

NORTH DAKOTA COMMISSION ON UNIFORM STATE LAWS - 2017-18 BIENNIAL REPORT

I - PREAMBLE

To the Honorable Governor Doug Burgum and members of the North Dakota Legislative Assembly and North Dakota Supreme Court. The North Dakota Commissioners on Uniform State Laws respectfully submit this biennial report for 2017 and 2018.

II - OVERVIEW OF UNIFORM LAW COMMISSION

The Uniform Law Commission (ULC), also known as the National Conference of Commissioners on Uniform State Laws, has worked for the uniformity of state laws since 1892. The commission is comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners appointed. Most jurisdictions provide for their commission by statute. The statutory authority governing North Dakota's Commission on Uniform State Laws can be found in North Dakota Century Code Chapter 54-55.

The single fundamental requirement for the more than 300 uniform law commissioners is that each commissioner must be a member of the bar. While some commissioners serve as state legislators and others as state officials, most are practitioners, judges, and law professors. Uniform law commissioners serve for specific terms, and receive no salaries or fees for their work with the ULC.

Commissioners study and review the laws of the states to determine which areas of law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law in which uniformity between the states is desirable. The Uniform Law Commission can make proposals--a uniform law is not effective until a state legislature enacts the uniform state law.

The work of the ULC simplifies the legal life of businesses and individuals by providing rules and procedures that are consistent from state to state. Representing both state government and the legal profession, the ULC is a genuine coalition of state interests. The Uniform Law Commission has sought to bring uniformity to the divergent legal traditions of more than 50 sovereign jurisdictions, and has done so with significant success.

III - HISTORY

On August 24, 1892, representatives from seven states--Delaware, Georgia, Massachusetts, Michigan, New York, New Jersey, and Pennsylvania--met in Saratoga Springs, New York, to form what is now known as the Uniform Law Commission. North Dakota joined the ULC in 1893. By 1912, every state was participating in the ULC. The United States Virgin Islands was the last jurisdiction to join, appointing its first commissioners in 1988.

Very early on the ULC became known as a distinguished body of lawyers. The Uniform Law Commission has attracted some of the best of the profession. In 1901, Woodrow Wilson became a member. This, of course, was before his more notable political prominence and service as President of the United States. Several persons, later to become Justices of the Supreme Court of the United States, have been members--former Justices Brandeis, Rutledge, and Souter, and former Chief Justice Rehnquist. Legal scholars have served in large numbers, including Professors Wigmore, Williston, Pound, and Bogert. Many more distinguished lawyers have served since 1892.

In each year of service, the ULC steadily increased its contribution to state law. Since its founding, the ULC has drafted more than 200 uniform laws on numerous subjects and in various fields of law, setting patterns for uniformity across the nation. Uniform Acts include the Uniform Probate Code, the Uniform Partnership Act, the Uniform Limited Partnership Act, the Uniform Anatomical Gift Act, the Uniform Interstate Family Support Act, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Prudent Management of Institutional Funds Act. North Dakota has enacted 86 uniform laws.

Most significant was the 1940 ULC decision to attack major commercial problems with comprehensive legal solutions--a decision that set in motion the project to produce the Uniform Commercial Code. Working with the American Law Institute, the Uniform Commercial Code took 10 years to draft and another 14 years before it was enacted across the country. The Uniform Commercial Code remains the signature product of the ULC.

Today, the ULC is recognized primarily for its work in commercial law, family law, the law of probate and estates, the law of business organizations, health law, and conflicts of law.

The Uniform Law Commission arose from the concerns of state government for the improvement of the law and for better interstate relationships. The Uniform Law Commission's sole purpose has been, and remains, service to state government and improvement of state law.

IV - DIVERSITY STATEMENT

Each member jurisdiction determines the number of uniform law commissioners the jurisdiction appoints to the ULC, the terms of uniform law commissioners, and the individuals who are appointed from the legal profession of that jurisdiction. The Uniform Law Commission encourages appointing authorities to consider among other factors, diversity of membership in the jurisdictions' uniform law commissions, including race, ethnicity, and gender in making appointments. The Uniform Law Commission does its best work when the uniform law commissioners are drawn from diverse backgrounds and experiences.

V - PROCEDURES

The Uniform Law Commission is convened as a body once a year. At this annual meeting, the ULC meets for a period of 6 or 7 days, usually in July or August. In the interim period between these annual meetings, drafting committees composed of commissioners meet to supply the working drafts considered at the annual meeting. At each annual meeting, the work of the drafting committees is read and debated. Each Act must be considered over a substantial period of years. An Act does not become officially recognized as a Uniform Act until the ULC is satisfied the Act is ready for consideration in the state legislatures and only then is the Act put to a vote of the states, during which each state caucuses and votes as a unit.

The Uniform Law Commission's governing body is the executive committee, which is composed of the officers, certain ex officio members, and members appointed by the president. Certain ULC 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 ULC to the state legislatures.

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

The Uniform Law Commission maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which provides advisors to all ULC drafting committees and many ULC study committees. Liaison also is maintained with the American Law Institute, the Council of State Governments, the National Conference of State Legislatures, the National Association of Secretaries of State, the Conference of Chief Justices, and the National Center for State Courts on an ongoing basis. Liaison and activities are conducted with other organizations as interests and activities necessitate.

VI - ACTIVITIES OF THE NORTH DAKOTA COMMISSION ON UNIFORM STATE LAWS

The membership of the North Dakota Commission on Uniform State Laws is codified as North Dakota Century Code Section 54-55-01. The North Dakota Commissioners are:

- An individual engaged in the practice of law in this state (Jacob T. Rodenbiker);
- The dean or a full-time member of the faculty of the University of North Dakota School of Law (Bradley Myers);
- A law-trained judge of a court of record in this state (Supreme Court Justice Jerod E. Tufte);
- A member of the House of Representatives (Representative Lawrence R. Klemin) (Chairman);
- A member of the Senate (Senator David Hogue, who also serves as a life member);
- A member of the Legislative Council staff (Jennifer S. N. Clark) (Secretary);
- A member appointed by the Attorney General (Parrell Grossman);
- Any residents of this state who, because of long service in the cause of uniformity of state legislation, have been elected life members of the National Conference of Commissioners on Uniform State Laws (Owen L. Anderson, Jay E. Buringrud, District Judge Gail H. Hagerty); and
- Any residents of this state who have been previously appointed to at least 5 years of service on the commission (William E. Kretschmar served until his death on August 17, 2017, David Nething, Candace Zierdt).

The Uniform Law Commission committee assignments for Commissioners from North Dakota are:

- Owen L. Anderson - Tribal Probate Code;
- Jennifer S. N. Clark - Unauthorized Disclosure of Intimate Images Act;
- Parrell Grossman - Data Breach Notification and Online Privacy Protection;
- Gail H. Hagerty - Alternatives to Bail Act, American Indian Tribes and Nations, Criminal Justice Reform, Economic Rights of Unmarried Cohabitants Act, Executive Committee, Extreme Risk Protection Orders, Family Law Arbitration Act, Interstate Family Support Act (2008), Membership and Attendance, and Non-Parent Custody and Visitation Act, and Parentage Act (2017);
- Lawrence R. Klemin - Garnishment of Wages in Bank Accounts, Manufactured Housing Act, Notarial Acts (2018), Relocation of Non-Utility Easements Act, and Wage Garnishment Act;
- Bradley Myers - Deployed Parents Custody and Visitation Act, Directed Trust Act, Fiduciary Income and Principal Act, Recognition of Substitute Decision-Making Documents Act, and Trust Decanting Act;
- Jacob T. Rodenbiker - Alternatives to Bail Act, Criminal Records Accuracy Act, Membership and Attendance, and Veterans Treatment Court Act;
- Jerod E. Tufte - Highly Automated Vehicles Act; and
- Candace Zierdt - American Indian Tribes and Nations, Chairman of Division B, Commercial Code, Non-Parental Custody and Visitation Act, Tribal Probate Code, and Amendments to Tribal Secured Transactions Act.

Other ULC offices held by Commissioners from North Dakota are:

- Jay E. Buringrud - Legislative Attorneys;
- Jennifer S. N. Clark - Legislative Attorneys; and
- Lawrence R. Klemin - Legislative Committee and Legislative Liaison.

The meeting held by the North Dakota Commissioners in 2017 was on Saturday, July 15, 2017. Commissioners attending the 2017 ULC Annual Meeting were Owen L. Anderson, Jay E. Buringrud, Jennifer S. N. Clark, Parrell Grossman, Gail H. Hagerty, Lawrence R. Klemin, Bradley Myers, David Nething, Jacob T. Rodenbiker, Jerod E. Tufte, and Candace Zierdt.

The meeting held by the North Dakota Commissioners in 2018 was on Tuesday, July 24, 2018. Commissioners attending the ULC Annual Meeting were Jay E. Buringrud, Jennifer S. N. Clark, Parrell Grossman, Gail H. Hagerty, Lawrence R. Klemin, Bradley Myers, David Nething, Jacob T. Rodenbiker, Jerod E. Tufte, and Candace Zierdt.

Legislative appearance by the North Dakota Commissioners in 2018 was a presentation to the Legislative Management's interim Judiciary Committee on Tuesday, August 7, 2018.

VII - SUMMARY OF NEW ACTS

2017

The following Uniform Acts were finalized at the 2017 Annual Meeting of the ULC:

- Uniform Directed Trust Act;
- Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act;
- Uniform Parentage Act;
- Uniform Protected Series Act;
- Model Veterans Treatment Court Act and Model Veterans Treatment Court Rules; and
- Uniform Regulation of Virtual-Currency Businesses Act.

2018

The following Uniform Acts were finalized at the 2018 Annual Meeting of the ULC:

- Uniform Criminal Records Accuracy Act;

- Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act;
- Uniform Fiduciary Income and Principal;
- Revised Uniform Law on Notarial Acts (RULONA);
- Uniform Nonparent Custody and Visitation Act;
- Uniform Supplemental Commercial Law for the Uniform Regulation of Virtual-Currency Businesses Act; and
- Amendments to UCC Articles 1, 3, 8, and 9.

VIII - RECOMMENDATIONS FOR ENACTMENT

The North Dakota Commission on Uniform State Laws recommend the following Uniform and Model Acts be considered in the legislative session beginning January 2019:

- Uniform Family Law Arbitration Act, which the ULC approved in 2016. States' laws vary when it comes to arbitrating family law matters, such as spousal support, division of property, child custody, and child support. The Uniform Family Law Arbitration Act standardizes the arbitration of family law. The Act is based in part on the Revised Uniform Arbitration Act (RUAA), though it departs from the RUAA in areas in which family law arbitration differs from commercial arbitration, such as standards for arbitration of child custody and child support, arbitrator qualifications and powers, and protections for victims of domestic violence. This Act is intended to create a comprehensive family law arbitration system for the states. The Act has been enacted in two states.
- Uniform Nonparental Child Custody and Visitation Act, which the ULC approved in 2018, addresses the rights of third parties other than parents to custody of or visitation with a child. Those rights are also affected by the decision of the United States Supreme Court in *Troxel v. Granville*, 530 U.S. 57 (2000), which held courts must give deference to decisions of fit parents concerning the raising of children, including concerning grandparents' visitation rights. The Act recognizes a right to seek custody or visitation for two categories of individuals: (1) nonparents who have served as consistent caretakers of a child without expectation of compensation, and (2) other nonparents who have a substantial relationship with a child and who demonstrate denial of custody or visitation would result in harm to the child.
- Revised Uniform Law on Notarial Acts, Amendment, which the ULC approved in 2018, authorizes notaries public to perform notarial acts in the state in which they are commissioned for remotely located individuals using audio-visual communication technology regardless of where the individual may be located. This amendment is not limited to foreign located individuals, it extends the authority to any remotely located individuals. This amendment was prepared in response to a rapidly emerging trend among the states to authorize the performance of notarial acts by means of audio-visual technology. The ability of notaries public to perform notarial acts by audio-visual technology is being promoted by the American Land Title Association and the Mortgage Bankers Association. They have prepared a Model On-Line Notary Act that contains provisions very similar to these RULONA amendments, but which are not incorporated into the framework of RULONA.
- Uniform Unsworn Domestic Declarations Act, which the ULC approved in 2016, permits the use of unsworn declarations made under penalty of perjury in state courts. Under the Act, unsworn declarations may be used in lieu of affidavits, verifications, or other sworn court filings if they were made under penalty of perjury and use substantially similar language to the model form provided. The Act builds upon the Uniform Unsworn Foreign Declarations Act (UUFDA), which covers unsworn declarations made outside the United States, which North Dakota enacted in 2011. States that have the UUFDA should enact the Uniform Unsworn Domestic Declarations Act, states that have not enacted UUFDA should enact the Uniform Unsworn Declarations Act. The Act has been enacted in South Dakota.

IX - SPECIAL ACTIVITIES

During the 2017 Annual Meeting, Commissioner Klemin presented the following memorial for Commissioner Kretschmar, who passed away on August 17, 2017:

William E. Kretschmar was born in St. Paul, Minnesota on August 21, 1933, the son of William E. Kretschmar and Frances J. (Peterson) Kretschmar. Bill grew up in Ashley, North Dakota, and graduated from Ashley High School in 1949. He received his Bachelor's degree from the University of St. Thomas in St. Paul, Minnesota, graduating magna cum laude in 1954. He received his Juris Doctorate degree from the University of Minnesota, graduating cum laude in 1961. While in law school, Bill served as a senior editor of the Minnesota Law Review.

After graduation from law school, Bill returned to his home in Venturia, North Dakota, located in south central North Dakota about 3 miles north of the State line with South Dakota. He was admitted to the practice of law in North Dakota in 1961, and entered into a law partnership with his cousin, Bruce E. Kretschmar, in Ashley, North Dakota, the county seat of McIntosh County. Venturia is located about 11 miles southwest of Ashley and had a population of 10 according to the 2010 census. The population of Ashley was 749.

Bill was active in his community and was a member of St. David's Catholic Church, the Elks Lodge, and the Fraternal Order of Eagles. He was a past President of the Ashley Lions Club, Ashley Jaycees, and a former Board member and President of the Ashley Medical Center.

In the 1960's, many North Dakotans believed that the North Dakota Constitution of 1889 needed modernization. The House and Senate passed a resolution in the 1969 Legislative Session authorizing a constitutional amendment calling for the second Constitutional Convention. The Convention was approved by the voters in 1970 and 98 delegates were then elected to attend the Convention. Bill was one of only 14 lawyers elected as delegates to the Constitutional Convention. He was 37 years old at that time. Following 16 special public hearings in 1971 and 1972, and intense public debate about the revisions, the revised Constitution was approved by the Convention and was then submitted to a vote of the people in April 1972, where it was soundly defeated. This was Bill's first personal experience with being elected to an office and working on constitutional amendments. But it was not to be his last.

Although he grew up, lived, and worked in a small rural farming community, Bill became widely known in the State through his service in the North Dakota Legislature. He was first elected to office in the North Dakota House of Representatives in 1972 after his experience in the Constitutional Convention and served a total of 40 years. He served as a State Representative in the North Dakota Legislative Assembly from 1973 to 1998 and again from 2001 to 2016. He had a brief hiatus from the Legislature for two years when he was defeated for re-election in 1998. He regained his seat with his re-election in 2000. During his time in office in the House of Representatives, Bill served in many leadership capacities. He served as Assistant Majority Leader, as Chairman of the House Judiciary Committee, Chairman of the Committee on Correction and Revision of the Journal, as a member of the House Political Subdivisions Committee, House Constitutional Revision Committee, and the House Rules Committee. He was the House Parliamentarian. In 1989, during North Dakota's Centennial year, Bill was elected Speaker of the House and represented the Legislature in many Centennial activities.

Bill was appointed to the Uniform Law Commission in 1987 and served as a long-time legislative liaison. He was a member of the Drafting Committee to Amend Uniform Probate Code Article VI.

During his 40 years in the Legislature, and through the sponsorship of many legislative bills and constitutional amendment resolutions, Bill managed to put into law many of the constitutional revisions that had been defeated by the voters in 1972. The voters proved to be more receptive to amendments made gradually over many years, rather than a major amendment of the entire Constitution at one time. Numerous revisions were also made to the North Dakota statutes in order to incorporate some of the defeated constitutional amendments.

Bill remained a single man throughout his life. He was preceded in death by his parents and his law partner. He is survived by many cousins. He is buried in the Venturia Lutheran Cemetery in Venturia, North Dakota. Although now deceased, his legacy in the North Dakota Legislature lives on. He is well remembered by his many friends and colleagues.