

COMMISSION ON UNIFORM STATE LAWS

The North Dakota Commission on Uniform State Laws was established to promote uniformity in state laws on subjects on which uniformity is deemed desirable and practicable among the states.

North Dakota Century Code Section 54-55-01 specifies the membership of the commission. Members appointed by the Governor are David J. Hogue, Minot (who is engaged in the practice of law); Judge Gail H. Hagerty, Bismarck (who is a law-trained judge of a court of record); Bradley Myers, University of North Dakota School of Law (who is a full-time member of the faculty); and Candace M. Zierdt, Stetson University College of Law, Gulfport, Florida, and William E. Kretschmar, Ventura (who previously have been appointed to at least five years of service on the commission). The members appointed by the Legislative Management are Representative Lawrence R. Klemin, Bismarck (a member of the House), and Senator Dave Nething, Jamestown (a member of the Senate). The member appointed by the Legislative Management chairman is Jay E. Buringrud, Bismarck (a member of the Legislative Council staff, but who also is a life member of the national conference). Owen L. Anderson, Binford (currently at the University of Oklahoma College of Law, Norman, Oklahoma), is a member of the commission due to his status as a life member of the national conference.

The commission chairman is William E. Kretschmar, and the commission secretary is Jay E. Buringrud.

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

History of the National Conference

In 1889 the New York Bar Association appointed a special committee on uniformity of laws. In 1890 the New York Legislature authorized the appointment of commissioners to examine subjects of national importance which seemed to show conflict among the laws of the states and to determine whether it would be advisable to invite the other states to send representatives to a convention to draft uniform laws to be submitted for approval and adoption of the several states. In 1890 the American Bar Association passed a resolution recommending that each state provide for commissioners to confer with the commissioners of other states on the subject of uniformity of legislation on certain subjects. In August 1892 the first National Conference of Commissioners on Uniform State Laws convened. By 1912 every state was participating in the national conference.

North Dakota has participated in the national conference since 1893.

Operation of the National Conference

As it has developed in its 121 years, the national conference is a confederation of state interests. It arose out of the concerns of state government for the

improvement of the law and for better interstate relationships. Its sole purpose is service to state governments and improvement of state laws.

The national conference is convened once a year. It meets for a period of eight days, usually in late July or early August. During the interim between annual meetings, drafting committees composed of commissioners meet to work on the drafts that are considered at the annual meeting. At each national conference, the work of the drafting committees is read and debated. No Act becomes officially recognized as a uniform Act until the national conference is satisfied that the Act is ready for consideration by state legislatures. The Act is then put to a vote of the members from all of the states in attendance, during which each state's commissioners vote as a unit.

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

A small staff located in Chicago operates the office of the national conference. The office handles meeting arrangements, publications, legislative liaison, and general administration for the national conference.

The national conference maintains relations with several organizations. Official liaison is maintained with the American Bar Association, the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures. Liaison and activities may be conducted with other associations as interests and activities necessitate.

Current Projects of the National Conference 2012-13 Drafting Committees

The Executive Committee of the national conference appoints each drafting committee, with a directive to draft a proposal for a uniform law on the subject assigned to the committee. The Executive Committee selects subjects upon which uniformity is desirable and practicable, primarily based on recommendations of study committees. Drafting committees may be assigned to draft new uniform Acts, revise existing uniform Acts, or prepare amendments to existing uniform Acts. Drafting committees continue from appointment through final adoption of a uniform Act by the national conference, which may take several years. Current drafting committees are:

- Appointment and Powers of Real Estate Receivers.
- Athlete Agents Act.
- Family Law Arbitration.
- Fiduciary Access to Digital Assets.
- Fraudulent Transfer Act.

- Hague Convention on Protection of Children.
- Interjurisdictional Recognition of Advance Planning Documents.
- Powers of Appointment.
- Prevention of and Remedies for Human Trafficking.
- Recognition and Enforcement of Canadian Domestic Violence Protection Orders.
- Residential Landlord and Tenant Act.
- Real Estate Mortgage Foreclosure Process and Protections.
- Series of Unincorporated Business Entities.
- Trust Decanting.

2012-13 Study Committees

The Committee on Scope and Program recommends to the Executive Committee areas of study for potential drafting projects. As a result of a study committee's recommendation, a drafting committee may be appointed to prepare a draft for consideration of the national conference. Current study committees are:

- Article 36 of the Vienna Convention on Consular Relations.
- Criminal Records Accuracy and Access.
- Portability and Recognition of Professional and Occupational License of Military Spouses.
- Tribal Legislation on Probate Transfer of Interests in Real Property.
- Trust Protector Act.
- Unclaimed Property Act Amendments.
- Veterans Court Act.
- Wage Garnishment.

ACTIVITIES OF THE NORTH DAKOTA COMMISSION

Members

Jay E. Buringrud is a member of the Committee of Legislative Attorneys.

Gail H. Hagerty is chairman of Division C of the conference, chairman of the Study Committee on Recognition and Enforcement of Foreign Domestic Violence Protections Orders, a member of the Study Committee on an Eyewitness Identification Procedures, a member of the Committee on Liaison with American Indian Tribes and Nations, and a member of the Standby Committee to Amend the Uniform Interstate Family Support Act.

Lawrence R. Klemin is a member of the Study Committee on Wage Garnishment, a member of the Standby Committee on a Uniform Manufactured Housing Act, and a member of the Standby Committee to Revise the Uniform Law on Notarial Acts.

William E. Kretschmar is the North Dakota liaison member of the Legislative Committee.

Bradley Myers is a member of the Study Committee on Trust Decanting, a member of the Joint Drafting Committee with the Uniform Law Conference of Canada on Interjurisdictional Recognition of Advance Planning Documents, and a member of the Standby Committee on Uniform Deployed Parents Custody and Visitation Act.

Candace M. Zierdt is a member of the Standby Committee to Revise the Uniform Law on Notarial Acts and a member of the Committee on Liaison with American Indian Tribes and Nations.

Meetings of the Commission

The North Dakota Commission on Uniform State Laws meets during the national conference to review activities, handle administrative matters, and determine whether to recommend legislative action regarding uniform Acts.

120th National Conference (2011)

The commissioners attended the 120th national conference (2011) in Vail, Colorado. The national conference recommended:

1. The Uniform Certificate of Title Act for Vessels.
2. The Model Protection of Charitable Assets Act.
3. Amendments to the Uniform Debt Management Services Act.
4. The Harmonized Uniform Business Organizations Code.

121st National Conference (2012)

The commissioners attended the 121st national conference (2012) in Nashville, Tennessee. The national conference recommended:

1. The Uniform Asset Freezing Orders Act.
2. The Uniform Choice of Court Agreements Convention Implementation Act.
3. The Uniform Deployed Parents Custody and Visitation Act.
4. The Uniform Manufactured Housing Act.
5. The Uniform Premarital and Marital Agreements Act.

Considerations of the Commission

Generally, the commission reviews uniform Acts under consideration by the national conference and amendments to uniform Acts that have been enacted in North Dakota. As a means to maintain the currency of uniform Acts enacted in North Dakota, the commission has followed a policy of recommending amendments to those Acts which have been recommended by the national conference. Under the constitution of the national conference, the Executive Committee can approve amendments, which are deemed approved by the national conference unless a commissioner files an objection. Generally, amendments approved by the Executive Committee cure technical errors. In limited instances the Executive Committee recommends substantive changes, which the committee describes fully when giving notice to the commissioners and the opportunity to object at the national conference.

The national conference has identified 16 "target Acts" that states are encouraged to enact so as to complete adoption by most if not all states. Eight of the Acts have not been adopted in North Dakota--Certificate of Title for Vessels; Collaborative Rules/Law; Uniform Commercial Code Article 4A Amendment; Electronic Legal Material Act; Foreign Country Money Judgments Recognition; Interstate Depositions and Discovery;

Limited Liability Company; and Real Property Electronic Recording.

Recommendations to Legislative Management

The commission is authorized by Section 54-55-04 to submit its recommendations for enactment of uniform and model laws to the Legislative Management for review and recommendation. Under Section 54-35-02, the Legislative Management is to receive, review, and make recommendations on uniform and model laws recommended to it by the commission. During the 2011-12 interim, the Legislative Management delegated its responsibility under that section to the interim Judiciary Committee.

At its annual meetings in July 2011 and 2012, the commission determined its recommendations. The commission presented eight recommendations to the interim Judiciary Committee in August 2012--Uniform Commercial Code Article 4A Amendment; Uniform Premarital and Marital Agreements Act; Uniform Electronic Legal Material Act; Uniform Deployed Parents Custody and Visitation Act; Uniform Asset Freezing Order Act; Uniform Certificate of Title for Vessels Act; Model Protection of Charitable Assets Act; and Uniform Collaborative Rules/Law Act.

Recommendations to 63rd Legislative Assembly

The commission introduced five recommendations to the 63rd Legislative Assembly under Joint Rule 208, which allows executive agencies to file bills for introduction by the appropriate standing committee of the House or Senate:

1. **Amendment to Uniform Commercial Code Article 4A (4A-108), with an emergency clause (House Bill No. 1127).** This amendment would have addressed a void in coverage of remittance transfers (wire funds transfers from the United States to friends, family members, or businesses in foreign countries) caused by congressional enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which amended the Federal Electronic Funds Transfer Act. Congress delayed the effective date of the federal Act to February 2013 to give the states time to amend their Uniform Commercial Code Article 4A statutes. The amendment provided that state law would apply to a remittance transfer unless the transfer is an electronic funds transfer under the federal Act. The importance of this amendment resulted in its designation as a "target Act" by the national conference in 2012.

Minnesota, South Dakota, and Montana, and eight other states, have enacted this amendment; and the amendment was introduced in 23 legislatures in 2013.

The bill failed to pass the Senate on March 22, 2013.

2. **Uniform Premarital and Marital Agreements Act (House Bill No. 1128).** This Act addresses the varying standards on both types of

agreements that have led to conflicting laws, judgments, and uncertainty about enforcement as couples move from state to state. The national conference approved this Act in 2012.

Before final passage, the Legislative Assembly amended the bill to require a marital agreement created pursuant to the Act to be signed within the first 120 days of marriage. The Legislative Assembly approved the bill on April 23, 2013.

3. **Uniform Electronic Legal Material Act (House Bill No. 1129).** This Act provides the guidelines for a state that decides to publish certain legal materials online and no longer in tangible (book) format. This Act was approved by the national conference in 2011.

In addition, prior to introduction, this Act was revised to declare the version of laws published by the Legislative Council as the official version of North Dakota laws. The bill puts into statute Joint Rule 604 "[a]s published by the Legislative Council, the legislative documents, whether in electronic or print format, are the correct copies, deemed to be officially published."

The Legislative Assembly approved the bill on March 25, 2013.

4. **Uniform Deployed Parents Custody and Visitation Act (Senate Bill No. 2122).** This Act facilitates expeditious and fair disposition of cases involving the custody rights of a member of the military. The Act promotes a just balance of interests--protecting the rights of the servicemember, the other parent, and the best interests of the children involved. The national conference approved the Act in 2012.

The Legislative Assembly approved the bill on March 14, 2013.

5. **Uniform Asset-Freezing Orders Act (Senate Bill No. 2123).** This Act would have created a uniform process for issuing asset-freezing orders (orders freezing the assets of a defendant) and imposing collateral restraint on nonparties such as the defendant's bank, in order to preserve assets from dissipation, pending judgment. The national conference approved this Act in 2012.

North Dakota would have been the first state to enact the Act, but the bill failed to pass the Senate on February 15, 2013.

Proposed Studies

In addition to bills recommended by the commission, the legislative members of the commission introduced House Concurrent Resolution No. 3004, which would have directed the Legislative Management to study the Uniform Certificate of Title for Vessels Act. This Act would facilitate vessel financing because security interest perfected under the Act would receive the status of a preferred ship mortgage under federal law. The national conference approved this Act in 2012. Because any burden on the Game and Fish Department or the Department of Transportation resulting from

implementation of the Act is unknown, an interim study of this Act by the Legislative Management during the 2013-14 interim was proposed.

The resolution failed to pass the Senate on March 26, 2013.

Before passage, House Bill No. 1128 was amended to include a proposed Legislative Management study of marriage, including the positive influence of marriage on society, children, and government spending, and the use of and the need for marital agreements in the state.