

# 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 Jacob T. Rodenbiker (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); Candace M. Zierdt, Stetson University College of Law, Gulfport, Florida; and William E. Kretschmar, Ventura; and David E. Nething, Jamestown (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 David J. Hogue, Minot (a member of the Senate). The member appointed by the Legislative Management Chairman is Timothy J. Dawson, Bismarck (a member of the Legislative Council staff). The members by reason of being life members are Owen L. Anderson, Bismarck (currently at the University of Oklahoma College of Law, Norman, Oklahoma) and Jay E. Buringrud, Bismarck.

The commission Chairman is William E. Kretschmar, and the acting commission secretary is Timothy J. Dawson.

During the 2015 legislative session, Senate Bill No. 2177 was enacted and provides that the Attorney General may appoint a member of the commission and the term may not extend beyond the term of the Attorney General. The bill is effective August 1, 2015.

## 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**

### **2014-15 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 for the:

- Athlete Agents Act.
- Commercial Real Estate Receiverships Act.
- Criminal Records Accuracy.
- Divided Trusteeship.
- Family Law Arbitration.
- Guardianship and Protective Proceedings Act.
- Home Foreclosure Procedures Act.
- Non-Parental Rights to Child Custody and Visitation.
- Recognition and Enforcement of Canadian Domestic Violence Protection Orders.
- Residential Landlord and Tenant Act.
- Revise the Uniform Unclaimed Property Act.
- Series of Unincorporated Business Entities.
- Social Media Privacy.
- Tribal Probate Code.
- Trust Decanting.
- Unsworn Domestic Declarations.
- Wage Garnishment Act.
- Model Veterans' Court Act.
- Model Tribal Secured Transaction Act.

### **2014-15 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:

- Alternative and Mobile Payment Systems.
- Amendments to the Uniform Parentage Act.
- Computer Database Retrieval System for Land Records.
- Enforcement of Child Custody and Child Support Orders.
- Model Veterans' Court Act.
- Registration of Foreign Judgments.
- State Regulation of Driverless Cars.
- Transfer and Recording of Consumer Debt.
- Bad Faith Patent Litigation.
- Declaration of Quarantine.
- Uniform Parentage Act and Same-Sex Marriage.

## **ACTIVITIES OF THE NORTH DAKOTA COMMISSION**

### **Members**

Owen L. Anderson is a member of the Drafting Committee on a Model Tribal Probate Code.

Jay E. Buringrud and Timothy J. Dawson are members of the Committee of Legislative Attorneys.

Gail H. Hagerty is Chairman of Division C of the conference. She is a member of the Committee on Liaison with American Indian Tribes and Nations, a member of the Committee on Membership and Attendance, and a member of the Committee on Strengthening State Delegations. She is a member of the Study Committee on the Transfer and Recording of Consumer Debt. She is a member of the Drafting Committee on:

- Non-Parental Rights of Child Custody and Visitation.
- Family Law Arbitration.
- Recognition and Enforcement of Canadian Domestic-Violence Protection Orders.

In addition, she is a member of the Standby Committee on:

- A Uniform Collaborative Law Act.
- A Uniform Deployed Parents Custody and Visitation Act.
- A Uniform Fiduciary Access to Digital Assets Act.
- A Uniform Premarital and Marital Agreements.
- To Amend the Uniform Interstate Family Support Act.

Lawrence R. Klemin is a member of the Study Committee on a Computer Database Retrieval System for Land Records and a member of the Drafting Committee on a Wage Garnishment Act. He is a member of the Standby Committee on a Uniform Manufactured Housing Act, and a member of the Standby Committee to Revise the Notarial Acts.

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

Bradley Myers is a member of the Drafting Committee on Trust Decanting and a member of the Drafting Committee on Divided Trusteeship. He is a member of the Joint Standby Committee with the Uniform Law Conference of Canada on an Act on Uniform Recognition of Substitute Decision Making Documents and a member of the Standby Committee on Uniform Deployed Parents Custody and Visitation Act.

Jacob T. Rodenbiker is a member of the Drafting Committee on Criminal Records Accuracy.

Candace M. Zierdt is a member of the Committee on Liaison with American Indian Tribes and Nations. She is a member of the Drafting Committee on a Model Tribal Probate Code and a member of the Drafting Committee on Non-Parental Rights of Child Custody and Visitation. In addition, she is a member of the Standby Committee to Revise the Uniform Law on Notarial Acts.

### **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.

#### **122<sup>nd</sup> National Conference (2013)**

The commissioners attended the 122<sup>nd</sup> national conference (2013) in Boston, Massachusetts. The national conference recommended the:

1. Uniform Act on Prevention of and Remedies for Human Trafficking.
2. Uniform Powers of Appointment Act.
3. Uniform Harmonized Business Organization Code.
4. Amendments to the Uniform Child Custody Jurisdiction and Enforcement Act Pertaining to International Proceedings.

### **123<sup>rd</sup> National Conference (2014)**

The commissioners attended the 123<sup>rd</sup> national conference (2014) in Seattle, Washington. The national conference recommended:

1. Amendment to the Uniform Voidable Transaction Act.
2. Fiduciary Access to Digital Assets Act.
3. Interjurisdictional Recognition of Substitute Decision-Making Documents Act.
4. Uniform Revision to Uniform Common Interest Ownership Act Section 3-3116.

### **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 15 "Target Acts" that are Acts that are prioritized in a given legislative session and change from session to session. Target Acts that have not been adopted in North Dakota are the:

1. Collaborative Rules/Law Act.
2. Fiduciary Access to Digital Assets Act.
3. Foreign Country Money Judgments Recognition Act.
4. Limited Liability Company Act.
5. Power of Attorney Act.
6. Powers of Appointment Act.
7. Real Property Electronic Recording Act.

The national conference has identified nine "Targets to Complete" that states are encouraged to enact and the Acts have already been adopted by a significant number of states. The only Target to Complete that has not been adopted in North Dakota is the:

1. Real Property Electronic Recording Act.

### **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 2013-14 interim, the Legislative Management delegated its responsibility under that section to the interim Judiciary Committee.

At its annual meetings in July 2013 and 2014, the commission determined its recommendations. In 2013 and 2014 the commission considered recommending the:

- Amendment to UCC Article 4A.
- Uniform Act on Prevention of and Remedies for Human Trafficking.
- Uniform Asset-Freezing Orders Act.
- Uniform Power of Appointment Act.
- Uniform Harmonized Business Organization Code.
- Amendment to the Uniform Child Custody Jurisdiction and Enforcement Act Pertaining to International Proceedings.
- Uniform Fiduciary Access to Digital Assets Act.

The commission presented five recommendations to the interim Judiciary Committee in August 2014.

## **Recommendations to the 64<sup>th</sup> Legislative Assembly**

The commission introduced five recommendations to the 64<sup>th</sup> 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. **The Uniform Act on Prevention of and Remedies for Human Trafficking (Senate Bill No. 2107).** The Act was initiated as the result of a proposal by the American Bar Association Center for Human Rights in 2010. The Act was approved by the national conference in July 2013 and by the ABA House of Delegates in August 2013. The Act was introduced in six states in 2015 and to date has been enacted in at least five states, including North Dakota.

The bill was signed into law on April 23, 2015.

2. **The Uniform Fiduciary Access to Digital Assets Act (Senate Bill No. 2106).** This Act was approved by the national conference in 2014. In the modern world, documents are stored in electronic files rather than in file cabinets, e.g., photographs are uploaded to websites rather than printed on paper. Under this Act, if a fiduciary would have access to a tangible asset, that fiduciary will also have access to a similar type of digital asset. The Act governs four common types of fiduciaries: personal representatives of a deceased person's estate; guardians or conservators of a protected person's estate; agents under a power of attorney; and trustees. The Act defers to an accounts holder's privacy choices as expressed in a document, e.g., a will or trust or by an online affirmative act.

The bill failed to pass the Senate on February 9, 2015.

3. **The amendment to Uniform Commercial Code Article 4A (4A-108) (House Bill No. 1134).** This amendment was approved by the national conference in 2012, was introduced in the 2013 legislative session, but which failed to pass the Senate. The amendment provides that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the Federal Electronic Funds Transfer Act. Without this amendment, neither state nor federal law will apply for transfers that may involve mistaken addresses or payees and other issues beyond the initial sending of the transfer.

The bill was signed into law on March 25, 2015.

4. **Amendments to the Uniform Fraudulent Transfer Act (House Bill No. 1135).** These amendments were adopted by the national conference in 2014. The conference renamed the Act the Uniform Voidable Transactions Act, which more closely reflects the Act. The amendments address narrowly-defined issues, e.g., choice of law rules and burden of proof rules for claims under the Act.

The bill was signed into law on March 25, 2015.

5. **The Revised Uniform Limited Liability Company Act (House Bill No. 1136).** This Act was recommended by the national conference in 2006. The revised Act was the subject of a 2009-10 interim Judiciary Committee study, which recommended continued study during the 2011-12 interim while Minnesota was working on the revised Act for adoption in Minnesota. The 2011-12 interim study recommended that the revised Act not be introduced during the 2013 legislative session because Minnesota had not yet adopted the revised Act. In 2014 the Minnesota Legislature adopted the revised Act, which was signed by the Governor in April.

The bill was signed into law on April 15, 2015.

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William E. Kretschmar  
Chairman