE JUDGMENT OR PART OF THE JUDGMENT BEING

1 REGISTERED, INCLUDING THE RATE OF INTEREST, THE PART OF THE
2 JUDGMENT TO WHICH INTEREST APPLIES, AND THE DATE WHEN INTEREST
3 BEGAN;

4 (II) COSTS AND EXPENSES INCLUDED IN THE JUDGMENT OR PART OF
5 THE JUDGMENT BEING REGISTERED, OTHER THAN AN AMOUNT AWARDED
6 FOR ATTORNEY'S FEES; AND

7 (III) THE AMOUNT OF AN AWARD OF ATTORNEY'S FEES INCLUDED
8 IN THE JUDGMENT OR PART OF THE JUDGMENT BEING REGISTERED;

9 (g) THE AMOUNT OF POST-JUDGMENT COSTS, EXPENSES, AND
10 ATTORNEY'S FEES AS OF THE DATE OF REGISTRATION CLAIMED BY THE
11 PERSON REGISTERING THE JUDGMENT OR PART OF THE JUDGMENT;

12 (h) THE AMOUNT OF THE JUDGMENT OR PART OF THE JUDGMENT
13 BEING REGISTERED THAT HAS BEEN SATISFIED AS OF THE DATE OF
14 REGISTRATION;

15 (i) A STATEMENT THAT:

16 (I) THE JUDGMENT IS FINAL, CONCLUSIVE, AND ENFORCEABLE
17 UNDER THE LAW OF THE CANADIAN JURISDICTION IN WHICH IT WAS
18 RENDERED;

19 (II) THE JUDGMENT OR PART OF THE JUDGMENT BEING REGISTERED
20 IS WITHIN THE SCOPE OF THIS ARTICLE 62.3; AND

21 (III) IF A PART OF THE JUDGMENT IS BEING REGISTERED, THE
22 AMOUNTS STATED IN THE REGISTRATION AS REQUIRED BY SUBSECTIONS
23 (2)(f), (2)(g), AND (2)(h) OF THIS SECTION RELATE TO THE PART;

24 (j) IF THE JUDGMENT IS NOT IN ENGLISH, A CERTIFIED
25 TRANSLATION OF THE JUDGMENT INTO ENGLISH; AND

26 (k) THE DOCKET FEE STATED IN SECTION 13-53-106.

27 (3) ON RECEIPT OF A REGISTRATION THAT INCLUDES THE

1 DOCUMENTS, INFORMATION, AND DOCKET FEE REQUIRED BY SUBSECTION
2 (2) OF THIS SECTION, THE CLERK SHALL FILE THE REGISTRATION, ASSIGN A
3 DOCKET NUMBER, AND ENTER THE CANADIAN JUDGMENT IN THE COURT'S
4 DOCKET.

5 (4) A REGISTRATION SUBSTANTIALLY IN THE FOLLOWING FORM,
6 WHICH INCLUDES THE ATTACHMENTS SPECIFIED IN THE FORM, COMPLIES
7 WITH THE REQUIREMENTS UNDER SUBSECTION (2) OF THIS SECTION FOR
8 REGISTRATION:

9 **REGISTRATION OF CANADIAN MONEY JUDGMENT**

10 **THIS COMPLETED FORM, TOGETHER WITH THE DOCUMENTS REQUIRED**
11 **BY SUBPART V, SHOULD BE FILED WITH THE CLERK OF THE DISTRICT**
12 **COURT. WHEN STATING A SUM OF MONEY, IDENTIFY THE CURRENCY IN**
13 **WHICH THE SUM IS STATED.**

14 **I. IDENTIFICATION OF CANADIAN JUDGMENT**

15 CANADIAN COURT RENDERING THE JUDGMENT:

16 _____

17 CASE/DOCKET NUMBER IN CANADIAN COURT: _____

18 NAME OF PLAINTIFF: _____

19 NAME OF DEFENDANT: _____

20 THE CANADIAN COURT ENTERED THE JUDGMENT ON _____ [DATE] IN
21 _____ [CITY] IN _____ [PROVINCE OR TERRITORY].

22 THE JUDGMENT INCLUDES AN AWARD FOR THE PAYMENT OF MONEY IN
23 FAVOR OF _____ IN THE AMOUNT OF _____.

24 IF ONLY PART OF THE CANADIAN JUDGMENT IS SUBJECT TO REGISTRATION
25 (SEE SECTIONS 13-62.3-103 (2) AND (3), COLORADO REVISED STATUTES),
26 DESCRIBE THE PART OF THE JUDGMENT BEING REGISTERED.
27 _____.

1 **II. IDENTIFICATION OF PERSON REGISTERING JUDGMENT AND**
2 **PERSON AGAINST WHOM JUDGMENT IS BEING REGISTERED**

3 NAME OF PERSON REGISTERING JUDGMENT:
4 _____. IF THE PERSON REGISTERING THE
5 JUDGMENT IS NOT THE PERSON IN WHOSE FAVOR THE JUDGMENT WAS
6 RENDERED, DESCRIBE THE INTEREST IN THE JUDGMENT OF THE PERSON
7 REGISTERING THE JUDGMENT THAT ENTITLES THE PERSON TO SEEK ITS
8 RECOGNITION AND ENFORCEMENT. _____

9 ADDRESS: _____

10 ADDITIONAL CONTACT INFORMATION FOR PERSON REGISTERING
11 JUDGMENT (OPTIONAL):

12 TELEPHONE NUMBER: _____ FAX NUMBER: _____

13 E-MAIL ADDRESS: _____

14 NAME OF ATTORNEY FOR PERSON REGISTERING JUDGMENT, IF ANY:
15 _____

16 ADDRESS: _____

17 TELEPHONE NUMBER: _____ FAX NUMBER: _____

18 E-MAIL ADDRESS: _____

19 NAME OF PERSON AGAINST WHOM JUDGMENT IS BEING REGISTERED:
20 _____

21 ADDRESS: _____ (PROVIDE THE
22 MOST RECENT ADDRESS KNOWN)

23 ADDITIONAL CONTACT INFORMATION FOR PERSON AGAINST WHOM
24 JUDGMENT IS BEING REGISTERED (OPTIONAL) (PROVIDE MOST RECENT
25 INFORMATION KNOWN):

26 TELEPHONE NUMBER: _____ FAX NUMBER:

27 _____

1 E-MAIL ADDRESS: _____

2 **III. CALCULATION OF AMOUNT FOR WHICH ENFORCEMENT IS**
3 **SOUGHT**

4 THE AMOUNT OF THE CANADIAN JUDGMENT OR PART OF THE JUDGMENT
5 BEING REGISTERED IS _____.

6 THE AMOUNT OF INTEREST ACCRUED AS OF THE DATE OF REGISTRATION ON
7 THE PART OF THE JUDGMENT BEING REGISTERED IS
8 _____ . THE APPLICABLE RATE OF INTEREST IS
9 _____ . THE DATE WHEN INTEREST BEGAN IS _____ . THE
10 PART OF THE JUDGMENT TO WHICH THE INTEREST APPLIES IS
11 _____ .

12 THE CANADIAN COURT AWARDED COSTS AND EXPENSES RELATING TO THE
13 PART OF THE JUDGMENT BEING REGISTERED IN THE AMOUNT OF
14 _____ (EXCLUDE ANY AMOUNT INCLUDED IN THE AWARD OF
15 COSTS AND EXPENSES THAT REPRESENTS AN AWARD OF ATTORNEY'S FEES).

16 THE CANADIAN COURT AWARDED ATTORNEY'S FEES RELATING TO THE
17 PART OF THE JUDGMENT BEING REGISTERED IN THE AMOUNT OF
18 _____ .

19 THE PERSON REGISTERING THE CANADIAN JUDGMENT CLAIMS
20 POST-JUDGMENT COSTS AND EXPENSES OF _____ AND
21 POST-JUDGMENT ATTORNEY'S FEES OF _____ RELATING TO THE
22 PART OF THE JUDGMENT BEING REGISTERED (INCLUDE ONLY COSTS,
23 EXPENSES, AND ATTORNEY'S FEES INCURRED BEFORE REGISTRATION).

24 THE AMOUNT OF THE PART OF THE JUDGMENT BEING REGISTERED THAT
25 HAS BEEN SATISFIED AS OF THE DATE OF REGISTRATION IS
26 _____ .

27 THE TOTAL AMOUNT FOR WHICH ENFORCEMENT OF THE PART OF THE

1 JUDGMENT BEING REGISTERED IS SOUGHT IS _____.

2 **IV. STATEMENT OF PERSON REGISTERING JUDGMENT**

3 I, _____ [PERSON REGISTERING JUDGMENT OR ATTORNEY
4 FOR PERSON REGISTERING JUDGMENT], STATE:

5 1. THE CANADIAN JUDGMENT IS FINAL, CONCLUSIVE, AND
6 ENFORCEABLE UNDER THE LAW OF THE CANADIAN JURISDICTION IN WHICH
7 IT WAS RENDERED.

8 2. THE CANADIAN JUDGMENT OR PART OF THE CANADIAN
9 JUDGMENT BEING REGISTERED IS WITHIN THE SCOPE OF ARTICLE 62.3 OF
10 TITLE 13, COLORADO REVISED STATUTES.

11 3. IF ONLY A PART OF THE CANADIAN JUDGMENT IS BEING
12 REGISTERED, THE AMOUNTS STATED IN SUBPART III OF THE REGISTRATION
13 RELATE TO THAT PART.

14 **V. ITEMS REQUIRED TO BE INCLUDED WITH REGISTRATION**

15 ATTACHED ARE (CHECK TO SIGNIFY REQUIRED ITEMS ARE INCLUDED):

16 _____ A COPY OF THE CANADIAN JUDGMENT AUTHENTICATED AS
17 ACCURATE BY THE CANADIAN COURT THAT ENTERED THE JUDGMENT IN
18 ACCORDANCE WITH SECTION 13-53-103, COLORADO REVISED STATUTES.

19 _____ IF THE CANADIAN JUDGMENT IS NOT IN ENGLISH, A CERTIFIED
20 TRANSLATION OF THE JUDGMENT INTO ENGLISH.

21 _____ A DOCKET FEE IN THE AMOUNT OF \$201.00.

22 I DECLARE THAT THE INFORMATION PROVIDED ON THIS FORM IS
23 TRUE AND CORRECT, EXCEPT AS TO MATTERS STATED TO BE ON
24 INFORMATION AND BELIEF AND, AS TO THOSE MATTERS, I BELIEVE THEM
25 TO BE TRUE.

26 SUBMITTED BY: _____

27 PERSON REGISTERING JUDGMENT OR

1 ATTORNEY FOR PERSON REGISTERING
2 JUDGMENT (SPECIFY WHETHER SIGNER IS THE
3 PERSON REGISTERING THE JUDGMENT OR
4 THAT PERSON'S ATTORNEY)

5 DATE OF SUBMISSION: _____

6 **13-62.3-105. Effect of registration.** (1) SUBJECT TO SUBSECTION
7 (2) OF THIS SECTION, A CANADIAN JUDGMENT REGISTERED UNDER SECTION
8 13-62.3-104 HAS THE SAME EFFECT PROVIDED IN SECTION 13-62-107 FOR
9 A JUDGMENT DETERMINED BY A COURT TO BE ENTITLED TO RECOGNITION.

10 (2) A CANADIAN JUDGMENT REGISTERED UNDER SECTION
11 13-62.3-104 MAY NOT BE ENFORCED BY SALE OR OTHER DISPOSITION OF
12 PROPERTY, OR BY SEIZURE OF PROPERTY OR GARNISHMENT, UNTIL
13 THIRTY-FIVE CALENDAR DAYS AFTER SERVICE OF NOTICE OF REGISTRATION
14 UNDER SECTION 13-62.3-106. THE COURT FOR CAUSE MAY PROVIDE FOR
15 A SHORTER OR LONGER TIME. THIS SUBSECTION (2) DOES NOT PRECLUDE
16 USE OF RELIEF AVAILABLE UNDER LAW OF THIS STATE OTHER THAN THIS
17 ARTICLE 62.3 TO PREVENT DISSIPATION, DISPOSITION, OR REMOVAL OF
18 PROPERTY.

19 **13-62.3-106. Notice of registration.** (1) A PERSON THAT
20 REGISTERS A CANADIAN JUDGMENT UNDER SECTION 13-62.3-104 SHALL
21 CAUSE NOTICE OF REGISTRATION TO BE SERVED ON THE PERSON AGAINST
22 WHOM THE JUDGMENT HAS BEEN REGISTERED.

23 (2) NOTICE UNDER THIS SECTION MUST BE SERVED IN THE SAME
24 MANNER THAT A SUMMONS AND COMPLAINT MUST BE SERVED IN AN
25 ACTION UNDER SECTION 13-62-106 SEEKING RECOGNITION OF A
26 FOREIGN-COUNTRY JUDGMENT.

27 (3) NOTICE UNDER THIS SECTION MUST INCLUDE:

1 (a) THE DATE OF REGISTRATION AND COURT IN WHICH THE
2 JUDGMENT WAS REGISTERED;

3 (b) THE DOCKET NUMBER ASSIGNED TO THE REGISTRATION;

4 (c) THE NAME AND ADDRESS OF:

5 (I) THE PERSON REGISTERING THE JUDGMENT; AND

6 (II) THE PERSON'S ATTORNEY, IF ANY;

7 (d) A COPY OF THE REGISTRATION, INCLUDING THE DOCUMENTS
8 REQUIRED UNDER SECTION 13-62.3-104 (2); AND

9 (e) A STATEMENT THAT:

10 (I) THE PERSON AGAINST WHOM THE JUDGMENT HAS BEEN
11 REGISTERED HAS THIRTY-FIVE DAYS AFTER THE DATE OF SERVICE OF
12 NOTICE IN WHICH TO PETITION THE COURT TO VACATE THE REGISTRATION;
13 AND

14 (II) THE COURT FOR CAUSE MAY PROVIDE FOR A SHORTER OR
15 LONGER TIME.

16 (4) PROOF OF SERVICE OF NOTICE UNDER THIS SECTION MUST BE
17 FILED WITH THE CLERK OF THE COURT.

18 **13-62.3-107. Petition to vacate registration.** (1) NOT LATER
19 THAN THIRTY-FIVE DAYS AFTER NOTICE UNDER SECTION 13-62.3-106 IS
20 SERVED, THE PERSON AGAINST WHOM THE JUDGMENT WAS REGISTERED
21 MAY PETITION THE COURT TO VACATE THE REGISTRATION. THE COURT FOR
22 CAUSE MAY PROVIDE FOR A SHORTER OR LONGER TIME.

23 (2) A PETITION UNDER THIS SECTION MAY ASSERT ONLY:

24 (a) A GROUND THAT COULD BE ASSERTED TO DENY RECOGNITION
25 OF THE JUDGMENT UNDER THE "UNIFORM FOREIGN-COUNTRY MONEY
26 JUDGMENTS RECOGNITION ACT", ARTICLE 62 OF THIS TITLE 13; OR

27 (b) A FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS

1 ARTICLE 62.3 FOR REGISTRATION OF THE JUDGMENT.

2 (3) A PETITION UNDER THIS SECTION DOES NOT ITSELF STAY
3 ENFORCEMENT OF THE REGISTERED JUDGMENT.

4 (4) IF THE COURT GRANTS A PETITION UNDER THIS SECTION, THE
5 REGISTRATION IS VACATED AND ANY ACT UNDER THE REGISTRATION TO
6 ENFORCE THE REGISTERED JUDGMENT IS VOID.

7 (5) IF THE COURT GRANTS A PETITION UNDER THIS SECTION ON A
8 GROUND UNDER SUBSECTION (2)(a) OF THIS SECTION, THE COURT ALSO
9 SHALL RENDER AN ORDER DENYING RECOGNITION OF THE CANADIAN
10 JUDGMENT. AN ORDER RENDERED UNDER THIS SUBSECTION (5) HAS THE
11 SAME EFFECT AS A ORDER DENYING RECOGNITION TO A JUDGMENT ON THE
12 SAME GROUND UNDER THE "UNIFORM FOREIGN-COUNTRY MONEY
13 JUDGMENTS RECOGNITION ACT", ARTICLE 62 OF THIS TITLE 13.

14 **13-62.3-108. Stay of enforcement proceedings.** A PERSON THAT
15 FILES A PETITION UNDER SECTION 13-62.3-107 (1) TO VACATE
16 REGISTRATION OF A CANADIAN JUDGMENT MAY REQUEST THE COURT TO
17 STAY ENFORCEMENT OF THE JUDGMENT PENDING DETERMINATION OF THE
18 PETITION. THE COURT SHALL GRANT THE STAY IF THE COURT DETERMINES
19 THAT THE PERSON HAS ESTABLISHED A LIKELIHOOD OF SUCCESS ON THE
20 MERITS WITH REGARD TO A GROUND UNDER SECTION 13-62.3-107 (2) FOR
21 VACATING A REGISTRATION. THE COURT MAY REQUIRE THE PERSON TO
22 PROVIDE SECURITY IN AN AMOUNT DETERMINED BY THE COURT.

23 **13-62.3-109. Relationship to "Uniform Foreign-country**
24 **Money Judgments Recognition Act".** (1) THIS ARTICLE 62.3
25 SUPPLEMENTS THE "UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS
26 RECOGNITION ACT", ARTICLE 62 OF THIS TITLE 13, AND THAT ACT, OTHER
27 THAN SECTION 13-62-106, APPLIES TO A REGISTRATION UNDER THIS

1 ARTICLE 62.3.

2 (2) A PERSON MAY SEEK RECOGNITION OF A CANADIAN JUDGMENT
3 EITHER:

4 (a) BY REGISTRATION UNDER THIS ARTICLE 62.3; OR

5 (b) AS PROVIDED UNDER SECTION 13-62-106.

6 (3) SUBJECT TO SUBSECTION (4) OF THIS SECTION, A PERSON MAY
7 NOT SEEK RECOGNITION IN THIS STATE OF THE SAME JUDGMENT OR PART
8 OF A JUDGMENT DESCRIBED IN SECTION 13-62.3-103 (2) OR (3) WITH
9 REGARD TO THE SAME PERSON UNDER BOTH THIS ARTICLE 62.3 AND
10 SECTION 13-62-106.

11 (4) IF THE COURT GRANTS A PETITION TO VACATE A REGISTRATION
12 SOLELY ON A GROUND UNDER SECTION 13-62.3-107 (2)(b), THE PERSON
13 SEEKING REGISTRATION MAY:

14 (a) IF THE DEFECT IN THE REGISTRATION IS ONE THAT CAN BE
15 CURED, FILE A NEW REGISTRATION UNDER THIS ARTICLE 62.3; OR

16 (b) SEEK RECOGNITION OF THE JUDGMENT UNDER SECTION
17 13-62-106.

18 **13-62.3-110. Uniformity of application and interpretation.** IN
19 APPLYING AND CONSTRUING THIS UNIFORM ACT, CONSIDERATION MUST BE
20 GIVEN TO THE NEED TO PROMOTE UNIFORMITY OF THE LAW WITH RESPECT
21 TO ITS SUBJECT MATTER AMONG STATES THAT ENACT IT.

22 **13-62.3-111. Transitional provision.** THIS ARTICLE 62.3 APPLIES
23 TO THE REGISTRATION OF A CANADIAN JUDGMENT ENTERED IN A
24 PROCEEDING COMMENCED IN CANADA ON OR AFTER THE EFFECTIVE DATE
25 OF THIS ARTICLE 62.3.

26 **13-62.3-112. Effective date.** THIS ARTICLE 62.3 TAKES EFFECT
27 _____. <{*When do you want this act to take effect?*}>