

**REPORT
OF THE ILLINOIS DELEGATION TO
THE NATIONAL CONFERENCE
OF COMMISSIONERS
ON UNIFORM STATE LAWS**



NOVEMBER 28, 2007



State of Illinois
LEGISLATIVE REFERENCE BUREAU
112 State House, Springfield, IL 62706-1300
Phone: 217/782-6625

November 28, 2007

The Honorable Rod Blagojevich
Governor
207 State House
Springfield, Illinois 62706

Dear Governor Blagojevich:

On behalf of the Illinois delegation to the National Conference of Commissioners on Uniform State Laws, I submit the enclosed annual report for 2007.

Respectfully,

Richard C. Edwards
Executive Director

Enclosure

Copy to:

President of the Senate
Senate Minority Leader
Secretary of the Senate
Legislative Research Unit
Members of the Legislative Reference
Bureau Board
Illinois Commissioners on Uniform
State Laws

Speaker of the House
House Minority Leader
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STATE OF ILLINOIS
REPORT OF THE ILLINOIS DELEGATION TO
THE NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS (NCCUSL)
November 28, 2007

PREAMBLE

To the Honorable Rod Blagojevich, Governor, and members of the Ninety-Fourth General Assembly. The Legislative Reference Bureau, on behalf of the Illinois Commissioners on Uniform State Laws, respectfully submits this annual Report.

HISTORY OF NCCUSL

In 1889, the New York Bar Association appointed a special committee on uniformity of laws. In the next year, the New York Legislature authorized the appointment of Commissioners "to examine certain subjects of national importance that seemed to show conflict among the laws of the several commonwealths, to ascertain the best means to effect an assimilation or uniformity in the laws of the states, and especially whether it would be advisable for the State of New York to invite the other states of the Union to send representatives to a convention to draft uniform laws to be submitted for approval and adoption by the several states." In that same year, 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 in Saratoga, New York, three days preceding the annual meeting of the American Bar Association. There have been annual Conferences since that time.

By 1912, every state was participating in NCCUSL. In each year of service, NCCUSL has steadily increased its contribution to state law. Because of that contribution, it very early became known as a distinguished body of lawyers. NCCUSL 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. These men are Justices Brandeis and Rutledge and Chief Justice Rehnquist. Legal scholars have served in large numbers. Examples are Professors Wigmore, Williston, Pound, and Bogart. Very many distinguished lawyers have served since 1892, though their names are not as well known in legal affairs and the affairs of the U.S. This distinguished body has guaranteed that the products of NCCUSL are of the highest quality and are enormously influential upon the process of the law.

As it has developed over its many years, NCCUSL 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 has been, and remains, service to state government and improvement of state law.

OPERATION OF NCCUSL

The National Conference is convened as a body once a year. It meets for a period of eight days, usually in late July or early August. In the interim period between the annual meetings, drafting committees composed of Commissioners meet to supply the working drafts that are considered at the annual meeting. At each National Conference, the work of the drafting committees is read and debated. Each Act must be considered over a substantial period of years. No Act becomes officially recognized as a Uniform Act until the National Conference is satisfied that it is ready for consideration in the state legislatures. It is then put to a vote of the states, during which each state caucuses and votes as a unit.

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

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

NCCUSL maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which contributes an amount each year to the operation of NCCUSL. Liaison is also maintained with the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures on an ongoing basis. Liaison and activities may be conducted with other associations as interests and activities necessitate.

STATUTORY AND OTHER AUTHORITY

Support of the uniformity of legislation is included as a function of the Legislative Reference Bureau. The law provides for a delegation to NCCUSL consisting of 5 members appointed by the Governor, 4 members appointed one each by the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate, and the Executive Director of the Legislative Reference Bureau, ex officio. In addition, Section 2.4 of the Constitution of NCCUSL provides for the life members. Commissioners who, for example, have served for at least 20 years may become life members and continue to serve even if not appointed. Section 2.5 of that Constitution requires that each commissioner be a member of the bar.

LAW CREATING THE COMMISSION

Section 5.07 of the Legislative Reference Bureau Act.

(25 ILCS 135/5.07) (from Ch. 63, par. 29.7)

Sec. 5.07. Uniform State Laws. The Legislative Reference Bureau shall examine all subjects on which uniformity is desirable with the laws of other states to ascertain the best means to effect uniformity in the laws of the States. The Legislative Reference Bureau shall supervise the participation of the State of Illinois in the National Conference of Commissioners on Uniform State Laws. To represent the State of Illinois on the National Conference of Commissioners on Uniform State Laws, there shall be 9 persons: 5 persons appointed by the Governor and one each by the President of the Senate, the Senate Minority Leader, the Speaker of the House, and the House Minority Leader, who shall hold office for the term of 4 years, respectively, and until their successors are appointed, and the Executive Director of the Legislative Reference Bureau, who shall be an ex-officio member of the National Conference. The Legislative Reference Bureau shall report to the Governor by December 31 of each year, and the Governor shall submit the report to the General Assembly with his or her recommendations, if any, in reference to the report. The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report as required by Section 3.1 of the General Assembly Organization Act and paragraph (t) of Section 7 of the State Library Act.

(Source: P.A. 87-918.)

ILLINOIS COMMISSIONERS (year appointed) (appointed by)

Harry D. Leinenweber (1976) (life member)
 Howard J. Swibel (1976) (Senate President)
 Michael B. Getty (1977) (House Speaker)
 Thomas J. McCracken, Jr. (1988) (Senate Minority Leader)
 Randall Picker (1991) (Governor)
 Richard C. Edwards (1993) (ex officio)
 Diane Ford (2000) (Governor)
 Steven G. Frost (2001) (Governor)
 Dimitri Karcazes (2004) (Governor)
 J. Samuel Tenenbaum (2004) (House Minority Leader)
 Vacant (Governor)

ORGANIZATION AND MEETINGS OF THE ILLINOIS DELEGATION.

The Illinois Delegation met at the National Conference in Pasadena, CA in July 2007. Howard J. Swibel is Chair, and Richard C. Edwards is Secretary.

UNIFORM AND MODEL ACTS ENACTED IN ILLINOIS

NCCUSL reports that over 95 Uniform and Model Acts have been enacted by Illinois.

FINANCIAL INFORMATION

The expenses of the participation by this State in NCCUSL consist of 2 components. One is the State's allocated contribution to the National Conference of Commissioners on Uniform State Laws (based on population) and the other is the expense of attendance at the meeting of the conference by the Illinois Commissioners.

Here is a table of the Commission's recent expenditures reimbursed by the State. The number of members attending the conference is shown in parentheses:

Fiscal Year	Contribution to NCCUSL	Travel Expenses		Registration Fees	Total
1992	34,300	9,686	(7)	1,750	45,736
1993	36,100	-----	(9)	-----	36,100
1994	38,000	-----	(9)	-----	38,000
1995	39,900	-----	(9)	-----	39,900
1996	41,900	7,350	(6)	1,950	51,200
1997	44,000	6,337	(5)	1,750	52,087
1998	46,200	9,007	(8)	2,625	57,832
1999	48,600	8,246	(8)	2,625	59,471
2000	51,100	7,498	(6)	2,000	60,598
2001	52,700	7,100	(6)	2,700	62,500
2002	52,700	11,584	(7)	3,500	67,784
2003	53,300	-----	(8)	-----	53,300
2004	54,900	-----	---	-----	54,900
2005	56,600	-----	---	-----	56,600
2006	58,300	-----	---	-----	58,300
2007	60,100	-----	---	-----	60,100
2008	60,100	-----	---	-----	60,100

No State moneys were authorized for payment in FY93, FY94, FY95, FY03, FY04, FY05, FY06, FY07, or FY08 for travel expenses or registration fees. Moneys to pay the FY95 annual contribution were appropriated and paid in FY98.

SHORT SUMMARIES OF 2007 ACTS

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act addresses the issue of jurisdiction over adult guardianships, conservatorships, and other protective proceedings. Under the Act, a “guardian” is appointed to make decisions regarding the person of an incapacitated adult, and a “conservator” is appointed to manage the property. The objective of the new uniform Act is simple: to ensure that only one state has jurisdiction at any one time. To that end, the Act contains specific guidelines to specify which court has jurisdiction to appoint a guardian or conservator for an incapacitated adult. The Act does this by prioritizing the states which might claim jurisdiction. The state with primary jurisdiction is the “home state,” defined as the state in which the adult has lived for at least six consecutive months immediately before the

beginning of the adult guardianship or protective proceeding. The second is the “significant-connection state,” which is broadly defined to include the location of the individual’s family, a state where the individual might have lived for many years, or the state where the individual’s property is located. The Act provides that once a court has jurisdiction, this jurisdiction continues until the proceeding is terminated or transferred; it also avoids the existing functional requirement of having to restart the guardianship process anew whenever the protected party crosses state lines. The Act also provides transfer procedures from one state to another. In this and other respects, the new Act accomplishes for adult guardianship determinations the same certainty that has occurred in child custody law with the promulgation of the 1997 Uniform Child Custody Jurisdiction and Enforcement Act, now the law in 48 states.

Uniform Rules Relating to the Discovery of Electronically Stored Information

The primary purpose of the new Uniform Rules Relating to the Discovery of Electronically Stored Information is to provide states with up-to-date rules for the discovery of electronic documents in civil cases. The Uniform Rules provide procedures for parties in a civil case to jointly follow relating to a number of issues, including the preservation of the electronic information; the form in which the information will be produced; and the period of time in which the information must be produced. The Uniform Rules limit the sanctions which may be imposed on a party for failure to provide electronic information that has been lost as the result of routine operation of an electronic information system. This rule applies to information lost due to the routine operation of an information system only if the system was operated in good faith. The Uniform Rules address the unique difficulties in accessing some electronic information by providing certain restrictions on its discovery. For instance, a party may object to discovery of electronically stored information on the grounds that the information is not reasonably accessible because of undue burden or expense. However, the court may order discovery of such information if it is shown that the likely benefit of the proposed discovery outweighs the likely burden or expense, and may allocate between the parties the expense of conducting the discovery.

Uniform Interstate Depositions and Discovery Act

The Uniform Interstate Depositions and Discovery Act provides efficient and inexpensive procedures to enable a party in one state to effectuate depositions of witnesses, discover documents or inspect premises in other states. Uniform procedures have become necessary as the amount of litigation involving individuals and documents located outside of the trial state has increased. The Act requires minimal judicial oversight and eliminates the need for obtaining a commission or local counsel in the discovery state, letters rogatory, or the filing of a miscellaneous action during the discovery phase of litigation. Discovery authorized by the subpoena must comply with the rules of the state in which it occurs. Furthermore, motions to quash, enforce, or modify a subpoena issued pursuant to the Act shall be brought in and governed by the rules the discovery state. The goal of the Act is to simplify and standardize the current patchwork of procedures across the various states for deposing witnesses for purposes of out-of-state litigation.

Uniform Limited Cooperative Association Act

The Uniform Limited Cooperative Association Act creates a new form of business entity and is an alternative to other cooperative and unincorporated structures. This Act is more flexible than most current law, and provides a default template that encourages planners to utilize tested cooperative principles for a broad range of entities and purposes. It promotes rural development by creating the option of a statutorily-defined entity that combines traditional cooperative values with modern financing mechanisms. The Act would, for example, allow a group of wheat farmers to build a value-added pasta facility, keeping their business in a cooperative form while being able to attract and utilize investment capital. The Act will be equally useful in an urban setting, where the cooperative value of individuals getting together to democratically own, run, and share in the benefit of their business can be combined with modern financing techniques. For example, it might be used by an urban food coop to attract investment capital to build facilities for the operation of the cooperative's business.

Uniform Representation of Children in Abuse, Neglect and Custody Proceedings Act

The Uniform Representation of Children in Abuse, Neglect and Custody Proceedings Act (URCANCPA) tries to answer a question that has plagued domestic relations law for a long time: "who should represent a child in a custody or abuse and neglect proceeding, and what is the nature of that representation?" URCANCPA, as amended in 2007, establishes three categories of representatives: a child's attorney, a best interests attorney, and a best interests advocate. A child's attorney represents the child as a traditional client-directed lawyer. A best interests attorney is also a lawyer for the child but must advocate the child's "best interests" based on applicable legal criteria and the unique circumstances and needs of the child. The best interests advocate is a non-lawyer representative appointed by the court to investigate and make recommendations regarding the child's welfare. Because of the fundamental importance of the interests at stake in child protective cases, URCANCPA requires the court to appoint either a child's attorney or a best interests attorney for every child in an abuse or neglect proceeding. For custody cases, in contrast, the appointment of any representative is a matter of court discretion. The Act identifies the many duties of legal representation that are common to both categories of attorney, and it also clarifies the distinct responsibilities of the child's attorney and the best interests attorney. URCANCPA should not only bring greater certainty to the roles and expectations of children's representatives across the United States but also improve the quality of representation by providing needed standards of conduct.

SHORT SUMMARIES OF 2006 ACTS

Uniform Anatomical Gift Act (2006)

The Uniform Anatomical Gift Act (2006) (UAGA 2006) revises the earlier 1968 and 1987 Uniform Acts, which are the basis for organ donation throughout the United States. UAGA 2006 is an important update to reflect the current system for allocations of cadaver organs for transplant purposes. It makes it easier to make a document of gift, particularly as provided on drivers' licenses. It creates a power in certain individuals, such as a holder of a health care power of attorney, to authorize an anatomical gift on

behalf of an incapacitated person, before death actually occurs. It expands the list of those who may make an anatomical gift after an individual dies if the individual has not executed a document of gift. It makes it clear that an anatomical gift that does not specify the donees of organs goes to a recognized transplant organization responsible for allocating organs. It accommodates the use of donor registries upon which a potential donor may put a document of gift for notice purposes. It more clearly provides for a document of refusal if an individual does not want organs donated. There are criminal penalties for misrepresentation of a document of gift for the purposes of selling organs or tissue. The Act attempts to resolve ambiguity and conflict between anatomical gifts and “Do Not Resuscitate” instructions. Without changing the basic concept that an individual may execute a document of gift to donate organs, UAGA 2006 makes the Act more usable than the earlier acts are currently.

Uniform Child Abduction Prevention Act

The Uniform Child Abduction Prevention Act (UCAPA) authorizes a proceeding in a court between contestants in a child custody dispute during which the court considers the probability that a contestant will abduct a child to another state or foreign jurisdiction. Upon a finding that an abduction is highly probable, the court may issue orders as necessary to prevent that abduction. The court hears evidence respecting the risk of abduction, based upon statutorily provided risk factors: previous abductions or attempts to abduct; threats by a contestant respecting abduction; abuse of the child; domestic violence; negligence; or refusal to obey an existing child-custody order. There are further risk factors if the anticipated abduction is to a foreign country, i.e., the country is not a party to the Hague Convention on International Child Abduction. Standing to bring such a proceeding broadly includes the court itself, a contestant in a child-custody proceeding, a prosecutor, or a public attorney. UCAPA relies upon the jurisdictional rules of the Uniform Child Custody Jurisdiction and Enforcement Act.

Uniform Emergency Volunteer Health Practitioners Act

The Uniform Emergency Volunteer Health Practitioners Act (UEVHPA) provides a state with a procedure for recognizing another state’s licenses for healthcare practitioners who volunteer to provide assistance for the duration of an emergency requiring substantial health care assistance. UEVHPA was prompted by the difficulties during the 2005 hurricane season on the gulf coast. Many health care practitioners (doctors, nurses, and veterinarians, for example) from other states volunteered services, but were denied the opportunity or were delayed because they were not initially licensed in the disaster states. Federal provisions for interstate cooperation do not reach to most private practitioners. UEVHPA calls for the creation of a registration system which out-of-state practitioners may use either before or during a disaster. The system may coincide with existing federal and state systems. Upon registration, practitioners are expressly allowed to contribute their professional skills to existing organized disaster efforts. The effect of the Act should be to ease the use of out-of-state practitioners when a state needs them the most.

Uniform Limited Liability Company Act (2006)

The Uniform Limited Liability Company Act (2006) (ULLCA 2006) replaces the Uniform Act of 1996. A limited liability company (LLC) is an entity that shares the limitation of liability characteristic of a corporation with partnership-like capacity to structure the entity by agreement rather than as prescribed by statute. Like a partnership, a limited liability company does not pay federal income tax on its profits. Its distributions of income to members are taxed as their income. This characteristic has made limited liability companies very popular throughout the U.S. Like the 1996 Act, ULLCA 2006 authorizes the filing of a certificate of registration to create an LLC. The terms of the Act, including fiduciary obligations and contractual obligations, govern the relationships between members and between members and managers, if there are designated managers. Most of the rules, as in the 1996 Act, are default rules. Express provisions of the operating agreement prevail over most statutory rules. These are some of the changes the ULLCA 2006 makes over the 1996 Act: the 2006 Act leaves the designation of a manager-managed LLC to the terms of the agreement rather than the certificate of registration; electronic records and signatures are recognized; the standard of care becomes ordinary care subject to the business judgment rule; there is the ability to certificate member transferable interests for the purpose of free transfer as investment securities; it is possible to eliminate the duty of loyalty or duty of care in an agreement, so long as not “manifestly unreasonable;” a member may bring a direct action against the company for misfeasance, not just a derivative action; and a company threatened by a derivative action may form a litigation committee to assume the burden of investigating the action and take certain actions on behalf of the company in its best interests.

Uniform Power of Attorney Act

The Uniform Power of Attorney Act (UPAA) replaces the 1969 Uniform Durable Power of Attorney Act, the Uniform Statutory Form Power of Attorney Act, and provisions on power of attorney in the Uniform Probate Code. Durable powers of attorney have been allowed only since the late 1960's to early 1970's in almost every state. A durable power survives the incapacity of the principal to avoid the need to bring expensive and time-consuming guardianship or conservatorship actions to care for the principal's assets. The named agent steps in the same way a guardian or conservator would. The 1969 Act was originally enacted in almost every state. But amendments from state to state have eroded uniformity between the states. UPAA requires that certain powers be expressly and specifically conferred rather than be general powers; this eliminates questions about the agent's authority and are cautionary in intent. UPAA provides a form power of attorney that must be accepted by any third party. There are civil penalties for refusal to accept if the third party has assets of the principal. There are other provisions that protect the principal from a dishonest agent.

Uniform Prudent Management of Institutional Funds Act

The Uniform Prudent Management of Institutional Funds Act (UPMIFA) is an update of the Uniform Management of Institutional Funds Act, which dates back to 1972. UPMIFA applies to funds held for charitable purposes by nonprofit, charitable institutions. The three principal issues addressed are scope of coverage, investment obligations, and expenditure of funds. The earlier Act did not include charitable trusts or necessarily nonprofit corporations. UPMIFA applies its rules to charitable institutions no

matter how organized. That is its scope. Investment obligations are governed by prudent investment rules derived from the Uniform Prudent Investor Act. They sharply refine the investment obligations in the 1972 Uniform Act. An express rule for prudent expenditure of appreciation as well as income replaces the older rule in the 1972 Act. Abolished is the concept of historic dollar value as a floor beneath which an endowment cannot be spent. The new rule allows a prudent use of total return expenditure. An optional provision allows a state to flag a total return expenditure of more than 7% of total return measured by a three year average as presumed imprudent. UPMIFA also provides a better, modern rule for exercise of cy pres that is changing an obsolete charitable purpose. Changing a charitable purpose will require notice to the appropriate regulator in a state.

Model Registered Agents Act and Amendments to Entity Acts to Rationalize Annual Filings

The Model Registered Agents Act (MRAA) with amendments to other entity acts allows a state to use the same rules in the same place for registering agents mainly for partnerships, limited partnerships, limited liability companies, and corporations. Currently every state has registration requirements for each kind of entity in the specific statute authorizing the entity, i.e., the partnership act has provisions for registering agents representing the partnership. There is no reason to have separate registration requirements, with inevitable differences, in every entity statute. A single statute applying to every kind of entity makes the administration of these statutes much more efficient. Accordingly, MRAA would consolidate registration of agents in one place under one procedure. It would repeal the individual registration provisions from entity act to entity act. The amendments in an appendix provide suggestions for making the repeal amendments from state to state by showing how it would be done in the existing uniform or model entity statutes. Agents are registered primarily to establish a single office for service of process and for taking jurisdiction of the entity in litigation.

Uniform Representation of Children in Abuse, Neglect and Custody Proceedings Act

The Uniform Representation of Children in Abuse, Neglect and Custody Proceedings Act (URCANCPA) tries to answer a question that has plagued domestic relations law for a long time: "Who represents a child in a custody or support proceeding?" The courts have traditionally used what is called a guardian ad litem, but that designation is ambiguous, particularly if an attorney is appointed. Courts have been more and more inclined to appoint an attorney for a child, remembering that this attorney does not represent the principal parties to the proceeding. The scope of representation and an attorney's obligations are not well set out in prior law. URCANCPA establishes three categories of representatives: a child's attorney, a best interests attorney, and a child's advisor. A child's attorney represents the child purely as a client, taking direction from that client. A best interests attorney represents the child's "best interest" before the court but not subject to the child directions as a client. The child's advisor is appointed by the court to advise the court on the best course of action with respect to the child, and is wholly court directed. A child's attorney is usually the first appointed and recognized, but has the capacity to relinquish the attorney-client relationship in the event the child's directions and desires raise the issue of its "best interests." The child's attorney can step

aside and the court then appoints the “best interests” attorney. A child’s advisor may be appointed at any time, but may also be appointed as an alternative to a best interests attorney. URCANCPA does not require a court to appoint any representative for or on behalf of a child. It is in the court’s discretion whether to use these provisions. URCANCPA provisions reconcile appointments with the standard attorney obligations for representing a client and should make proceedings in which a child needs representation more certain.

SHORT SUMMARIES OF 2005 ACTS

Uniform Assignment of Rents Act (UARA)

Real estate law generally does not provide a consistent creditor’s right to rents when a debtor on a real estate loan on property with tenants then defaults on payment. Creditors normally take an assignment of rents upon default as part of the credit transaction, but enforceability of such assignments and their priority over other creditors is often in doubt. The Uniform Assignment of Rents Act seeks to remedy this problem by establishing a comprehensive statutory model for the creation, perfection, and enforcement of a security interest in rents. An assignment of rents creates a security interest in the rents that may be perfected by a filing in the appropriate real estate records. Perfection establishes priority in collection of the rents over competing creditors. Tenants may be required, upon specified notice, to pay rents directly to the assignee as a means of enforcement of the security interest. A receiver may be appointed in the event the assignee can show that direct enforcement is insecure.

Uniform Foreign-Country Money Judgments Recognition Act (UF-CMJRA)

This Act is a revision of the Uniform Foreign Money-Judgments Recognition Act of 1962, which codified the most prevalent common law rules with regard to the recognition and enforcement of money judgments rendered in other countries. Recognition in an American state court is a step towards enforcement of the judgment against assets of the judgment debtor. This revision continues the basic policies and language of the 1962 Act; the main purpose of this modest revision is to correct and clarify gaps in the 1962 Act revealed in the case law. For example, the 2005 Act provides that a petitioner for recognition has the burden of proving that the judgment is entitled to recognition under the standards of the Act, and that any respondent resisting recognition and enforcement has the burden of proof respecting denial of recognition. Burdens of proof were not addressed in the 1962 Act. The 2005 Act has statutes of limitations provisions not found in the 1962 Act at all. The result is a more comprehensive Act and better response to the conditions of international trade.

Uniform Debt-Management Services Act (UDMSA)

The consumer debt management industry has taken many forms over the time since its development in the 1950’s. The industry has had a checkered past, with frequent accusations of abuse. The interest in debt counseling and management, however, has been dramatically escalated by the bankruptcy reform legislation passed by Congress in 2005. It mandates counseling by a private agency before an individual may enter into bankruptcy. The Uniform Debt-Management Services Act regulates debt-management

companies by requiring them to register with the state. To obtain a certificate of registration, a provider must supply information about itself, must obtain insurance against employee dishonesty, and must post a surety bond to safeguard any money that it receives from individuals for payment of creditors. The Act also regulates interaction with consumers, including steps to be taken before entering an agreement with an individual, the content of an agreement (including limitations on the fees that may be charged), and provisions concerning the performance and termination of agreements. Finally, the Act provides for enforcement both by a public authority and by private individuals, including rule-making power on the part of the administrator and recovery of minimum, actual, and, in appropriate cases, punitive damages in private enforcement actions.

Uniform Certificate of Title Act (UCOTA)

Ownership of motor vehicles is dependent upon registration of motor vehicle titles in every state. Not only ownership rights, but the rights of secured creditors are dependent upon these registrations. A secured creditor with a security interest in a motor vehicle perfects that interest in the title registration records. Though the buying, selling, financing and owning of motor vehicles is clearly interstate in scope, the law providing for registration of certificates of title for motor vehicles is not uniform from state to state. The Uniform Certificate of Title Act is intended to promote uniformity of certificate of title law. This is significant now because the law of secured transactions, under which motor vehicles are financed, is uniform. The Uniform Act provides basic procedures for registering certificates of title for motor vehicles. It is designed to incorporate electronic registrations of title. It is also designed to incorporate electronic title searches for motor vehicles. While this Act does not cover watercraft or premanufactured homes, nor does it attempt to harmonize state “lemon laws” or title branding systems, it is intended to enable state coordination with federal initiatives to prevent title and odometer fraud. By providing for improved administrative rules and remedies governing title issues, creating better and more consistent data flows and information, and providing increased uniformity in the law, the Act will make certificates of title more meaningful and useful for all parties. The resulting increased integrity of the title system will benefit all involved.

Model Entity Transactions Act (META)

The Model Entity Transactions Act provides procedures for mergers, conversions, interest exchanges, divisions and domestications of business and nonprofit entities, including partnerships, limited partnerships, limited liability companies and corporations. Cross entity transactions of these kinds are made more universally possible. The objective is to accomplish such a transaction with appropriate approvals without having to dissolve an entity and without extinguishing any obligations owed by preceding entities in the process. This is a model act because it must be tailored in each enacting state to tie existing entity statutes together. It was initially completed in 2004. Division of entities was added in 2005.

SHORT SUMMARIES OF 2004 ACTS

Uniform Residential Mortgage Satisfaction Act

The Uniform Residential Mortgage Satisfaction Act provides that a mortgage must provide a statement of satisfaction that is recorded in the real property records when a mortgagor has paid off the mortgage. The mortgagor is also entitled to a payoff letter. In the event there is no timely response to a request for a statement of satisfaction (30 days after notice), the mortgagor may provide an affidavit through qualified intermediaries for the real property records in lieu of the statement of satisfaction.

Uniform Real Property Electronic Recording Act

The Uniform Real Property Electronic Recording Act equates electronic documents and signatures to original paper documents and manual signatures so that electronic documents pertaining to real estate transactions may be electronically recorded. The Act also establishes a state board to establish standards for electronic recording.

Uniform Wage Withholding and Unemployment Insurance Procedure Act

The Uniform Wage Withholding and Unemployment Insurance Procedure Act strives to provide a harmonized wage base for each state and between each state for computing withholding for income taxes and unemployment compensation taxes. It also provides for one set of reporting and payment requirements and dates for employers to meet.

Model Entity Transactions Act

The Model Entity Transactions Act provides for procedures for mergers, conversions, interest exchanges and domestications of business and nonprofit entities, including partnerships, limited partnerships, limited liability companies and corporations. Cross entity transactions of these kinds are made more universally possible. The objective is to accomplish such a transaction with appropriate approvals without having to dissolve an entity and without extinguishing any obligations owed by preceding entities in the process.

Amendments to Uniform Trust Code

An assortment of technical amendments were made to the Uniform Trust Code, including optional provisions for notice to qualified beneficiaries and more specific procedures for termination or modification of an irrevocable trust.

Amendments to Uniform Money Services Act

Limited technical amendments were made to this uniform Act in 2004.

SHORT SUMMARIES OF 2003 ACTS

2003 Amendments to Article 2, Uniform Commercial Code

Article 2 of the Uniform Commercial Code governs sales of goods. It was promulgated as part of the Uniform Commercial Code in 1951. It has ancestry in the Uniform Sales Act, originally promulgated in 1906. The amendments incorporate electronic transactions so that sale contracts can be formed and enforced though in

electronic media. Other areas of Article 2 are clarified in light of the experience with this Article since 1951, the year it replaced the Uniform Sales Act and the year the Uniform Commercial Code was launched.

2003 Amendments to Article 2A, Uniform Commercial Code

Article 2A governs leases of goods in a parallel fashion to the governance of sales of goods in Article 2. Article 2A was added to the Uniform Commercial Code in 1987, and was the first new Article in the Uniform Commercial Code since its original promulgation in 1951. Article 2A was amended in 1990. The primary purpose of the 2003 amendments is to incorporate electronic transactions so that lease contracts can be formed and enforced though in electronic media. There are other clarifications based on the experience with Article 2A since 1987.

Revised Article 7, Uniform Commercial Code

Article 7 governs the transfer of bills of lading and warehouse receipts as documents of title. Generally, transfer of a document of title from one person to another transfers the rights in the goods represented by the document of title. Article 7 provides for negotiable documents of title, which transfer interests in goods represented in such documents free of any claims or defenses of the issuer or other transferor of the document. The revisions establish the rules for electronic documents of title. It authorizes them, incorporates electronic records and signatures for statute of fraud purposes, provides an analogous system for transfer of electronic documents to the system of negotiable paper documents of title, provides for conversion of electronic documents of title into tangible documents of title and vice versa, and prepares for the expected reliance upon electronic documents of title into the future. A key concept to transfer of electronic documents of title is that of "control". Control occurs when it is possible to identify every transfer of an authoritative copy of an electronic document with absolute certainty and when transfer can occur only when the party in control authorizes transfer.

Uniform Environmental Covenants Act

This new Uniform Act in 2003 creates an interest in real estate called an "environmental covenant" that assures a plan of rehabilitation for contaminated real property (brownfields) and control of use that may be separately conveyed to and enforced by a relevant third person called a "holder". An underlying plan between state or federal government and a landowner for "remediation" of the property must be in place for an environmental covenant to be created and conveyed. The ultimate objective of this Act is to allow contaminated property to be returned to those uses consistent with prescribed clean-up, essentially making them marketable. The Act provides for the creation of such a covenant, its termination when appropriate, priority over other real estate interests, and enforcement over the time the covenant is in place. An environmental covenant is perpetual unless a specific term is prescribed in the instrument creating it. The interest will be recorded in the real estate records.

2003 Revision of the Uniform Estate Tax Apportionment Act

This is a revision of earlier acts, and part of the Uniform Probate Code, that provides for apportioning the burden of federal or state estate taxes between the

respective interests of heirs or legatees of an estate, or beneficiaries of a revocable trust, when the fiduciary for an estate or trust is required to pay such taxes. Generally, the tax burden is allocated to the interests of estate or trust beneficiaries in proportion to their interests in the whole of the taxable estate. There are special rules for specific sorts of interests, such as qualified terminable interest property trusts (a kind of marital trust) and when certain kinds of property are insulated from inclusion in the apportionable estate, though they are taxable property. This update takes into account all changes in tax rules arising since the last time this Act was amended.

2003 Amendments to Uniform Mediation Act: UNCITRAL Model Act on Commercial Conciliation

The 2003 Amendment to the Uniform Mediation Act provides for adoption of the UNCITRAL Model Act on Commercial Conciliation by incorporating it by reference in the Uniform Mediation Act. The Model Law was adopted by UNCITRAL in 2002 and provides for the appointment of conciliators (mediators) and the conduct of a conciliation between international commercial disputants. Conciliation and mediation are virtually synonymous for the purposes of these Acts.

2003 Amendments to the Uniform Trust Code

The 2003 amendments to the Uniform Trust Code (2000) follow a set of amendments approved in 2001. The changes consist of several clarifications and technical corrections, mostly nonsubstantive. An amendment to Section 105(b)(8) clarifies the mandatory rule requiring qualified beneficiaries over the age of 25 to be notified of the existence of an irrevocable trust, the identity of the trustee, and their right to request a trustee's reports. An amendment to Section 411 adds the words "modification or" to correct an inadvertent technical glitch. The Section relates to the modification or termination of a noncharitable irrevocable trust by consent. Amendments to Sections 602 and 603 deal with revocable trusts and who controls the rights of the beneficiaries while the trust is revocable. The objective is to make sure that, in cases of a trust with a joint interest, a settlor is notified if another settlor amends or revokes the trust. Since Section 603 is much broader in scope, the language has been stricken from it and added more precisely into Section 602. An amendment to Section 802 deals with the trustee's duty of loyalty. The amendment to Section 802(f) clarifies the Uniform Trust Code provision on proprietary mutual funds. The amendment provides that Section 802(f) applies to institutional trustees in many contexts other than proprietary mutual funds. The last amendment changes an "or" to an "and" in Section 815, relating to general powers of a trustee. While a technical typographical glitch, its impact is substantive. This amendment clarifies the intent of the drafters that, to the extent the terms of the trust are silent, the trustee powers will be supplemented by those in the Uniform Trust Code.

2003 Amendment to the Uniform Tort Apportionment Act

This Act, which was promulgated originally in 2002 and which replaces the Uniform Comparative Fault Act of 1979, received some limited amendments in 2003. Language relating to "strict liability" in Section 3 has been deleted, since the defense of contributory fault has not ordinarily been available in strict liability cases. The Act applies in negligence cases and any other case in which a defense of contributory fault

may have been a defense. Other amendments clarify the reallocation provisions, primarily providing for a more precise statement relating to any security position or subrogation rights considered in reallocating damages. A precise time of 90 days has been provided for filing for reallocation in the event a share of a party is uncollectible.

SHORT SUMMARIES OF 2002 ACTS

Uniform Apportionment of Tort Responsibility Act

This Act provides for a modified form of comparative fault that compares the fault of an injured party with that of all contributing tortfeasors in an action for damages until the injured person's contribution reaches or exceeds 50% of his or her own injury. Then contributory fault is an absolute bar to recovery. Joint and several liability of multiple tortfeasors is limited to certain instances, primarily the one in which multiple tortfeasors act in concert. Otherwise, joint and several liability is abolished. There is a reallocation procedure when there are multiple tortfeasors and it appears reasonably certain that a tortfeasor will not pay compensation to an entitled injured party.

Uniform Child Witness Testimony by Alternative Methods Act

This Act authorizes a court to consider whether to allow a child to testify outside the presence of a party and outside a proceeding when not so testifying would impair the testimony of the child witness or subject the child witness to distress. In a criminal proceeding, to obtain an alternative method, it must be proved by clear and convincing evidence that testimony will cause the child great emotional distress. In a civil proceeding, it must be shown that an alternative is in the best interests of the child by a preponderance of the evidence. Party rights to examination and cross-examination are preserved.

Amendments to Uniform Commercial Code Articles 3 and 4

Very limited amendments to UCC Articles 3 and 4 were promulgated by the American Law Institute and the Uniform Law Conference in 2002. These articles govern negotiable instruments and bank deposits and collections. The most significant amendment deals with adding suretyship rules from the Restatement of Suretyship to replace the rules for indorsers and accommodation parties when an obligation is released without payment. There are new warranty rules for telephonically generated checks, a new phenomenon. Certain writing requirements are extended to include electronic records. These are examples of these amendments. The primary character of negotiable instruments and checks remains unchanged.

Uniform Computer Information Transactions Act (Last amended in 2002)

The Uniform Computer Information Transactions Act (UCITA) is the first comprehensive Act governing the commercial licensing of computer information and network access contracts. It governs all aspects of licensing contracts from formation to remedies in the event there is breach of contract. Computers operate with, produce, and use digitized information. The software that runs the computer and the music that it plays are all the same in that sense. What is transferred from person to person is that digitized information stored electronically. A licensing contract is a contract to transfer the

informational rights and copies of the information that the originator of computer information has to a transferee. Usually, the transferor of computer information reserves some of the informational rights—the right to copy being the most commonly withheld right. Computer information can be copied and disseminated instantly and infinitely, and the license contract protects the transferor's economic interest in computer information by limiting the transferee's subsequent transfer rights. There are special formation rules in UCITA for acquisition of licenses in the mass-market, warranty rules for transfer of information, including special compatibility rules, rules relating to the authentication of transfers of computer information, and rules for memorializing contracts using electronic records. Remedies for breach of an agreement are, generally, damages. 2002 amendments cut off electronic self-help as a remedy, limit the ability to prohibit reverse engineering, and make licensing contracts nonbinding until they are available for review either electronically or in a writing.

Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act (Last amended in 2002)

This Act implements the obligation of full faith and credit for domestic violence protection orders required by the U.S. Constitution and the federal Violence against Women Act. There are two principal methods of enforcement: (1) direct enforcement by a court of the domestic violence protection orders of another state; or (2) enforcement by law enforcement officers upon a finding that there is probable cause to believe that a domestic violence protection order from another state has been violated. In addition, a domestic violence protection order from another state may be registered in advance of any possible violation of that order to expedite enforcement by courts or law enforcement officers. The 2002 amendments expressly add anti-stalking orders to the scope of this Act.

Uniform Nonjudicial Foreclosure Act

This Act permits the foreclosure of real estate mortgages without a judicial proceeding. It allows traditional sale by auction, placing foreclosed property directly on the real estate market, or strictly foreclosing on the property. Nonjudicial foreclosure of a residential mortgage eliminates deficiency judgments for good faith debtors. Post-sale redemption is eliminated. The premise for this Act is that in the huge majority of cases, the right to foreclose is clear and unequivocal. A judicial proceeding in every case therefore impedes the inevitable result, which is sale of the property to satisfy the debt. There is always recourse to a court if there is doubt about the right to foreclose.

Uniform Parentage Act (Last Amended in 2002)

The original Uniform Parentage Act (UpaA) was promulgated in 1973. It removed the legal status of illegitimacy from the law of the U.S. and provided a first modern civil paternity action. The 2002 UpaA augments and streamlines the 1973 UpaA. It includes the basic paternity or parentage action with expanded standing to bring such an action, but provides for a non-judicial acknowledgment of paternity procedure that is the equivalent of an adjudication of paternity in a court, providing that there is no presumed father of the child. The presumption of fatherhood is based on the relationship between a man and woman with respect to a child. The most common presumed father is

the man married to the birth mother of the child at the time of conception. The acknowledgment proceeding is predicated on the availability of the precise genetic testing that has developed since 1973. A paternity registry is provided in the 2002 UpaA. There is a specific, separate judicial proceeding for ordering genetic testing. The 2002 UpaA provides specific standards for genetic testing. Only genetic tests that identify another man as a father or exclude the presumed father may be used to rebut the presumption of fatherhood in a paternity action. Also included in the 2002 UpaA are rules for determining the parents of children whose conception is not the result of sexual intercourse. Included kinds of assisted conception are artificial insemination and in vitro fertilization. The 2002 UpaA also incorporates sections on gestational agreements, but as optional sections because of state law differences on these kinds of contracts. The principal amendments in 2002 return some of the nonmarital presumptions of paternity from the 1973 Act that were eliminated in the 2000 Act.

Uniform Securities Act (Last revised in 2002)

A major revision of the Uniform Securities Act was promulgated in 2002. There has been a uniform Act on the issues of securities regulation going back to 1930. This Act replaces both the 1956 Uniform Act and the 1985/88 Uniform Act. It provides basic law for registration of securities issues, broker-dealers and investment advisors, along with enforcement powers for the securities administrator. Coordination with federal law, particularly after the 1996 National Securities Markets Improvement Act, is a primary goal. The 1996 federal Act specifically preempted state securities regulation, making all existing state law out of compliance. The Act also accommodates electronic records and filing systems.

LEGISLATIVE ACTIVITY IN 2005-2007

In 2007 the Uniform Real Property Electronic Recording Act was enacted as Public Act 95-472, effective August 27, 2007.

In 2006 the following were introduced but did not pass both houses: HB4659, Uniform Parentage Act (2000); HB4991, Uniform Debt-Management Services Act; and HB5224, Uniform Residential Landlord and Tenant Act.

In 2005 the following were introduced but did not pass both houses: HB3618, Uniform Parentage Act (2000); SB1646, Uniform Commercial Code Article 7 (2003); and SB1647 Uniform Commercial Code Article 1 (2001).

Respectfully submitted,

Richard C. Edwards, Executive Director
Legislative Reference Bureau
On behalf of the Commissioners