

NORTH DAKOTA COMMISSION ON UNIFORM STATE LAWS - 2019-20 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 2019 and 2020.

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 178 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, who also serves as a life member) (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, Gail H. Hagerty); and
- Any residents of this state who previously have been appointed to at least 5 years of service on the commission (David Nething and Candace Zierdt).

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

- Owen L. Anderson - Tribal Probate Code;
- Jennifer S. N. Clark - Civil Remedies of Unauthorized Disclosure of Intimate Images Act, Public Meetings During Emergencies Act, and Telehealth Act;
- Parrell Grossman - Collection and Use of Personally Identifiable Data Act;
- Gail H. Hagerty - American Indian Tribes and Nations Committee, Monitor Development in Criminal Justice Reform, Criminalization of Student Discipline, Debt Collection Default Judgments Act, Economic Rights of Unmarried Cohabitants Act, Family Law Arbitration Act, Membership Committee, Nonparent Custody and Visitation Act, Parentage Act (2017), and Pretrial Release and Detention Act;
- Lawrence R. Klemin - Easement Relocation Act, Manufactured Housing Act, Mitigation of Public Health Emergency Business Disruptions, Revised Law on Notarial Acts (2018), Supply Chain Transparency, and Wage Garnishment Act;
- Bradley Myers - Community Property Disposition at Death Act, Deployed Parents Custody and Visitation Act, Determination of Death Act (Update), Directed Trust Act, Fiduciary Income and Principal Act, Recognition of Substitute Decision-Making Documents Act, Telehealth Act, and Trust Decanting Act;
- Jacob T. Rodenbiker - Criminal Records Accuracy Act, Jury Selection and Service, Membership Committee, Pretrial Release and Detention Act, Public Health Emergency Authorities, and Veterans Treatment Court Act/Rules;
- Jerod E. Tufte - Automated Operation of Vehicles Act, Jury Selection and Service, Public Health Emergency Authorities, and Public Meetings During Emergencies Act; and
- Candace Zierdt - American Indian Tribes and Nations Committee, Collection and Use of Personally Identifiable Data Act, Nonparent Custody and Visitation Act, Tribal Probate Code, Tribal Secured Transactions Act, Uniform Commercial Code, and Uniform Commercial Code and Emerging Technologies.

Other ULC offices held by Commissioners from North Dakota are:

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

The meeting held by the North Dakota Commissioners in 2019 was on Monday, July 15. Commissioners attending the 2019 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 2020 was on Thursday, June 11. Commissioners in attendance were Jay E. Buringrud, Jennifer S. N. Clark, Parrell Grossman, Gail H. Hagerty, David Hogue, Lawrence R. Klemin, Bradley Myers, David Nething, Jacob T. Rodenbiker, Jerod E. Tufte, and Candace Zierdt. Due to travel and meeting restrictions related to Coronavirus (COVID-19), Commissioners attended the ULC Annual Meeting remotely.

Legislative appearance by the North Dakota Commissioners in 2020 was a presentation to the Legislative Management's interim Judiciary Committee on Thursday, September 24, 2020.

VII - SUMMARY OF NEW ACTS 2019

The following Uniform Acts were finalized at the 2019 Annual Meeting of the ULC:

- Uniform Automated Operation of Vehicles Act;
- Uniform Electronic Wills Act;
- Uniform Registration of Canadian Money Judgments Act;
- Amendments to Revised Uniform Athlete Agents Act; and
- Amendment to Uniform Probate Code.

2020

The following Uniform Acts were finalized at the 2020 Annual Meeting of the ULC:

- Uniform Easement Relocation Act;
- Uniform Pretrial Release and Detention Act; and
- Uniform Public Expression Protection Act.

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 2021:

- Senate Bill No. 2047 - Revised Uniform Athlete Agents Act (amendments), which the ULC approved in 2015 and amended in 2019. The Revised Uniform Athlete Agents Act (RUAAA) is an update of the Uniform Athlete Agents Act of 2000, which has been enacted in 42 states, including North Dakota in 2003. The 2000 Act governs relations among student athletes, athlete agents, and educational institutions, protecting the interests of student athletes and academic institutions by regulating the activities of athlete agents. The RUAAA was promulgated in 2015 and makes numerous changes to the original act, including expanding the definition of "athlete agent" and "student athlete"; providing for reciprocal registration between states; adding new requirements to the signing of an agency contract; and expanding notification requirements. North Dakota enacted the RUAAA in 2017. The RUAAA was amended in 2019 to allow student athletes more freedom and flexibility when choosing between entering a professional draft or continuing their collegiate education. The 2019 RUAAA amendments have been enacted by 10 states.
- House Bill No. 1077 - Uniform Electronic Wills Act, which the ULC approved in 2019. The Uniform Electronic Wills Act permits testators to execute an electronic will and allows probate courts to give electronic wills legal effect. Most documents that were traditionally printed on paper can now be created, transferred, signed, and recorded in electronic form. Since 2000 the Uniform Electronic Transactions Act (UETA) and a similar federal law, E-SIGN, have provided that a transaction is not invalid solely because the terms of the contract are in an electronic format. However, UETA and E-SIGN both contain an express exception for wills, which, because the testator is deceased at the time the document must be interpreted, are subject to special execution requirements to ensure validity and must still be executed on paper in most states. Under the new Electronic Wills Act, the testator's electronic signature must be witnessed contemporaneously, or notarized contemporaneously in states that allow notarized wills. States have the option to include language that allows remote witnessing. The Act also addresses recognition of electronic wills executed under the law of another state. For a generation used to banking, communicating, and transacting business online, the Uniform Electronic Wills Act allows online estate planning while maintaining safeguards to help prevent fraud and coercion.
- House Bill No. 1079 - Uniform Environmental Covenants Act, which the ULC approved in 2003. The Uniform Environmental Covenants Act (UECA) allows for the long-term enforcement of clean-up controls - restrictions on certain uses, prohibitions on using wells, protection of concrete "caps," maintenance of monitoring equipment, etc.--to be contained in a statutorily defined agreement known as an "environmental covenant" that will be binding on subsequent purchasers of the property and be listed in the local land records. The purpose of this Act is to remove various legal impediments to the use of such restrictions and thereby to lessen liability concerns of sellers and lenders associated with the redevelopment and sale of brownfields while at the same time requiring state approval of the remediation and control plan as well as notice to surrounding landowners, local governments, and other parties in interest. By ensuring such institutional controls are maintained and enforced, the UECA helps fulfill the dual purposes of such restrictions--the protection of human health and the economically viable reuse of the property in question.
- House Bill No. 1078 - Faithful Presidential Electors Act, which the ULC approved in 2010. The Uniform Faithful Presidential Electors Act (UFPEA) provides a statutory remedy if a state presidential elector fails to vote in accordance with the voters of the elector's state. The UFPEA has a state-administered pledge of faithfulness, with any attempt by an elector to submit a vote in violation of that pledge, effectively constituting resignation from the office of elector. The UFPEA also provides a mechanism for filling a vacancy created for that reason or any other reason. In addition, in *Chiafalo et al v. Washington* (2020), the United States Supreme Court unanimously ruled states may require presidential electors to vote for the electors' party's candidate for president. This decision affirms states may enact laws requiring presidential electors to cast their votes in a manner faithfully reflecting the electors' commitment to vote for the person the electors promised to choose when they were nominated as an elector.

- Senate Bill No. 2048 - Revised Uniform Unclaimed Property Act, which the ULC approved in 2016. The Revised Uniform Unclaimed Property Act (RUUPA) is the latest revision to the Uniform Unclaimed Property Act, first promulgated in 1954 and last updated in 1995. The Act requires holders of unclaimed property to turn unclaimed property over to the state unclaimed property administrator after a suitable dormancy period so the administrator can attempt to reunite the property with its rightful owner. The RUUPA updates numerous provisions and addresses unclaimed gift cards and other stored-value cards, life insurance benefits, securities, dormancy periods, and use of contract auditors. The RUUPA has been enacted by four states.

The North Dakota Commission on Uniform State Laws recommend the following Uniform and Model Act be considered by the North Dakota Supreme Court to address through court rule:

- Uniform Pretrial Release and Detention Act, which the ULC approved in 2020. The Uniform Pretrial Release and Detention Act creates a comprehensive procedural framework for release and detention determinations after arrest. The Act also includes an optional article to guide arrest and citation practices.

IX - ENACTMENT

The Sixty-sixth Legislative Assembly enacted the following uniform laws in 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 other 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 audiovisual 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 individual. This amendment was prepared in response to a rapidly emerging trend among the states to authorize the performance of notarial acts by means of audiovisual technology. The ability of notaries public to perform notarial acts by audiovisual 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 Revised Uniform Law on Notarial Acts (RULONA) amendments, but which are not incorporated into the framework of RULONA. This Act has been enacted in 11 other states.
- 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 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.