

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



NOVEMBER 22, 2010



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

November 22, 2010

The Honorable Pat Quinn
Governor
207 State House
Springfield, Illinois 62706

Dear Governor Quinn:

On behalf of the Illinois delegation to the National Conference of Commissioners on Uniform State Laws, I submit the enclosed annual report for 2010.

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 22, 2010**

PREAMBLE

To the Honorable Pat Quinn, Governor, and members of the Ninety-Sixth General Assembly. The Legislative Reference Bureau, on behalf of the Illinois Commissioners on Uniform State Laws, respectfully submits this annual report.

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. It is comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners appointed.

There is only one fundamental requirement for the more than 300 uniform law commissioners: that they are members of the bar. While some commissioners serve as state legislators and other 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 law 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 where uniformity between the states is desirable. The ULC may only propose uniform laws—no uniform law is effective in a state until the state legislature adopts it.

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. It has sought to bring uniformity to the divergent legal traditions of more than 50 sovereign jurisdictions and has done so with significant success.

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. By 1912, every state was participating in the ULC. The U.S. Virgin Islands is the last jurisdiction to join, appointing its first commission in 1988.

Very early on the ULC became known as a distinguished body of lawyers. The ULC 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 and Rutledge, former Chief Justice Rehnquist, and current Justice Souter. Legal scholars have served in large numbers, including Professors Wigmore, Williston, Pound, and Bogert. Many more distinguished lawyers have served since 1892, though their names are not as well known in legal affairs and the affairs of the U.S.

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, and the Uniform Child Custody Jurisdiction and Enforcement Act.

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 (UCC). Working with the American Law Institute, the UCC took ten years to complete and another 14 years before it was enacted across the country. It 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 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.

DIVERSITY STATEMENT

Each member jurisdiction determines the number of uniform law commissioners it appoints to the Uniform Law Commission, the terms of uniform law commissioners, and the individuals who are appointed from the legal profession of that jurisdiction. The Uniform Law Commission has no appointing authority. The Uniform Law Commission, however, does encourage the appointing authorities to consider among other factors,

diversity of membership in their 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.

PROCEDURES

The ULC 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 these annual meetings, drafting committees composed of Commissioners meet to supply the working drafts that are 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. No Act becomes officially recognized as a Uniform Act until the Uniform Law Commission 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 ULC Executive Committee, which is composed of the officers, certain ex-officio members, and members appointed by the ULC President. Certain activities are conducted by the 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 the ULC to the state legislatures.

A small staff located in Chicago operates the national office of the ULC. The national office handles meeting arrangement, publication, legislative liaison, and general administrative services for the ULC.

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

ILLINOIS 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 the ULC 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 the ULC 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.

ILLINOIS 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) (House Republican Leader—life member)
 Howard J. Swibel (1976) (Senate Democrat Leader—life member)
 Michael B. Getty (1977) (House Democrat Leader—life member)
 Thomas J. McCracken, Jr. (1989) (Senate Republican Leader)
 Richard C. Edwards (1993) (ex officio)
 Steven G. Frost (2001) (Governor)
 Dimitri Karcazes (2004) (Governor)
 J. Samuel Tenenbaum (2004) (House Republican Leader)
 Patrick D. Hughes (2007) (Governor)
 William J. Quinlan (2007) (Governor)
 A. J. Wilhelmi (2009) (Governor)

ORGANIZATION AND MEETINGS OF THE ILLINOIS DELEGATION.

The Illinois Delegation met at the National Conference in Chicago, IL in 2010. Howard J. Swibel is Chair, and Richard C. Edwards is Secretary. The annual meeting in 2011 will be in Vail, CO.

UNIFORM AND MODEL ACTS ENACTED IN ILLINOIS

NCCUSL reports that 104 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, and the other is the expense of attendance at the annual meeting of the conference by the Illinois Commissioners. The combined amount expended in Fiscal Year 2010 was \$79,400. The combined amount for Fiscal Year 2011 is \$79,400.

SHORT SUMMARIES OF 2010 ACTS

Uniform Military and Overseas Voters Act

The 2010 Uniform Military and Overseas Voters Act (UMOVA) establishes reasonable, standard timetables for application, registration, provision of ballots, and election information for covered voters, and submission of ballots, and provides for the determination of the address that should be used for active-duty military and overseas voters. The Act simplifies and expands, in common sense fashion, the class of covered voters and covered elections. UMOVA allows voters to make use of electronic transmission methods for applications and receipt of registration and balloting materials, tracking the status of applications, and expands use of the Federal Post Card Application and Federal Write-In Absentee Ballot. Finally, UMOVA obviates non-essential requirements that could otherwise invalidate an overseas ballot. The new Act uses and builds upon the key requirements of UOCAVA and MOVE, and extends the important protections and benefits of these Acts to voting in applicable state and local elections.

2010 Amendments to Article 9 of the Uniform Commercial Code

The 2010 amendments to Article 9, which governs secured transactions in personal property, address filing issues as well as other matters that have arisen in practice following over a decade of experience with the revised Article 9 (last revised in 1998 and enacted in all states and the District of Columbia). Of most importance, the 2010 amendments provide greater guidance as to the name of an individual debtor to be provided on a financing statement. The amendments also improve the system for filing financing statements. More detailed guidance is provided for the debtor's name on a financing statement when the debtor is a corporation, limited liability company or limited partnership and when the collateral is held in a statutory or common law trust or in a decedent's estate. Some extraneous information currently provided on financing statements will no longer be required. In addition, the amendments provide greater protection for an existing secured party having a security interest in after-acquired property when its debtor relocates to another state or merges with another entity. Finally, the amendments also contain a number of technical changes that respond to issues arising in the marketplace and a set of transition rules.

Uniform Electronic Recordation of Custodial Interrogations Act

The Uniform Electronic Recordation of Custodial Interrogations Act addresses difficult problems that accompany interrogations conducted by law enforcement officials. These issues include false confessions and frivolous claims of abuse that ultimately waste court resources. By requiring law enforcement to electronically record custodial interrogations, the Act promotes truth-finding and judicial efficiency and further protects the rights of law enforcement and those under investigation. The Act is carefully drafted to avoid undue burdens and technical pitfalls for law enforcement officials and prosecutors. The Act does not require law enforcement to make recordings that are unfeasible or that would endanger confidential informants, nor does it punish law enforcement for equipment failures. A uniform statute governing the electronic recordation of custodial interrogations will provide consistent rules among the states and improve the administration of justice.

Uniform Faithful Presidential Electors Act

The Uniform Faithful Presidential Electors Act (UFPEA) addresses the problem of a presidential elector who decides to vote inconsistently with the way they were elected to vote by the people of the state. The UFPEA creates a procedure that assures that states attempting to appoint a complete complement of electors will succeed and maintains the sanctity of the electoral process. Under the UFPEA, electors take a pledge of faithfulness. A vote in violation of that pledge constitutes resignation from the office of elector. Correspondingly, the Act provides a mechanism for filling a vacancy created because of this constructive resignation. The UFPEA disallows faithless voting and assures that faithful votes are substituted for faithless ones. In doing so, it provides the voters of the state with the confidence that the votes they have cast will be honored when the Electoral College meets.

Uniform Partition of Heirs Property Act

The Uniform Partition of Heirs Property Act (UPHPA) establishes a hierarchy of remedies for use in those partition actions involving heirs property. The remedies are designed to help those who own heirs property to maintain ownership of their property when possible or to ensure at the very least that any court-ordered sale of the property is conducted under commercially reasonable circumstances that will protect the owners from losing substantial wealth upon the sale of their property. Courts use the Act's guideline to determine if tenancy in common property is heirs property that must be partitioned in accordance with the Act. UPHPA provides the procedures by which notice is provided to cotenants and appraisers and brokers are hired. The Act also mandates that any commissioners, referees, or partitioners that are appointed by the court must be disinterested. Importantly, UPHPA incorporates an option and statutory procedure for cotenants to buy-out the interests of those other cotenants seeking partition by sale. In those instances in which a buy-out doesn't resolve the action, the Act retains the widespread current preference for a partition in kind but outlines specific criteria a court must consider in determining whether a partition by sale may be justified. The UPHPA provides a supplementary mechanism for existing state partition law to help preserve the character and integrity of family-owned property and to protect a family's property-based wealth while still allowing a fair partition action to proceed.

Uniform Protection of Genetic Information in Employment Act

The need for regulation of genetic information and the desirability of uniformity in the area was recognized at the federal level with the enactment of the Genetic Information Nondiscrimination Act (GINA) of 2008. However, much in the same way that states have supplemented federal employment nondiscrimination Acts with their own fair employment Acts, there is a role for states in the regulation of genetic information in the workplace. The Uniform Act is designed to eliminate the preemption problems created by GINA for existing state statutes. It thus incorporates the key definitions and concepts of GINA. It also complements and supplements GINA with additional provisions that are more protective of employees, following the pattern of many state fair employment laws that supplement Title VII and other federal statutes. The Act comprehensively regulates acquisition, use, retention, and disclosure of genetic information in the employment setting.

Model State Administrative Procedure Act

The Model State Administrative Procedure Act (MSAPA) was first promulgated by the Uniform Law Commission (ULC) in 1946. The MSAPA has since been revised three times: 1961, 1981 and the most recent revision was completed and adopted by the ULC in July of 2010. The 2010 MSAPA maintains continuity with the provisions of the 1961 Act and, to a lesser degree, the 1981 Act. This Act returns to the external hearing rights approach followed in the 1961 Act, but also includes constitutionally required hearings in the mix of sources of hearing rights law. This Act is designed especially for adoption by states that currently have the 1961 Act, but would like to replace that Act with a more modern up to date Administrative Procedure Act. The Act is composed to ensure fairness in administrative proceedings, increase public access to the law administered by agencies, and promote efficiency in agency proceedings by providing for extensive use of electronic technology by state governments. The Act has been drafted to be less detailed and less comprehensive than the 1981 Act. Consistent with both the 1961 MSAPA and the 1981 MSAPA, the Act provides for a uniform minimum set of procedures to be followed by agencies subject to the Act. The Act creates only procedural rights and imposes only procedural duties. Throughout the Act there are provisions that refer generally to other state laws governing related topics. When specific state laws are inconsistent with the provisions of the Act, those specific state laws will be controlling.

Revised Uniform Law on Notarial Acts

The 2010 Revised Uniform Law on Notarial Acts (RULONA) comprehensively revises and replaces the earlier 1982 Uniform Law on Notarial Acts (ULONA). Since the original promulgation of ULONA, society and technology have advanced considerably, requiring notarial officers and their practice to adapt. In particular, RULONA recognizes the ascendance of electronic commerce and transactions in the public and private sectors, and brings the law governing electronic notarial acts on par with laws governing other forms of electronic transactions. RULONA continues to focus on preservation of the integrity of the notarial transaction, whether tangible or electronic. References to the notarial seal are replaced with an “official stamp”, and RULONA provides for affixing an

official stamp to a notarial certificate for tangible documents or logically associating it with an electronic one. RULONA provides minimal standards for commissioning notarial officers and handles recognition of notarial acts from other states and certain foreign equivalents. Finally, the revised Act addresses deceptive and fraudulent practices and advertising, transactions in which the notary or a spouse is a party or has an interest, and prohibitions on unauthorized practice of law.

Insurable Interest Amendments to the Uniform Trust Code

Personal life insurance trusts are a key component of most modern estate plans, and trust and estate planners create them routinely. The trustee is typically designated as the owner, and usually also as the beneficiary, of one or more insurance policies held on the life of the trust's creator (i.e., the "grantor" or "settlor"). These trusts are extremely useful devices for ensuring that life insurance proceeds are managed competently for the beneficiaries of the trust, and, in the case of irrevocable life insurance trusts ("ILITs"), for removing life insurance proceeds from an insured's gross estate. A recent federal district court decision (*Chawla ex rel Giesinger v. Transamerica Occidental Life Insurance Co.*, aff'd in part, vac'd in part, 440 F.3d 639 (4th Cir. 2006)) inserted doubt into the estate planning world by stating in dicta that a trust did not have an insurable interest in the life of the insured who was the settlor and the creator of the trust. The amendment attempt to clarify, with respect to trusts, what constitutes an "insurable interest" for purposes of insurance law, while at the same time allowing for the transfer of interest in insurance as property.

Uniform Collateral Consequences of Conviction Act

The Uniform Collateral Consequences of Conviction Act, promulgated by the Uniform Law Commission in 2009 and subsequently amended in 2010, improves the understanding of penalties that attach when an individual is convicted of an offense, and in appropriate circumstances, offers a mechanism to provide partial relief from the disabilities. The Act facilitates notification of collateral consequences before, during, and after sentencing. Under the provisions of the Act, states are to create a collection of all collateral consequences, with citations and descriptions of the relevant statutes. Individuals will be advised of the particular collateral consequences associated with the offense for which they are charged at or before arraignment. Notice is also to be given at the time of sentencing, and if an individual is sentenced to prison, at the time of release. The Act mandates the essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent. Amendments approved in 2010 responded to the Supreme Court decision in *Padilla v. Kentucky*. This decision mandated that defense counsel must advise a defendant of certain collateral consequences associated to the crime. The need for attorney to provide clear and impartial descriptions of the options available to the party prior to deciding upon a course of action is stressed throughout the Act. The Act provides mechanisms for relieving collateral sanctions imposed by law. The Act creates an Order of Limited Relief, designed to relieve an individual from one or more collateral consequence based on a showing of fitness for reentry. The Order does not automatically remove the consequence, but does remove the automatic disqualification imposed by law. A state agency remains able to disqualify an individual

on a case by case basis. The Act also creates a Certificate of Restoration of Rights. The Certificate is granted to individuals who demonstrate a substantial period of law-abiding behavior consistent with successful reentry and desistance from crime. Issuance of a Certificate facilitates reintegration of those individuals who have demonstrated an ability to live a lawful life.

SHORT SUMMARIES OF 2009 ACTS

UNIFORM COLLABORATIVE LAW ACT (2009)

The Uniform Collaborative Law Act, promulgated by the Uniform Law Commission in 2009, standardizes the most important features of collaborative law practice, mindful of ethical concerns as well as questions of evidentiary privilege. In recent years, the use of collaborative law as a form of alternative dispute resolution has expanded from its origin in family law to other areas of law, including insurance and business disputes. As the practice has grown it has come to be governed by a variety of statutes, court rules, formal, and informal standards. A comprehensive statutory framework is necessary in order to guarantee the benefits of the process and to further regulate its use. The Act encourages the development and growth of collaborative law as an option for parties that wish to use it as a form of alternative dispute resolution.

The Act mandates the essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent. The need for attorneys to provide clear and impartial descriptions of the options available to the party prior to deciding upon a course of action is stressed throughout the Act. Additionally, the Act mandates that the collaborative agreement contains the disqualification provisions that are essential to the collaborative process. The disqualification requirements create incentives for cooperation and settlement. By standardizing the collaborative process, the Act secures the benefits of collaborative law for the parties involved while providing ethical safeguards for the lawyers involved.

UNIFORM COLLATERAL CONSEQUENCES OF CONVICTION ACT (2009)

The Uniform Collateral Consequences of Conviction Act, promulgated by the Uniform Law Commission in 2009, improves the understanding of penalties that attach when an individual is convicted of an offense, and in appropriate circumstances, offers a mechanism to provide partial relief from the disabilities. The Act facilitates notification of collateral consequences before, during, and after sentencing. Under the provisions of the Act, states are to create a collection of all collateral consequences, with citations and descriptions of the relevant statutes. At or before arraignment, individuals will be advised of the particular collateral consequences associated with the offense for which they are charged. Notice is also to be given at the time of sentencing, and if an individual is sentenced to prison, at the time of release. Formal advisement promotes fairness and compliance with the law.

The Act provides mechanisms for relieving collateral sanctions imposed by law. The Act creates an Order of Limited Relief, designed to relieve an individual from one or more collateral consequence based on a showing of fitness for reentry. The Order does

not automatically remove the consequence, but does remove the automatic disqualification imposed by law. A state agency remains able to disqualify an individual on a case by case basis. The Act also creates a Certificate of Restoration of Rights. The Certificate is granted to individuals who demonstrate a substantial period of law-abiding behavior consistent with successful reentry and desistance from crime. Issuance of a Certificate facilitates reintegration of those individuals who have demonstrated an ability to live a lawful life.

UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT (2009)

Asset-specific mechanisms for the non-probate transfer of property and funds are now common – the proceeds of life insurance policies and pension plans, securities registered in transfer on death (TOD) form, and funds held in pay on death (POD) bank accounts, are good examples of property that have benefitted from this trend in modern property law. However, a straightforward, inexpensive, and reliable means of passing real property, which may be a decedent’s major asset, directly to a beneficiary is not generally available. The Uniform Real Property Transfer on Death Act (URPTODA) enables an owner of real property to pass it to a beneficiary upon the owner’s death by a similar mechanism – simply, directly, and without probate. Under URPTODA, the property passes by means of a recorded transfer on death (TOD) deed. URPTODA sets forth the requirements for the creation and revocation of a TOD deed, and clarifies the effect of the TOD deed for all parties while the transferor is living and after they pass away. A TOD deed is effective without consideration, and without notice or delivery to the beneficiary. Beneficiaries take the property subject to allowed claims against the transferor’s estate. If the intended beneficiary wishes, they may disclaim all or part of their beneficiary interest in the property. Finally, URPTODA provides optional language for forms to create and revoke TOD deeds.

UNIFORM STATUTORY TRUST ENTITY ACT (2009)

The Uniform Statutory Trust Entity Act (USTEA) addresses the need for a uniform law to regulate statutory business trusts. This need arises from the increasing popularity of statutory trust entities, chiefly in the structured finance and mutual fund industries. Practitioners, entrepreneurs, and scholars struggle to understand the law governing statutory trusts. The case law on statutory trusts is sparse. USTEA validates the statutory trust as a permissible form of business organization and brings the disparate and often inadequate existing state laws into uniformity.

USTEA more closely resembles a generic corporate code or unincorporated entity law than it does the Uniform Trust Code (UTC). However, nothing in this Act displaces the common law of trusts, or the UTC, with respect to such trusts. The USTEA uses Delaware Statutory Trust Act as a starting point for the Act but adds several innovations. The USTEA will be used primarily as a business organization tool and will clarify this area of law.

UNIFORM LAW ENFORCEMENT ACCESS TO ENTITY INFORMATION ACT (2009)

The Uniform Law Enforcement Access to Business Entity Act (ULEAIEA) addresses the need for law enforcement to have ready access to information regarding the

owners and managers of entities established under state law. ULEAIEA is designed to be a substitute for the Incorporation Transparency and Law Enforcement Assistance Act (S. 569), co-sponsored by Senators Levin, Grassley and McCaskill. ULEAIEA will help address some national security concerns relating to companies operating for the purpose of organized crime, terrorist financing, securities fraud, tax evasion and other misconduct, while at the same time balancing important privacy concerns. The Act is intended to provide a viable state law alternative to pending federal legislation. Rather than filing and updating “beneficial ownership” information, ULEAIEA provides that LLC’s, partnerships, trusts, and other entities must designate a “records contact”, which is responsible for producing information upon an appropriate request. ULEAIEA is intended to be more comprehensive and less invasive than S. 569. [Please note that at this time we are NOT recommending this act be introduced in 2010. This Act was developed as a potential alternative to pending federal legislation (s.569) and any legislative efforts are therefore on hold until the status of that bill is resolved.]

SHORT SUMMARIES OF 2008 ACTS

2008 Amendments to the Uniform Common Interest Ownership Act (and) the Uniform Common Interest Owners’ Bill of Rights Act

The 2008 amendments to the Uniform Common Interest Ownership Act (UCIOA) update and revise the 1994 version of the Act. The original 1982 version of UCIOA had previously been adopted in five jurisdictions, and the 1994 revised version in two. This Act contains provisions for the formation, management, and termination of any common interest community, including condominiums, planned communities, and real estate cooperatives.

The 2008 UCIOA amendments seek to address critical aspects of association governance, with particular focus on the relationship between the association and its individual members, foreclosures, election and recall of officers, and treatment of records. Importantly, UCIOA gives greater flexibility to association governing boards with regard to enforcement of the declaration, bylaws, and rules of the association. The 2008 amendments also modernize UCIOA with respect to electronic commerce and practice.

In addition to amendments to UCIOA, a new Uniform Common Interest Owners Bill Of Rights Act (UCIOBORA) was also drafted that can be enacted by states as part of UCIOA or as a stand-alone Act. The UCIOBORA is drawn from the provisions of UCIOA, and supplements existing state law with many of the most important updates and protections of the 2008 Act.

2008 Amendments to the Uniform Interstate Family Support Act

In November 2007, the United States signed the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance. This Convention contains numerous provisions that establish uniform procedures for the processing of international child support cases. The 2008 UIFSA amendments, approved by the Uniform Law Commission, serve as the implementing language for the Convention within U.S. States and Territories.

In order for the United States to fully accede to the Convention it was necessary to modify UIFSA by incorporating provisions of the Convention that impact existing state law. Section 7 of the 2008 UIFSA provides important guidelines and procedures for the registration, recognition, enforcement and modification of foreign support orders from countries that are parties to the Convention. Enactment of the amendments to UIFSA will improve the enforcement of American child support orders abroad and will help ensure that children residing in the United States will receive the financial support due from parents, wherever the parents reside.

Federal implementing legislation submitted to Congress will require that the 2008 version of UIFSA be enacted in every jurisdiction by 2010, as a condition for continued receipt of federal funds supporting state child support programs. Failure to enact these amendments by 2010 will result in the loss of this important federal funding.

2008 Amendments to the Uniform Principal and Income Act

The Uniform Law Commission, in July 2008, approved amendments to the Uniform Principal and Income Act that update the Act to reflect current policy of the Internal Revenue Service (IRS) and clarify technical language regarding withholdings. Section 409 of the Act has been changed to satisfy a 2006 IRS ruling regarding marital deductions. The new language comports with the ruling and the underlying tax policies of the IRS. Further, the 2008 amendments include a change to Section 505, which addresses the amount of money which must be withheld from a distribution to pay the tax on the undistributed income. The amendment clarifies the section and removes any ambiguity that could lead to litigation.

2008 Amendments to the Uniform Probate Code

The Uniform Probate Code (UPC), which is fully adopted in 18 states (and partially adopted as various stand-alone acts in many others) provides an integrated statutory system for all sorts of probate and estate law matters. The UPC, along with its constituent stand-alone Acts, has been frequently updated since its inception in 1969. The 2008 amendments to the UPC are designed to address four key issues. First, several sections having to do with cost-of-living adjustments have been updated for the first time since 1990. Second, definitions have been added to make the UPC consistent with the use of electronic signatures and records and to allow for the option of notarized wills (as an alternative to attestation by two witnesses). Third, Article II of the UPC dealing with intestate succession has been reorganized and expanded to extend intestate inheritance rights to a broader group of potential heirs based on the existence of a “parent-child relationship” as defined therein. This last change significantly modernizes the UPC’s treatment of non-marital children (and children of new forms of marriage), adoptive children, and children of assisted reproduction. Finally, the process and standards under which a will can be reformed or corrected are clarified so as to be consistent with the Restatement (Third) of Property: Wills and other Transfers, and the Uniform Trust Code.

The Revised Uniform Unincorporated Nonprofit Association Act

The Uniform Unincorporated Nonprofit Association Act (originally promulgated in 1996), addressed a key problem in common law: that an unincorporated association was not a separate entity, but rather was an aggregate of individuals with many

characteristics of a business partnership. The 1996 Uniform Act reformed the common law in three basic areas: authority to acquire, hold, and transfer property, especially real property; authority to sue and be sued as an entity; and contract and tort liability of officers and members of the association.

The Revised Act (RUUNAA) improves upon its predecessor by providing additional guidance, incorporating a number of modern practices, and by eliminating potential conflicts with other bodies of law. The revised act extends the nature of unincorporated nonprofit associations as distinct entities by allowing qualified associations to exist in perpetuity where necessary or convenient to carry out its purposes.

The RUUNAA distinguishes itself from its predecessor in that it provides greater guidance with respect to a number of member and manager issues (meetings, duties, resignation of members and managers, quorum and notice rules, etc.). Also, the RUUNAA addresses a number of financial issues such as prohibited distributions, compensation and other payments, reimbursement and indemnification, and advancement of expenses, as well as dissolution, winding up, and termination of an association.

In short, the RUUNAA modernizes the 1996 Uniform Act by addressing popular internal and external issues that would face an unincorporated nonprofit association today. Significantly, the project was executed in close coordination with similar efforts by the Uniform Law Conferences of Canada and Mexico, so widespread adoption of the Revised Act will have the added benefit of functional cross-border harmonization.

Uniform Unsworn Foreign Declarations Act

The Uniform Unsworn Foreign Declarations Act, promulgated by the Uniform Law Commission in 2008, affirms the validity of unsworn foreign declarations made by a declarant who is physically outside the boundaries of the United States when making the declaration and who may not have access to a notary. Under the Act, unsworn declarations cannot be used for depositions, oaths of office, oaths related to self-proved wills, declarations recorded under certain real estate statutes, and oaths required to be given before specified officials other than a notary. Use of an unsworn declaration, like a sworn declaration, would be subject to penalties for perjury, and the Act provides a model form that unsworn declarations must substantially follow.

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.

LEGISLATIVE ACTIVITY IN 2010

The Uniform Emergency Volunteer Health Practitioners Act became law (Public Act 96-983) and is codified at 225 ILCS 140/. The Illinois Athlete Agents Act became law (Public Act 96-1030) and is codified at 225 ILCS 401/. The Uniform Child Abduction Prevention Act (House Bill 5928) was introduced but did not pass both chambers of the General Assembly.

Respectfully submitted,

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Legislative Reference Bureau
On behalf of the Commissioners