

WEST VIRGINIA COMMISSION ON UNIFORM STATE LAWS

REPORT TO THE WEST VIRGINIA LEGISLATURE REGULAR SESSION 2010

I. INTRODUCTION

The West Virginia Commission on Uniform State Laws submits this annual report to the West Virginia Legislature in accordance with the provisions of West Virginia Code, § 29-1A-4. Since the establishment of the West Virginia Commission on Uniform State Laws, its members have regularly and actively participated in the Uniform Law Commission (ULC) as required by Section 29-1A-4 of the West Virginia Code. The ULC was formerly known as the “National Conference of Commissioners on Uniform State Laws” and frequently referred to as the “National Conference” and “NCCUSL.” From the Uniform and Model Acts promulgated by the ULC, the West Virginia Commissioners have selected those which they think would be most immediately beneficial to the State of West Virginia and have worked with the state Legislature for their passage. Over the years, the West Virginia Legislature has enacted 88 Acts drafted by the Uniform Law Commission.

II. HISTORY OF NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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 adopted 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 of 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.

West Virginia joined the National Conference in 1909, over 100 years ago. By 1912, every state was participating. Over the years, the National Conference has steadily increased its contribution to state law and has attracted some of the best of the profession. In 1912, Woodrow Wilson became a member. This, of course, was before his more notable political prominence and service as President of the United States. Justices of the Supreme Court of the United States (Louis Brandeis, Wiley Rutledge, and William Rehnquist) have been members. Legal scholars have served in large numbers. Examples are Professors Wigmore, Williston, Pound, and Bogart. This distinguished body has guaranteed that the projects of the National Conference are of the highest quality and are enormously influential upon the process of the law.

Over its 118 years, the Uniform Law Commission has developed into 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.

III. THE OPERATION OF THE NATIONAL CONFERENCE

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 the annual meetings, drafting committees composed of commissioners meet to supply the working drafts which are considered at the annual meeting. The various drafts are accessible on the Internet. The address is www.nccusl.org. At each annual meeting, the latest drafts of the drafting committees are read and debated. Normally, each Act is considered over a minimum period of two years. No Act becomes officially recognized as a Uniform Act until the ULC is satisfied that it is ready for consideration in the state legislatures. It is then put to a vote of the state delegations, during which each state caucuses and votes as a unit.

The governing body is the ULC Executive Committee, composed of the officers, certain ex-officio members, and members appointed by the President of the ULC. 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 assists the State commissioners in their work with their state legislatures.

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

The ULC 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 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 ongoing basis. The Uniform Commercial Code is a continuing joint project of the ULC and the American Law Institute. Liaison and activities may be conducted with other associations as interests and activities necessitate.

IV. ACTIVITIES OF THE WEST VIRGINIA COMMISSION ON UNIFORM STATE LAWS

A. Annual Meeting of the Commission

The West Virginia Commissioners are Richard E. Ford of Lewisburg, Judge Frederick P. Stamp, Jr., of Wheeling and Vincent P. Cardi of Morgantown who succeeded John L. McClaugherty of Charleston. Richard Ford is Chairperson of the West Virginia Commission and Frederick Stamp, Jr., is Secretary. The Commissioners met in July.

B. Uniform Law Commission Offices Held by Commissioners from West Virginia and Committee Memberships

Judge Fred Stamp was until recently a Trustee of the Uniform Law Foundation.

Richard Ford is a member of the Legislative Council and is Regional Chairman for West Virginia, Virginia, the District of Columbia, Maryland, and North Carolina. He has also served for two years on the Executive Committee and has served for two years as Secretary of the Uniform Law Commission. Vincent Cardi is the Legislative Liaison Member for West Virginia.

Former Commissioner John L. McClaugherty served two years as Chairman of the Executive Committee and served two years as President of the ULC, an honor for lawyers second only to the Presidency of the American Bar Association.

The commissioners from West Virginia serve on several committees of the ULC. Richard Ford serves on the Committee on Review of Conference Act and the Committee on Membership and Attendance. Judge Fred Stamp was the Chairperson of the Study Committee on Conflicts of Laws-Limitations Act, has served on the Scope and Program Committee, the Drafting Committee for the Correction or Clarification of Defamation Act, and the Uniform Athlete Agents Act. He presently serves on the Committee on Review of Conference Acts and the Committee on Federalism and State Law. He is also a member of the drafting committee for the Uniform Oversight of Charitable Assets.

Vincent Cardi served on the Study Committee for Regulation of Medico-Legal Death Investigations and on the Study Committee on Notice and Repair of Construction Defects. He is presently a member of the Drafting Committee on a Certificate of Title Act for Boats, and as such, met with the drafting committee in Chicago in November 2009 and March 2010.

C. Work of the West Virginia Commissioners

The tasks of the three commissioners, among other duties that arise as their Conference work demands, are to:

- (1) Meet at least once every two years as required by § 29-1A-3 of the West Virginia Code.
- (2) Participate as members of the Uniform Laws Commission as required by § 29-1A-4 in drafting Uniform and Model State Acts and other functions of the ULC.
- (3) Work with the West Virginia Legislature's Joint Legislative Commission on Interstate Cooperation by
 - a. reporting on the work of the ULC,
 - b. recommending to this Joint Legislative Commission Uniform and Model Acts produced by the ULC that the West Virginia Commissioners think the Commission should introduce in the

- c. Legislature for enactment, and working with this Joint Legislative Commission in advising and assisting the Commission in considering these Uniform and Model Acts.
- (4) Testify on the Uniform and Model Acts that have been introduced by the Joint Legislative Commission (or by other legislative committees) before the Judiciary Committee or other committees that have taken up these acts when needed, and otherwise assist the legislature in gathering information on and understanding these acts.
- (5) Make this annual report about the activities of the West Virginia Commission on Uniform State Laws to the Legislature as called for under § 29-1A-4 of the statute which creates the Commission.

V. THE WEST VIRGINIA COMMISSIONERS AND THE ANNUAL CONFERENCE OF THE UNIFORM LAW COMMISSION

Commissioners Ford, Stamp, and Cardi attended the 118th Annual Conference of the Uniform Law Commission in July of 2009, where they worked with other commissioners considering Uniform and Model Acts being presented to the Conference by various committees of state commissioners who have been working on the particular acts. At the meeting, the work of the Conference focused on the following:

- (1) discussing areas of social, commercial, and legal concerns which appear to be ripe for new state legislation, and deciding whether to appoint committees to study and make recommendations as to whether new state statutes should be drafted to address these problem areas;
- (2) deliberating on presentations from existing study committees as to whether a permanent drafting committee should be appointed to actually draft Acts on topics which have been studied over the last several years;
- (3) examining line-by-line preliminary drafts of Acts produced by existing drafting committees on various problems, and debating the policy implications of these drafts, the language of the drafts, and other matters surrounding these works in progress; and
- (4) participating in line-by-line readings of final drafts which are being presented to the conference for approval by the drafting committees.

Once the commissioners approved the final drafts they sent the resulting Uniform and Model Acts to the American Bar Association for its review.

The leadership of the ULC recommended to the commissioners attending the conference a list of “targeted acts,” which are Uniform and Model Acts which they think are particularly ripe for presentation to state legislatures.

Throughout the conference, special conference committees and subcommittees met regularly during the morning, day, and evenings on particular tasks involving

conference business.

Throughout the year, committees of commissioners met, and are continuing to meet, to study problem areas and to draft Model Acts.

A. Creation of New Study Committees

At this year's conference and at the winter meeting of the Executive Committee, five new study committees were appointed to consider subjects for possible future drafting. These include:

(1) Study Committee on Mareva Injunctions

This study committee will consider and make recommendations concerning the need for and feasibility of drafting a uniform act that provides authority for Mareva Injunctions – freezing orders – entered in one jurisdiction that would prevent a defendant in litigation pending in another jurisdiction from transferring assets until the outcome of the associated lawsuit is settled.

(2) Study Committee on a Mortgage Satisfaction

This committee will consider and make recommendations concerning the need for and feasibility of drafting a uniform act that makes it clear that a mortgagee of a re-financed mortgage is subrogated to the rights and priority of the original mortgagee.

(3) Study Committee on an Act to Implement the Consular Notification Requirements of Article 36 of the Vienna Convention on Consular Relations

Article 36 of the Vienna Convention on Consular Relations (1963), which the United States ratified in 1969, provides that when a national of a foreign country is arrested or detained on criminal or immigration charges, the detainee must be advised of the right to have the detainee's consulate notified and that the detainee has the right to regular consultation with consular officials during detention and any trial. A number of states and law enforcement agencies implement these requirements through rules, regulations, or policies, but only a small number of states have legislation on this matter. This committee will consider and make recommendations concerning the need for and feasibility of drafting a uniform act that implements the consular notification requirements of Article 36 of the Vienna Convention.

(4) Study Committee on an Act on the Recovery of Stolen Cultural and Artistic Property

Most states do not have specific legislation directed to the recovery of

stolen cultural or artistic property, but rather treat such matters under the state's general property law. This committee will consider and make recommendations concerning the need for and feasibility of drafting a uniform act that provides for private rights of action to recover stolen cultural or artistic property and illegally exported artifacts. In its study, the committee also will consider the relationship between any uniform state legislation and existing federal laws and international treaties.

B. Creation of New Drafting Committees

Drafting committees composed of commissioners, with participation from observers, advisors and reporter-drafters, have been meeting and will meet throughout the year. Tentative drafts of the laws are not submitted to the entire Conference until they have received extensive committee consideration. Proposed Acts are subjected to rigorous examination and debate in at least two annual meetings before they become eligible for designation as Conference products.

This year two new drafting committees were created to begin working on new Acts. These are:

(1) Drafting Committee on Authentication and Preservation of State Online Legal Materials

This drafting committee will draft an act requiring that state online legal materials be secured and authenticated and preserved for permanent public access. The committee will review possible application to state administrative codes and registers, state statutes and session laws, and state appellate and supreme court opinions, as well as the impact of copyright practices and the conversion and destruction of original source materials.

(2) Drafting Committee on Visitation and Custody Issues Affecting Military Personnel and Their Families

This drafting committee will prepare an act that provides standards and procedures for resolving visitation and custody issues affecting military personnel and their families, which may include resolution of matters in intrastate, interstate, and international contexts.

(3) Drafting Committee on Marital and Premarital Agreements Act

This committee will draft an act that provides standards and procedural requirements concerning the scope and enforceability of marital and premarital agreements between persons in legally recognized relationships. This project was jointly recommended by the Joint Editorial Boards on Uniform Family Laws and Uniform Trust and Estate Acts.

(4) **Drafting Committee on Manufactured Housing**

The uncertainty about whether a manufactured home is characterized as "personal" or "real" property creates significant impediments to the financing of manufactured homes, particularly upon resale or attempts to re-finance, and also makes it difficult to securitize debt secured by manufactured homes. This committee will draft an act on manufactured housing that will alleviate those problems and address at least the following issues: the appropriate characterization of manufactured housing as either personal property or real property, including in particular the point in time at which an interest in manufactured housing converts from a personal property interest to a real property interest; whether the fact that manufactured housing is located on leased land affects that characterization; the continued priority and appropriate characterization of security interests in manufactured housing after conversion; and appropriate transition provisions.

C. Acts Reviewed and Debated at the Conference

Commissioners Ford, Cardi, and Stamp spent six days at the annual meeting with the commissioners from other states discussing the following evolving acts, and where drafts have been produced, reading and vigorously debating them for possible final consideration in the next few years:

(1) **Uniform Electronic Recordation of Custodial Interrogations Act**

This committee will draft an act addressing the issue of the use of audio and/or video electronic devices to record law enforcement officers' interviews of criminal suspects who are in custody.

(2) **Uniform Faithful Presidential Electors Act**

This committee will draft an act providing a state statutory remedy in the event a state presidential elector fails to vote in accordance with the voters of his or her state.

(3) **The Hague Convention on Choice of Court Agreements**

This drafting committee, at the request of the U.S. State Department, will draft uniform state legislation and appropriate declarations and understandings to assist in the implementation and ratification of the Hague Convention on Choice of Court Agreements.

(4) **Uniform Insurable Interests Relating to Trusts Act**

This committee will draft an act to address concerns regarding the purchase of life insurance trusts by trustees as it relates to insurable interest law. Life insurance trusts are a standard estate planning tool because proceeds of an irrevocable life insurance trust are not subject to

estate taxes. Recent case law has raised the possible need for uniform law on insurable interests. The scope of the project is narrow and might be drafted within the Uniform Trust Code or as a free-standing act.

- (5) **Uniform Military Services and Overseas Civilian Absentee Voters Act**
This committee will draft uniform state legislation that will simplify the process of absentee voting for United States military and overseas civilians by making the process more uniform, convenient, secure and efficient.
- (6) **Revised Model State Administrative Procedure Act**
This committee is revising the 1980 Model State Administrative Procedures Act, which provided procedures for promulgating administrative regulations and for adjudicating disputes before administrative bodies. A revision is necessary to update the act to recognize electronic communications and other state procedural innovations since the act was originally promulgated.
- (7) **Revised Uniform Law on Notarial Acts**
The purpose of this drafting committee is to revise the 1982 Uniform Law on Notarial Acts. The charge is limited to drafting revisions with respect to notary responsibilities, electronic recording, interstate recognition, and remedies.
- (8) **Uniform Partition of Inherited Real Property Act**
The purpose of this committee is to draft a uniform act that will address the issue of tenancy-in-common land ownership. Tenancy in common is a type of joint ownership without right of survivorship. When there is no right of survivorship, the death of a tenant in common can trigger an action to partition the land to satisfy the deceased tenant's heirs. In a partition, the land is sold to satisfy tenant in common interests, often in a sale that does not meet market value. This committee will draft a new law to protect vulnerable landowners by providing a buy-out option; balancing factors for judges on partition of real property; sale price minimums if dispossession occurs; and a waiting period of up to three years for strangers to title.
- (9) **Revisions to UCC Article 9**
This joint ALI/ULC committee will draft specific revisions of UCC Article 9 to address specific issues that a study committee has already identified as needing statutory revision. The issues that the committee will address are those as to which ambiguities have been discovered in existing statutory language, where there have been substantial problems in practice in applying current statutory provisions, or as to which there have been

significant judicial decisions or non-uniform amendments that suggest the need to consider statutory revisions.

VI. NEW ACTS APPROVED BY NCCUSL AND TARGETED ACTS

A. Approval of New Acts and Amendments

At the 2009 meeting, the Commissioners approved the following three new Acts and Amendments to four Acts for presentation to state legislatures.

(1) Uniform Collaborative Law Act

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 matters 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, and other 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 contain the disqualification provisions that are essential to the collaborative process, prohibiting a lawyer who participates in a collaborative law process from appearing before a tribunal representing any party in the collaborative law process in a proceeding related to the collaborative matter. 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.

(2) Uniform Collateral Consequences of Conviction Act

The Uniform Collateral Consequences of Conviction Act, promulgated by the Uniform Law Commission in 2009, improves the understanding of consequences other than incarceration and probation that attach when an individual is convicted of an offense and offers a mechanism to provide partial relief from these consequences in appropriate circumstances. 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. The National Institute of Justice is funding a national study that will provide a baseline listing of all collateral consequences that are established in each state and that will greatly simplify the process of establishing the collection of collateral consequences in states that adopt the Act. 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 consequences 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 from some benefit, such as public housing or employment by a governmental agency, 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.

- (3) **Uniform Law Enforcement Access to Entity Information Act**
The Uniform Law Enforcement Access to Business Entity Act (ULEAEIA), promulgated by the Uniform Law Commission in 2009, addresses the need for law enforcement to have ready access to information regarding the owners and managers of entities established under state law. ULEAEIA is intended to provide a viable state law alternative to the Incorporation Transparency and Law Enforcement Assistance Act (S. 569), co-sponsored by Senators Levin, Grassley and McCaskill. ULEAEIA 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. Rather than filing and updating “beneficial ownership” information with the Secretary of State, as required by S. 569, ULEAEIA provides that LLC’s, partnerships, trusts, and other entities must designate in the records of the Secretary of State a “records contact”, which is responsible for producing ownership and control information upon an appropriate request by law enforcement or other governmental entities, and a “responsible

individual,” who participates in and is knowledgeable about the control or management of the entity, and whom law enforcement may contact to find out detailed information about the entity’s operations. ULEAEIA is intended to provide law enforcement better tools for fighting money laundering and terrorism than S. 569 does, and it accomplishes these goals while imposing far fewer financial and administrative burdens on secretaries of state and on business entities, and while protecting important privacy interests that are central considerations in business entity laws throughout the United States.

**Note that legislative introduction of this act, as well as submission to the ABA House of Delegates, is likely to be deferred until federal action is clarified.*

(4) Uniform Real Property Transfer on Death Act

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), promulgated by the Uniform Law Commission in 2009, 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 form language for TOD deeds.

(5) Uniform Statutory Trust Entity Act

The Uniform Statutory Trust Entity Act (USTEA), promulgated by the Uniform Law Commission in 2009, 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, and 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 USTEPA uses Delaware Statutory Trust Act as a starting point for the Act but adds several innovations. The USTEPA will be used primarily as a business organization tool and will clarify this area of law.

B. Targeted Acts

The Executive Committee of the ULC listed four Uniform and Model Acts as “Targeted Acts,” Acts that they think are especially timely for state adoption this year.

Following is the list of 2009-2010 Targeted Acts. By July 2009, West Virginia had already adopted one of these Acts.

(1) Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007)

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. *UAGPPJA has been enacted in 12 states: Alaska, Colorado, Delaware, District of Columbia, Minnesota, Montana, Nevada, North Dakota, Oregon, Utah, Washington, and West Virginia.*

(2) 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, when 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. *UAGA has been enacted in 39 states: Alabama, Alaska, Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming.*

(3) Uniform Child Abduction Prevention Act (2006)

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. *UCAPA has been enacted in 9 states: Colorado, District of Columbia, Kansas, Louisiana, Mississippi, Nebraska, Nevada, South Dakota, Utah.*

(4) Uniform Debt-management Services Act (2005)

The consumer debt management industry has taken many forms over the time since its development in the 1950s. 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. *UDMSA has been enacted in six states: Colorado, Delaware, Nevada, Rhode Island, Tennessee, Utah.*

(5) Uniform Emergency Volunteer Health Practitioners Act (2007)

The Uniform Emergency Volunteer Health Practitioners Act, first approved in 2006, allows state governments to give reciprocity to other states' licensees on emergency services providers so that covered individuals may provide services without meeting the disaster state's licensing requirements. Amendments to UEVHPA were approved in 2007 to complete previously reserved sections addressing the civil liability of disaster volunteers and the care of volunteers who are injured, become ill or die while delivering emergency services. With regard to civil liability, the act provides two options. In "Alternative A," a volunteer health practitioner is not liable for acts or omissions, nor can any party be held vicariously liable for a volunteer practitioner's acts or omissions, unless the conduct in question rises to the level of willful misconduct, or wanton, grossly negligent, reckless, or criminal conduct, represents an intentional tort; involves a breach of contract, is a claim by a host or deploying entity, or is an act or omission relating to the operation of a motor vehicle, vessel,

aircraft, or other vehicle. “Alternative B” utilizes the same basic exclusions, but caps the compensation a volunteer can receive in connection with the emergency (not including reimbursement of reasonable expenses) at \$500 per year, and does not include the limitation on vicarious liability. It is anticipated that enacting states will choose the alternative that most closely tracks their existing state provisions regard “Good Samaritan” liability protection and/or each state’s implementation of federal law on this subject. The 2007 Amendments also provide that a volunteer health practitioner who is not otherwise covered by the workers’ compensation laws of the host or deploying state may elect to be deemed an employee of the host state for purposes of making a claim under the host state’s workers’ compensation system. The act directs enacting states to coordinate implementation of this coverage with other enacting states. *UEVHPA has been enacted in 10 states: Arkansas, Colorado, Indiana, Kentucky, Louisiana, New Mexico, North Dakota, Oklahoma, Tennessee, and Utah.*

(6) Uniform Environmental Covenants Act (2003)

This uniform act 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 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. *UECA has been enacted in 24 states: Alabama, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Maryland, Minnesota, Mississippi, Missouri, Nebraska, Nevada, Ohio, Oklahoma, Pennsylvania, South Dakota, U.S. Virgin Islands, Utah, Washington, West Virginia.*

(7) Uniform Foreign-country Money Judgments Recognition Act (2005)

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. *The UFCMJRA has been enacted in 11 states: Colorado, Hawaii, Idaho, Michigan, Montana, Nevada, New Mexico, North Carolina, Oklahoma, Oregon, and Washington.*

(8) Uniform International Wills Act (1977)

The Uniform International Wills Act implements an international convention calling for all countries and states to adopt a uniform formality for executing wills that, if observed, should assure the validity of the will no matter where the testator resides or owns property at the time of death. The UIWA essentially copies a model law annexed to an international convention devoted to the formality for executing wills. More specifically, the model, proposed as an addition to existing methods of finalizing a will, requires the presence, witnessing and signature of three persons acting with the signing by testator, one of whom must be an official referred to as an “authorized person.” The UIWA version directs that all persons admitted and in good standing to practice law in the enacting state are “authorized persons.” *The UIWA has been enacted in 16 states: Alaska, California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Mexico, North Dakota, Oregon, Virginia.*

(9) Uniform Interstate Depositions and Discovery Act (2006)

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. *The UIDDA has been enacted in nine states: Colorado, Idaho, Kentucky, Maryland, Montana, New Mexico, Tennessee, Utah, Virginia.*

(10) 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; 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. *The ULLCA has been enacted in two states: Idaho, Iowa.*

(11) Revision of Uniform Limited Partnership Act (2001)

The Uniform Limited Partnership Act (2001) updates limited partnership law to reflect modern business practices by allowing for greater variety and flexibility in the formation and management relationships within these entities. The ULPA allows for the use of a limited partner’s name in the entity’s name, and authorizes family limited partnerships, entities which by nature require entrenched management and passive limited partners. It shifts default liability away from limited partners by allowing for limited liability limited partnership status, and allows for easier dissolution upon the consent of all general partners together with a number of limited partners owning a majority of the rights to distributions. The ULPA furthers estate planning considerations by restricting the ability of a limited

partner to disassociate from an entity prior to its termination, except for specific circumstances. Finally, the ULPA eliminates the previous rule requiring a termination date to be included in a limited partnership certificate, thereby allowing for the default creation of a perpetual entity. ULPA is also a free-standing, comprehensive act, no longer dependent upon general partnership law for rules that are not contained within ULPA. The ULPA represents a significant revision of limited partnership law to reflect modern usages, makes the limited partnership even more appealing to business ventures and estate planners, and will enhance the business climate of those states which adopt it. *RULPA has been enacted in 16 states: Alabama, Arkansas, California, Florida, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Minnesota, Nevada, New Mexico, North Dakota, Virginia, Washington.*

(12) Uniform Principal and Income Act Amendments (2008)

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. *UPIA 2008 has been enacted in 15 states: Arizona, Colorado, Delaware, Idaho, Indiana, Iowa, Nebraska, Nevada, North Dakota, Oklahoma, South Dakota, Utah, Virginia, Washington, West Virginia.*

(13) Uniform Real Property Electronic Recording Act (2004)

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. *URPERA has been enacted in 23 states: Alabama, Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Minnesota, Nevada, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, Washington, Wisconsin.*

(14) Uniform Trust Code (2000)

The Uniform Trust Code (UTC) is the first effort to codify the law of trusts in the history of the United States. A trust is formed when an individual (called settlor) transfers assets to a person called the trustee. The assets are held in “trust” for identifiable beneficiaries or for a valid beneficial purpose. All voluntary trusts fall under the UTC. Involuntary

trusts such as resulting trusts are not included. The UTC provides rules for charitable trusts and other honorary trusts such as pet trusts, as well as for ordinary trusts in which there are income beneficiaries and remainder beneficiaries at the conclusion of the trust. Spendthrift trusts are recognized. A spendthrift trust prevents creditors of a beneficiary from attaching a trust distribution until it is actually made to that beneficiary. UTC distinguishes revocable trusts from irrevocable trusts. All trusts are revocable unless the trust instrument makes them irrevocable. A revocable trust, which allows the settlor to revoke it before the settlor dies or becomes incapacitated, is treated as a will substitute. Any individual with the legal capacity to make a will can create a revocable trust. UTC provides for fiduciary obligations of a trustee, except for those contained in the Uniform Prudent Investor Act. There can be valid oral trusts under UTC. A written instrument is not necessary for enforcement. There are rules for jurisdiction and enforcement. Almost all the rules in the UTC are default rules, and may be waived or varied in a trust instrument. *UTC 2000 has been enacted in 23 states: Alabama, Arizona, Arkansas, District of Columbia, Florida, Kansas, Maine, Michigan, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, Wyoming.*

(15) Uniform Unsworn Foreign Declarations Act (2008)

The Uniform Unsworn Foreign Declarations Act 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. *The UUFDA has been enacted in three states: Colorado, New Mexico, Utah.*

VII. 2010 RECOMMENDATIONS BY THE WEST VIRGINIA COMMISSION ON UNIFORM STATE LAWS AND WEST VIRGINIA LEGISLATIVE ACTION

The West Virginia Commissioners met in July and, after some discussion, decided to introduce the following Uniform Acts for eventual approval by the West Virginia Legislature at its 2010 session.

1. Uniform Debt-management Services Act (2005)
2. Uniform International Wills Act (1977)
3. Revision of Uniform Limited Partnership Act (2001)
4. Uniform Real Property Transfer on Death Act
5. Uniform Trust Code (2000)

The final decision was to be left to Commissioner Cardi after his discussions with members and counsel to the West Virginia Joint Legislative Commission on Interstate Cooperation, Delegates and Senators serving on the Joint Commission, and other citizens and groups who would naturally have an interest.

At the September 2009 interim meeting of the West Virginia Joint Legislative Commission on Interstate Cooperation in Charleston, Commissioner Cardi reported on the activities of the July National Conference meeting among other matters and advised the Committee on the Acts that the West Virginia Commission would be recommending for enactment in the 2009 session.

In February 2010, the Probate Committee finished the extensive examination of it, and enthusiastically approved it with a number of suggested changes. It was too late for the West Virginia Commission to introduce it to the Joint Commission on Interstate Cooperation, so it will be done next year.

In the 2010 Legislative Session, the West Virginia Legislature considered the following Uniform Act recommended by the Commissioners:

(1) **Uniform Real Property Electronic Recording Act (2004)**

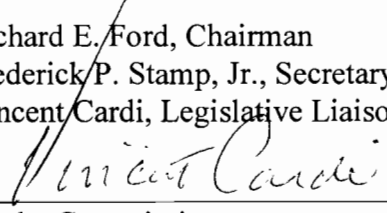
The Uniform Real Property Electronic Recording Act equates electronic documents and signatures to original paper documents and manual signatures so that electronic documents pertaining to real estate transactions may be electronically recorded. The Act also establishes a state board to establish standards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

VIII. DISTRIBUTION OF REPORT

As recommended in the Performance Review Report pertaining to the Commission on Uniform State Laws, a copy of this report to the Legislature is being forwarded to the West Virginia State Bar, the West Virginia Bar Association, the Mountain State Bar Association, the West Virginia Trial Lawyers Association, and the Defense Trial Counsel of West Virginia.

Respectfully submitted this 18th day of March 2010.

Richard E. Ford, Chairman
Frederick P. Stamp, Jr., Secretary
Vincent Cardi, Legislative Liaison



for the Commissioners