

# 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 (NDCC) Section 54-55-01 specifies the membership of the commission. Members appointed by the Governor are David J. Hogue, Minot (the member who must be engaged in the practice of law); Judge Gail H. Hagerty, Bismarck (the member who must be a law-trained judge of a court of record); Bradley Myers, University of North Dakota School of Law (the member who must be the dean or a full-time member of the faculty of the law school); and Candace M. Zierdt, Stetson University College of Law, Gulfport, Florida, and William E. Kretschmar, Ventura (members who previously have been appointed to at least five years of service on the commission). The members appointed by the Legislative Council are Representative Lawrence R. Klemin, Bismarck (the member who must be a member of the House of Representatives), and Senator Dave Nething, Jamestown (the member who must be a member of the Senate). The member appointed by the Legislative Council chairman is Jay E. Buringrud, Bismarck (the member who must be a member of the Legislative Council staff, and 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), Frank F. Jestrab, Williston (currently in Gaithersburg, Maryland), and Michael B. Unhjem, Fargo, are members of the commission due to their status as life members 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 117 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. Each Act is considered over a substantial period of years. 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 2008-09 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:

- Drafting Committee on a **Business Organizations Act**.
- Drafting Committee on a **Certificate of Title Act for Boats**.
- Drafting Committee on a Uniform **Collaborative Law Act**.
- Drafting Committee on a **Collateral Consequences of Conviction**.
- Joint Review Committee on **Uniform Commercial Code Article 9**.
- Drafting Committee on **Electronic Recordation of Custodial Interrogations**.
- Drafting Committee on the **Hague Convention of Choice of Court Agreements**.
- Joint Drafting Committee for **Implementation of the UN Convention on Independent Guarantees and Stand-by Letters of Credit**.
- Drafting Committee on **Insurable Interests Relating to Trusts Act**.
- Drafting Committee on a **Military Services and Overseas Civilian Absentee Voters Act**.
- Drafting Committee to Revise the Uniform Law on **Notarial Acts**.
- Drafting Committee on **Tenancy-In-Common Real Property Act**.
- Drafting Committee on **Presidential Electors Act**.
- Drafting Committee on Uniform **Protection of Genetic Information in Employment and Insurance Act**.
- Drafting Committee on Uniform **Real Property Transfer on Death Act**.
- Drafting Committee on Uniform **Record Owners of Business Act**.
- Drafting Committee on the **Regulation of Charities**.
- Drafting Committee on a **Relocation of Children Act**.
- Drafting Committee on a Uniform **Statutory Trust Entity Act**.
- Committee to Implement the **UN E-Commerce Convention**.

#### **2008-09 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:

- Study Committee on **Administrative Procedures for Interstate Compact Entities**.
- Study Committee on **Authentication of Online State Legal Materials**.
- Study Committee on **Division of Income for Tax Purposes Act**.
- Study Committee to Revise Model **Drug Dependence Treatment and Rehabilitation Act**.
- Study Committee on **Environmental Controls and Hazards Notice System Act**.
- Study Committee to Revise Uniform **Federal Lien Registration Act**.

- Study Committee on the **Hague Convention on Protection of Children**.
- Study Committee on **Health Care Information Interoperability**.
- Study Committee on **Mental Health Advance Directives**.
- Study Committee on **Regulation of Financial Institutions and Payment Systems**.
- Study Committee on Model **Tribal Legislation Concerning Child Custody and Domestic Violence**.
- Study Committee on Model **Tribal Legislation on Collateralization of Interests in Real Property**.

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

Owen L. Anderson is a member of the Standby Committee to Amend Uniform Common Interest Ownership Act, and a member of the Standby Committee on the Uniform Real Property Electronic Recording Act.

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

Gail H. Hagerty is a member of the Study Committee to Revise Model Drug Dependence Treatment and Rehabilitation Act, a member of the Study Committee on Model Tribal Legislation Concerning Child Custody and Domestic Violence, a member of the Committee on Liaison with American Indian Tribes and Nations, a member of the Standby Committee on a Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, a member of the Standby Committee to Revise the Uniform Anatomical Gift Act, and a member of the Standby Committee to Amend the Uniform Interstate Family Support Act.

Lawrence R. Klemin is a member of the Drafting Committee to Revise the Uniform Law on Notarial Acts and a member of the Standby Committee on Uniform Rules Relating to the Discovery of Electronically Stored Information.

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

Candace M. Zierdt is chairman of the Study Committee on Model Tribal Legislation Concerning Child Custody and Domestic Violence, a member of the Drafting 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 North Dakota 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.

Generally, the commission reviews uniform Acts under consideration by the national conference and amendments to uniform Acts that have been enacted in North Dakota. The commission has followed a policy of recommending amendments recommended by the

national conference for those uniform Acts enacted in North Dakota as a means to maintain the currency of those Acts. 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.

#### **116<sup>th</sup> National Conference (2007)**

The commissioners attended the 116<sup>th</sup> national conference (2007). The national conference recommended:

1. The Uniform Assignment of Rents Act.
2. The Uniform Certificate of Title Act.
3. The Uniform Debt-Management Services Act.
4. The Uniform Foreign Country Money Judgments Recognition Act.
5. The Model Entity Transactions Act.

#### **117<sup>th</sup> National Conference (2008)**

The commissioners attended the 117<sup>th</sup> national conference (2008). The national conference recommended:

1. The Uniform Anatomical Gift Act.
2. The Uniform Child Abduction Prevention Act.
3. The Uniform Emergency Volunteer Health Practitioners Act.
4. The Limited Liability Company Act.
5. The Uniform Power of Attorney Act.
6. The Uniform Prudent Management of Institutional Funds Act.
7. The Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings Act.
8. The Model Registered Agents Act.

#### **Considerations of the Commission**

Commission members considered several issues during discussion of possible recommendations to the Legislative Council and the Legislative Assembly.

In 2007 the national conference identified 11 "targeted Acts" that states are encouraged to enact so as to complete adoption by most if not all states. Six of the targeted Acts have not been adopted in North Dakota--the 2001 amendments to the Uniform Interstate Family Support Act, the Uniform Environmental Covenants Act, the Uniform Foreign Country Money Judgments Recognition Act, the Uniform Mediation Act, the Uniform Prudent Management of Institutional Funds Act, and the Uniform Real Property Electronic Recording Act.

The commission traditionally has maintained uniform Acts North Dakota has enacted. This would include updating uniform Acts to reflect revised Acts as well as "technical amendments" approved by the Executive Committee of the national conference.

#### **Recommendations of the Commission to the Legislative Council in 2007-08**

The commission is authorized by NDCC Section 54-55-04 to submit its recommendations for enactment of uniform and model laws to the Legislative Council for the Council's review and recommendation. Under Section 54-35-02, the Legislative Council is to receive, review, and make recommendations on uniform and model laws recommended to it by the commission. During the 2007-08 interim, the Legislative Council delegated its responsibility under that section to the interim Judiciary Committee.

At its annual meeting in July 2008, the commission determined its recommendations. The commission presented its recommendations to the interim Judiciary Committee in August 2008:

1. **House Bill No. 1072 - Amendments to the Uniform Probate Code approved by the Executive Committee in 2008 and amendments to the Uniform Probate Code approved by the national conference in 2008.** The Uniform Probate Code was adopted in 1973 in North Dakota and has been updated on a regular basis as amendments have been recommended by the national conference.
2. **House Bill No. 1073 - Uniform Emergency Volunteer Health Practitioners Act.** This Act was recommended by the national conference in 2007. The Act allows reciprocity to other states' licensees on emergency services providers so that covered individuals may provide services without meeting the disaster state's licensing requirements, specifically the problem of allowing out-of-state medical professionals to practice in the afflicted areas.
3. **House Bill No. 1074 - Uniform Prudent Management of Institutional Funds Act.** This Act was recommended by the national conference in 2006. The Act provides statutory guidelines for management, investment, and expenditures of endowment funds held by charitable institutions, and expressly provides for diversification of assets, pooling of assets, and total return investment to implement whole portfolio management.
4. **Senate Bill No. 2072 - Amendments to the Uniform Interstate Family Support Act approved by the national conference in 2008.** The amendments are tied to a federal mandate enacting the 2000 Hague Convention on Maintenance, which was signed by the President in 2008. The amendments modify the current version of the Act's international provisions to comport with the obligations of the United States under the convention.
5. **Senate Bill No. 2073 - Amendments to the Uniform Principal and Income Act approved by the national conference in 2008.** The amendments will bring the Uniform Principal and Income Act into compliance with Internal Revenue Service comments regarding allocation of IRA distributions in Section 409

and clarify the formula for calculating how much a trust needs to distribute and how much it can use to pay taxes.

6. **Senate Bill No. 2074 - Uniform Adult Guardianship and Protective Proceedings Act.** This Act was recommended by the national conference in 2007. The Act addresses the issue of jurisdiction over adult guardianships, conservatorships, and other protective proceedings and provides a mechanism for resolving multistate jurisdictional disputes arising because there are more than 50 guardianship systems in the United States.
7. **Senate Bill No. 2195 - An Amendment to the Revised Uniform Anatomical Gift Act approved by the Executive Committee in 2008.** The Uniform Anatomical Gift Act (2006) was recommended by the national conference in 2006 and adopted in North Dakota in 2007. The Uniform Anatomical Gift Act (2006) has been adopted in seven states.
8. **House Concurrent Resolution No. 3005 - Study of the Revised Uniform Limited Liability Company Act.** This Act was recommended by the national conference in 2006. Although originally to be recommended as a bill during the 2009 legislative session, the North Dakota Secretary of State and other interested parties recommended that the Act be studied during the 2009-10 interim, especially with respect to issues other states have addressed in considering the Act.
9. **House Concurrent Resolution No. 3006 - Study of the Uniform Debt-Management Services Act.** This Act was recommended by the national conference in 2008. Although originally to be recommended as a bill during the 2009 legislative session, the North Dakota Attorney General and the Commissioner of Financial Institutions recommended that the Act be studied during the 2009-10 interim, especially with respect to the most appropriate administrator of the Act.

### **Action by the Legislative Assembly**

The Legislative Assembly approved the seven bills and two resolutions, and the bills have been signed by the Governor.

**House Bill No. 1072 - Uniform Probate Code Amendments.** The Legislative Assembly approved the bill on March 6, 2009, and the Governor signed the bill on March 19.

**House Bill No. 1073 - Uniform Emergency Volunteer Health Practitioners Act.** The Legislative Assembly approved the bill on April 22, 2009, and the Governor signed the bill on April 28.

**House Bill No. 1074 - Uniform Prudent Management of Institutional Funds Act.** The Legislative Assembly approved the bill on April 14, 2009, and the Governor signed the bill on April 21.

**Senate Bill No. 2072 - Uniform Interstate Family Support Act Amendments.** The Legislative Assembly approved the bill on April 2, 2009, and the Governor signed the bill on April 22.

**Senate Bill No. 2073 - Uniform Principal and Income Act Amendments.** The Legislative Assembly approved the bill on March 4, 2009, and the Governor signed the bill on March 19.

**Senate Bill No. 2074 - Uniform Adult Guardianship and Protective Proceedings Act.** The Legislative Assembly approved the bill on March 4, 2009, and the Governor signed the bill on March 19.

**Senate Bill No. 2195 - Uniform Anatomical Gift Act Amendment.** The Legislative Assembly approved the bill on April 29, 2009, and the Governor signed the bill on April 30.

**House Concurrent Resolution No. 3005 - Study of the Revised Uniform Limited Liability Company Act.** The Legislative Assembly approved the resolution on April 1, 2009.

**House Concurrent Resolution No. 3006 - Study of the Uniform Debt-Management Services Act.** The Legislative Assembly approved the resolution on April 1, 2009.