

# WEST VIRGINIA COMMISSION ON UNIFORM STATE LAWS

## REPORT TO THE WEST VIRGINIA LEGISLATURE REGULAR SESSION 2015

### I. INTRODUCTION

The West Virginia Commission on Uniform State Laws submits this annual report to the West Virginia Legislature in accordance with 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.” From the Uniform and Model Acts promulgated by the ULC, the West Virginia Commissioners have selected those that 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 eighty-nine 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 to determine 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. The first National Conference of Commissioners on Uniform State Laws convened in Saratoga, New York in August of 1892: three days preceding the annual meeting of the American Bar Association.

West Virginia joined the National Conference in 1909, 106 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, such as Professors Wigmore, Williston, Pound, and Bogart, have served in large numbers. This distinguished body has guaranteed that the projects of the National Conference are of the highest quality and are influential upon the process of the

law.

Over its 123 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 convenes as a body once a year. It meets for a period of six days, usually in July. Between the annual meetings, study committees and drafting committees composed of commissioners meet to supply the working drafts of statutes which are considered at the annual meeting. The various drafts are accessible on the Internet at [3www.uniformlaws.org](http://www.uniformlaws.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 of the ULC is the ULC Executive Committee, which is 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 fifteen 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 attorney Richard E. Ford of Lewisburg, Judge Frederick P. Stamp, Jr., of Wheeling, and Professor 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 had their annual meeting in July 2014.

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

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

Richard Ford has been a member of the Legislative Council, served for two years on the Executive Committee, and was Secretary of the Uniform Law Commission for two years. Vincent Cardi is the Legislative Liaison Member for West Virginia.

Former Commissioner John L. McClaugherty of Charleston 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. Fred Stamp was the Chairperson of the Study Committee on Conflicts of Laws-Limitations Act and 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 Act.

Vincent Cardi served on the Study Committee for Regulation of Medico-Legal Death Investigations, the Study Committee on Notice and Repair of Construction Defects, the Drafting Committee for Fraudulent Transfers Act, and the Drafting Committee on Uniform Certificate of Title Act for Vessels. He is presently a member of the Enactment Committee for the Uniform Certificate of Title Act for Vessel and the Study Committee for the Computer Database Retrieval System for Land Records.

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

- Legislature for enactment, and
- c. 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 Stamp and Cardi attended the 122<sup>nd</sup> Annual Conference of the Uniform Law Commission in July of 2014. At the conference, 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 that 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.

During 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 the 2014 conference and at the winter meeting of the Executive Committee, six new study committees were appointed to consider subjects for possible future drafting. These included:

- (1) **Study Committee on Alternative and Mobile Payment Systems**  
New payments providers such as Bitcoin and mobile or alternative payments companies are currently being licensed and regulated differently in various jurisdictions. The ULC has addressed this issue previously with the drafting of the Uniform Money Services Act, which dealt with the licensing and regulation of non-bank financial service providers like Western Union and PayPal. At that time, few new electronics payments providers were in business, but a decade later consumers are now using new methods and services to move their money, which raises concerns for regulators about how to protect funds when they are held by non-bank entities. In the absence of an overarching federal payments regulatory framework, state laws may need to be harmonized to the extent possible. This study committee will consider the need for and feasibility of enacting state legislation to regulate alternative and mobile payment systems.
- (2) **Study Committee on a Computer Database Retrieval System for Land Records**  
The Uniform Real Property Electronic Recording Act (URPERA) was approved in 2004 and since has been adopted in 28 jurisdictions. A potential next step might be for states to adopt legislation that authorizes and establishes minimum requirements for searching and receiving systems for county land records so that people searching digital records in one county can easily and with familiarity search records in another county. The need for a statute on this idea was first proposed by Senator Greg Tucker of Nicholas County and formally submitted to ULC by Commissioner Cardi. After a year's deliberation, the ULC Executive Committee approved creation of a study committee. This study committee will consider the need for and feasibility of enacting state legislation on a computer database retrieval system for land records.
- (3) **Study Committee on State Regulation of Driverless Cars**  
Four states and the District of Columbia have already enacted legislation concerning some aspects of state regulation of driverless

cars, and the National Highway Transportation Safety Administration (NHTSA) has issued guidelines for states that may seek to regulate driverless cars. This study committee will study the need for and feasibility of drafting state legislation concerning the regulation of driverless cars.

- (4) **Study Committee on the Transfer and Recording of Consumer Debt**  
Consumer debt, particularly past-due consumer credit-card debt, is frequently sold by the original creditor to other entities that specialize in debt collection. The Office of the Comptroller of the Currency in 2013 issued a “Best Practices” document that expressed concern about safety, soundness and consumer protection issues involved with such sales of consumer debt, and some have proposed the creation of a national debt registry, or multiple registries, that would track title to consumer debt that has been transferred. This study committee will study the need for and feasibility of state legislation on the transfer and recording of consumer debt and will also investigate the viability of a registration system to record transfers of consumer debt.

## **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.

In 2014, six new drafting committees were created to begin working on new Acts. These are:

- (1) **Drafting Committee on Accuracy of Criminal Records**  
There have been many developments concerning criminal records over the past 20 years, including the creation of the National Criminal Background Check System in 1993; the establishment of criminal history repositories in all states; and the increasing use of criminal record checks in connection with eligibility for employment, professional and occupational licenses, credit worthiness, and other non-criminal justice purposes. Recent studies have demonstrated that criminal records that are accessed for these purposes may be inaccurate or incomplete. Some of the causes of inaccuracy or incompleteness are: lack of information on dispositions after an arrest or other charge has been entered in a database; data entry errors resulting in an incorrect listing of the offense, or multiple listings of the same offense, or attribution of an

offense to a wrong individual; criminal identity theft; and searches for criminal record information resulting in one person's criminal record information appearing in search results initiated for a different individual. This drafting committee will draft an act that seeks to improve the accuracy of criminal records.

(2) **Drafting Committee on Divided Trusteeship**

An increasingly common practice in contemporary estate planning and asset management is the naming of a trustee that is given custody of the trust property, but with one or more of the investment, distribution or administration functions of the trusteeship being given to a person or persons who are not formally designated as trustees. This is the problem of *divided trusteeship*. There is much uncertainty about the fiduciary status of nontrustees who have control or potential control over a function of trusteeship and about the fiduciary responsibility of trustees with regard to actions taken by such nontrustees. Existing uniform trust and estate statutes inadequately address the issues and are at risk of becoming obsolete unless they are amended to take account of these developments. This Committee will draft legislation on divided trusteeship and also will draft conforming amendments to other uniform trust and estate acts as appropriate.

(3) **Drafting Committee on Domestic Unsworn Declarations**

The Uniform Unsworn Foreign Declarations Act (UUFDA) was adopted in 2008 and has since been enacted in 20 states. The Act authorizes the use in litigation that takes place in the United States of unsworn declarations made under penalty of perjury outside the United States. West Virginia's Joint Legislative Commission on Interstate Cooperation rejected consideration of this idea at its September 2014 interim meeting. Federal legislation, 28 U.S.C. Section 1746, is broader in that this legislation also authorizes the use in federal court of unsworn declarations made under penalty of perjury within the United States. This drafting committee will draft both an amendment to UUFDA and free-standing state legislation that authorizes the use of unsworn declarations made under penalty of perjury within the United States, in both interstate and intrastate situations.

(4) **Drafting Committee to Revise the Uniform Guardianship and Protective Proceedings Act**

The UGPPA was approved by the ULC in 1982, and amended in 1989 and last revised in 1997. Nearly 20 states have enacted one or the other version of the act. This drafting committee will revise selected portions of the UGPPA in order to implement some of the recommendations of the Third National Guardianship Summit and

otherwise to update the act. The National Guardianship Network (NGN) is a collaboration of ten national organizations that work toward effective adult guardianship law and practice.

**(5) Drafting Committee on Non-Parental Rights to Child Custody and Visitation**

State legislation and judicial decisions concerning the rights of third parties who are not parents (such as grandparents, stepparents, domestic partners, and siblings) to rights of custody of or visitation with a child vary greatly. Those rights are also affected by the decision of the United States Supreme Court in *Troxel v. Granville*, 530 U.S. 57 (2000), which held that courts must give deference to decisions of fit parents concerning the raising of children, including concerning grandparents' visitation rights. This drafting committee will draft an act concerning the rights of third parties other than parents to custody of or visitation with a child. The drafting committee is not authorized to undertake any revisions or the Uniform Parentage Act.

**(6) Drafting Committee on Social Media Privacy**

The use of social media in the United States is burgeoning, and it is now not uncommon for employers to ask current and prospective employees to grant the employer access to social media accounts. Educational institutions also sometimes seek to examine the social media presence of current or prospective students. During 2012 - 2014, seventeen states enacted varying legislation on social media privacy, and numerous additional bills on these topics were introduced during the 2014 legislative sessions. This drafting committee will draft legislation concerning employer's access to employees' or prospective employees' social media accounts and educational institutions' access to students' or prospective students' social media accounts, and the committee's charge is limited to these issues.

**C. Acts Reviewed and Debated at the Conference**

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

**(1) Amendments to the Uniform Athlete Agents Act**

The Uniform Athlete Agents Act was promulgated by the ULC in 2000, and has been enacted in 42 states including West Virginia. In recent years, however, substantial changes have occurred in the marketplace for athlete agents, and a number of states have recently



considered non-uniform amendments to the act, particularly in response to recent allegations of improper conduct by agents with regard to college athletes. The drafting committee will draft amendments to the Uniform Athlete Agents Act that are appropriate in light of the experience with the 2000 Act.

- (2) **Model Act on Commercial Real Estate Receiverships Act**  
The committee is drafting a model act that authorizes the appointment of real estate receivers and sets forth their powers. The act may also provide powers for a receiver to act with respect to personal property that is ancillary to real estate, but the act will not authorize the appointment of receivers with respect to owner-occupied residences.
- (3) **Family Law Arbitration**  
While arbitration has not formally been permitted in family law matters, in recent years a number of states have adopted legislation that authorizes arbitration with respect to some issues in the family law area. This drafting committee is drafting an act that authorizes the use of arbitration as a method of resolving some family law disputes and that will provide any special provisions, in addition to those in existing state arbitration legislation, necessary to facilitate the use of arbitration in family law matters.
- (4) **Home Foreclosure Procedures Act**  
This committee will draft an act that applies only to residential mortgages and that will be drafted as an overlay to, rather than a replacement of, existing state legislation. The drafting committee will consider a specific list of issues that were recommended for consideration in the final report of the Study Committee, and the drafting committee is asked to return to the Scope and Program Committee for approval if it wishes to address additional issues, or if it believes that revisions to UCC Articles 3 or 9 are necessary.
- (5) **Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act**  
In 2011, the Uniform Law Conference of Canada promulgated legislation that would facilitate the recognition and enforcement in Canada of domestic-violence protection orders entered by courts in Canada and by courts outside Canada if certain requirements are met. Earlier in 2011, the Council of the Hague Conference on Private International Law asked its Secretariat to study the feasibility of drafting an international convention concerning the recognition and enforcement of domestic-violence protection orders. The Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act (last amended in 2002) applies only to

enforcement of orders entered by courts in the United States. This drafting committee is drafting a free-standing act that will provide for recognition and enforcement of Canadian domestic-violence protection orders in the United States; the committee also will monitor developments at the Hague Conference concerning these issues.

- (6) **Revision of the Uniform Residential Landlord and Tenant Act**  
This committee will prepare revisions of the Uniform Residential Landlord and Tenant Act (1972). The 1972 Act has been adopted in 21 states and has influenced statutory developments in many other states. Since 1972, however, there have been many new statutory and common law developments that affect residential landlord and tenant law, and the committee will seek to codify best current practices in a revised act. This project was recommended by the Joint Editorial Board on Uniform Real Property Acts.
- (7) **Series of Unincorporated Business Entities Act**  
The committee is drafting series provisions that can be added to some or all of the uniform unincorporated business organization acts other than the Uniform Statutory Trust Entity Act. The committee is also authorized to draft revisions to the series provisions in USTEPA if it believes such revisions are necessary.
- (8) **Trust Decanting Act**  
Trust decanting is a nonjudicial method for modifying an irrevocable trust. The technique has gained wide currency in the past several years, and more than ten states have enacted legislation on the subject. Common law support for the technique of trust decanting is uncertain in many states. This drafting committee is drafting an act on trust decanting as a freestanding act or as an amendment to the Uniform Trust Code (or both); the committee also will monitor the effort of the Internal Revenue Service and the Department of Treasury to draft and promulgate guidance on the tax treatment of trust decanting. Some members of the West Virginia State Bar feel a strong need for legislation in this area.

## VI. NEW ACTS APPROVED BY ULC AND TARGETED ACTS

### A. Approval of New Acts and Amendments

At the 2014 meeting, the Commissioners approved the following new Acts and Amendment to Acts for presentation to state legislatures.

- (1) **Uniform Fiduciary Access to Digital Assets Act**  
The Uniform Fiduciary Access to Digital Assets Act is an important

update for the Internet age. A generation ago, files were stored in cabinets, photos were stored in albums, and mail was delivered by a human being. In the modern world, digital assets have largely replaced tangible ones. Documents are stored in electronic files rather than in file cabinets. Photographs are uploaded to web sites rather than printed on paper. However, the laws governing fiduciary access to these digital assets are in need of an update. The Uniform Fiduciary Access to Digital Assets Act (UFADAA) solves the problem using the concept of “media neutrality.” If a fiduciary would have access to a tangible asset, that fiduciary will also have access to a similar type of digital asset. UFADAA governs four common types of fiduciaries: personal representatives of a deceased person’s estate; guardians or conservators of a protected person’s estate; agents under a power of attorney; and trustees. UFADAA defers to an account holder’s privacy choices as expressed in a document (such as a will or trust), or online by an affirmative act separate from the general terms-of-service agreement. Therefore, an account holder’s desire to keep certain assets private will be honored under UFADAA. Delaware adopted an early version of this act this past year. The West Virginia Commissioners recommend that the Joint Legislative Commission introduce this act in the 2015 legislative session.

- (2) **Uniform Recognition of Substitute Decision-Making Documents Act** The Uniform Recognition of Substitute Decision Making Documents Act is a joint endeavor of the Uniform Law Commission and the Uniform Law Conference of Canada. The project was undertaken to promote the portability and usefulness of substitute decision-making documents for property, health care, and personal care, without regard to whether the documents are created within or outside of the jurisdiction where a substitute decision is needed. Common examples of substitute decision making documents include powers of attorney and proxy delegations for personal decision making.
  
- (3) **Amendments to Uniform Voidable Transactions Act (formerly the Uniform Fraudulent Transfer Act)** The 2014 Amendments to the Uniform Voidable Transactions Act address a small number of narrowly-defined issues, and is not a comprehensive revision. Amendments include a new Section 10, which sets forth a choice of law rule for claims of the nature governed by the Act, as well as the addition of uniform rules allocating the burden of proof and defining the standard of proof with respect to claims and defenses under the Act. The West Virginia Commissioners recommend that the Joint Legislative Commission introduce this act in the 2015 legislative session.

- (4) **Amendments to Uniform Common Interest Ownership Act**  
The 2014 Amendments to Section 3-115 of the Uniform Common Interest Ownership Act clarify rules governing the six-month “limited priority” lien for unpaid common expense assessments owed to community associations, in response to conflicting interpretations by state courts.

**B. Targeted Acts**

The Executive Committee of the ULC listed fourteen Uniform and Model Acts as “Targeted Acts,” Acts that they think are especially timely for state adoption this year. Following is the list of 2014 Targeted Acts not yet adopted in West Virginia.

- (1) **Uniform Collaborative Law Act (2009)(2010)**  
The Uniform Collaborative Law Act 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 frame work 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.

*UCLA enacted in 10 states: Alabama, District of Columbia, Hawaii, Maryland, Michigan, Nevada, Ohio, Texas, Utah, and Washington.*

- (2) **Uniform Deployed Parents Custody and Visitation Act (2012)**  
The increased deployment of service members has raised difficult

child custody issues that profoundly affect both children's welfare and service members' ability to serve their country efficiently. The Uniform Deployed Parents Custody and Visitation Act (UDPCVA) standardizes and simplifies the rules covering custody and visitation issues for deployed parents. The goal of the UDPCVA is to facilitate expeditious and fair disposition of cases involving the custody rights of a member of the military. One of the key points of the new Act provides that the mere absence of a military parent from a state will not be used to deprive that state of custody jurisdiction. For most cases, a move is a purely voluntarily thing. For service members, however, a move is not voluntary but is made under a military order. Such an involuntary move should not lead to the loss of jurisdiction by a state most familiar and involved with the child's best interests. The UDPCVA ultimately promotes a just balance of interests – protecting the rights of the service member, the other parent, and, above all, the best interests of the children involved. The West Virginia Commissioners recommend that the Joint Legislative Commission introduce this act in the 2015 legislative session.

*The UDPCVA has been enacted in six states: Colorado, Nevada, North Carolina, North Dakota, South Dakota, and Tennessee.*

**(3) Uniform Electronic Legal Material Act (2011)**

The Uniform Electronic Legal Material Act (UELMA) addresses many of the concerns posed by the publication of state primary legal material online. UELMA provides a technology-neutral, outcomes-based approach to ensuring that online state legal material deemed official will be preserved and will be permanently available to the public in unaltered form. It furthers state policies of accountability and transparency in providing legal information to the public. The act applies to electronic legal material that has been designated official. Four categories of basic state legal material are specifically named in the act, including the state constitution, state session laws, codified laws, and agency regulations which have the effect of law. The state has discretion to include any other publications it desires.

The Act requires that official electronic legal material be:

1. *Authenticated*, by providing a method to determine that it is unaltered;
2. *Preserved*, either in electronic or print form; and
3. *Accessible*, for use by the public on a permanent basis.

The UELMA does not require specific technologies, leaving the choice of technology for authentication and preservation up to the states.

*The UELMA has been enacted in 11 states: California, Colorado, Connecticut, Delaware, Idaho, Illinois, Hawaii, Minnesota, Nevada, North Dakota, Oregon.*

- (4) **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 15 states: Arkansas, Colorado, District of Columbia, Illinois, Indiana, Kentucky, Louisiana, Nevada, New Mexico, North Dakota, Oklahoma, Tennessee, Texas, U.S. Virgin Islands, and Utah.*

- (5) **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 19 states: Alabama, California, Colorado, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, Montana, Nevada, New Mexico, North Carolina, Oklahoma, Oregon, Virginia, and Washington.*

**(6) 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 12 states: Alabama, California, District of Columbia, Florida, Idaho, Iowa, Minnesota, Nebraska, New Jersey, South Dakota, Utah, and Wyoming.*

**(7) 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 freestanding, 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 19 states: Alabama, Arkansas, California, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Minnesota, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Utah, and Washington.*

**(8) Uniform Military and Overseas Voters Act (2010)**

Military personnel and overseas civilians face a variety of challenges to their participation as voters in U.S. elections, despite repeated congressional and state efforts to facilitate their ability to vote. The federal Uniformed and Overseas Citizens Absentee



Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), as well as the various state efforts, have not been wholly effective in overcoming difficulties that these voters face. Further, American elections are conducted at the state and local levels under procedures that vary dramatically by jurisdiction, and many are conducted independent of the federal elections to which UOCAVA and the MOVE Act do apply. Lack of uniformity, and lack of application of the federal statutes to state and local elections, complicates efforts to more fully enfranchise these voters. 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.

*UMOVA has been enacted in 14 states: California, Colorado, District of Columbia, Hawaii, Kentucky, Missouri, Montana, Nevada, North Carolina, North Dakota, Oklahoma, Pennsylvania, and Utah.*

**(9) Uniform Power of Attorney Act (2006)**

The Uniform Power of Attorney Act (UPOAA) 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 1960s to early 1970s 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. UPOAA 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.

UPOAA 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.

*UPOAA 2006 has been enacted in 17 states: Alabama, Arkansas, Colorado, Hawaii, Idaho, Iowa, Maine, Maryland, Montana, Nebraska, Nevada, New Mexico, Ohio, Pennsylvania, Virginia, West Virginia, and Wisconsin.*

**(10) Uniform Powers of Appointment Act (2013)**

A power of appointment is an estate planning tool that permits the owner of property to name a third party and give that person the power to direct the distribution of that property among some class of permissible beneficiaries. It is an effective and flexible technique used in a wide variety of situations, but there is very little statutory law governing the creation and use of powers of appointment. Instead, estate planning attorneys must rely on a patchwork of state court decisions. The drafters of the Uniform Powers of Appointment Act did not set out to change the law, but rather to codify the existing common law, relying heavily on the Restatement (Third) of Property: Wills and other Donative Transfers. Therefore, estate planning attorneys will already be familiar with the act's provisions, and are likely to welcome the legal certainty that would result from its enactment.

*UPoAA has been enacted in one state: Colorado.*

**(11) Uniform Act on Prevention of and Remedies for Human Trafficking (2013)**

Human trafficking – a form of modern day slavery – is a global concern that affects the United States on all levels: federal, state, and local. Human trafficking has become the second fastest growing criminal activity in the United States, behind only drug trafficking. While every state has laws regarding human trafficking, these laws vary greatly in both substance and scope. Comprehensive and uniform criminal laws are needed to stop human trafficking both on the supply side and the demand side. But criminal penalties alone are not a sufficient response to the harms of human trafficking. Without support, victims are less likely to be willing to assist police and prosecutors. Without housing, counseling, and other help, victims may be forced back to the traffickers. Without awareness and planning, the public, state agencies, and other organizations cannot effectively coordinate efforts to stop trafficking.

The new Uniform Act on the Prevention of and Remedies for

Human Trafficking provides the three components necessary for ending human trafficking: (1) comprehensive criminal provisions which focus on criminalizing specific conduct and which sets out penalties for that conduct; (2) provisions for victim services which create protections for victims of human trafficking; and (3) the promotion of coordinated state activities to educate the public and develop a system of victim services. The West Virginia Commissioners recommend that the Joint Legislative Commission introduce this act in the 2015 legislative session.

*UAPRHT 2013 has been enacted in three states: Delaware, Louisiana, and New Hampshire.*

**(12) 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. The West Virginia Commissioners recommend that the Joint Legislative Commission introduce this act in the 2015 legislative session.

*URPERA has been enacted in 30 states: Alabama, Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Michigan, Minnesota, Mississippi, Nevada, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, U.S. Virgin Islands, Utah, Virginia, Washington, and Wisconsin.*

**(13) 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 30 states: Alabama, Arizona, Arkansas, District of Columbia, Florida, Kansas, Kentucky, Maryland, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, West Virginia, Wyoming.*

**(14) 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. West Virginia's Joint Legislative Commission on Interstate Cooperation rejected consideration of this idea at its September 2014 interim meeting.

*The UUFDA has been enacted in 21 states: Alabama, Colorado, Connecticut, Delaware, District of Columbia, Idaho, Indiana, Michigan, Minnesota, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Washington, and Wisconsin.*

**VII. 2015 RECOMMENDATIONS BY THE WEST VIRGINIA COMMISSION ON UNIFORM STATE LAWS FOR WEST VIRGINIA LEGISLATIVE ACTION**

The West Virginia Commissioners on Uniform State Laws met in July and, after some discussion, decided to present to the Joint Legislative Commission on Interstate Cooperation the following Uniform Acts for consideration for introduction into the West Virginia Legislature at its 2015 session.

- (1) **Uniform Fiduciary Access to Digital Assets Act (2014)**  
In the modern world, digital assets have largely replaced tangible ones. Documents are stored in electronic files rather than in file cabinets. Photographs are uploaded to web sites rather than printed on paper. However, the laws governing fiduciary access to these digital assets are in need of an update. The Uniform Fiduciary Access to Digital Assets Act solves the problem using the concept of “media neutrality.” If a fiduciary would have access to a tangible asset, that fiduciary will also have access to a similar type of digital asset. UFADAA governs four common types of fiduciaries: personal representatives of a deceased person’s estate; guardians or conservators of a protected person’s estate; agents under a power of attorney; and trustees. UFADAA defers to an account holder’s privacy choices as expressed in a document (such as a will or trust), or online by an affirmative act separate from the general terms-of-service agreement. Therefore, an account holder’s desire to keep certain assets private will be honored under UFADAA.

*UFADAA has been enacted in one state: Delaware.*

- (2) **Uniform Deployed Parents Custody and Visitation Act (2012)**  
The increased deployment of service members has raised difficult child custody issues that profoundly affect both children’s welfare and service members’ ability to serve their country efficiently. The Uniform Deployed Parents Custody and Visitation Act (UDPCVA) standardizes and simplifies the rules covering custody and visitation issues for deployed parents. The goal of the UDPCVA is to facilitate expeditious and fair disposition of cases involving the custody rights of a member of the military. One of the key points of the new Act provides that the mere absence of a military parent from a state will not be used to deprive that state of custody jurisdiction. For most cases, a move is a purely voluntarily thing. For service members, however, a move is not voluntary but is made under a military order. Such an involuntary move should not lead to the loss of jurisdiction by a state most familiar and involved with the child’s best interests. The UDPCVA ultimately promotes a just balance of interests – protecting the rights of the service member, the other parent, and, above all, the best interests of the children involved.

*UDPCVA has been enacted in six states: Colorado, Nevada, North Carolina, North Dakota, South Dakota, and Tennessee.*

- (3) **Uniform Voidable Transactions Act (2014)**  
The Uniform Voidable Transactions Act (UVTA), formerly the Uniform Fraudulent Transfer Act, strengthens creditor protections

by providing remedies for certain transactions by a debtor that are unfair to the debtor's creditors. For example, the UTVA provides a remedy to a creditor whose debtor transfers property to a relative or third party to keep the property away from the creditor's reach. The 2014 amendments to the UVTA update the existing Uniform Fraudulent Transfer Act, originally promulgated in 1984, with a number of key changes, including a new Section 10, which sets forth a choice of law rule for claims of the nature governed by the Act, as well as the addition of uniform rules allocating the burden of proof and defining the standard of proof with respect to claims and defenses under the Act.

*The Uniform Voidable Transactions Act (formerly the Uniform Fraudulent Transfers Act) has been enacted in 45 states, including West Virginia. The 2014 Amendments to UVTA have been enacted in no states.*

**(4) 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 30 states: Alabama, Arizona, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Michigan, Minnesota, Mississippi, Nevada, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, U.S. Virgin Islands, Utah, Virginia, Washington, and Wisconsin.*

**(5) Uniform Act on Prevention of and Remedies for Human Trafficking (2013)**

Human trafficking – a form of modern day slavery – is a global concern that affects the United States on all levels: federal, state, and local. Human trafficking has become the second fastest growing criminal activity in the United States, behind only drug trafficking. While every state has laws regarding human trafficking, these laws vary greatly in both substance and scope. Comprehensive and uniform criminal laws are needed to stop human trafficking both on the supply side and the demand side. But criminal penalties alone are not a sufficient response to the harms of human trafficking. Without support, victims are less likely to be willing to assist police and prosecutors. Without housing, counseling, and other help,

victims may be forced back to the traffickers. Without awareness and planning, the public, state agencies, and other organizations cannot effectively coordinate efforts to stop trafficking.

The new Uniform Act on the Prevention of and Remedies for Human Trafficking provides the three components necessary for ending human trafficking: (1) comprehensive criminal provisions which focus on criminalizing specific conduct and which sets out penalties for that conduct; (2) provisions for victim services which create protections for victims of human trafficking; and (3) the promotion of coordinated state activities to educate the public and develop a system of victim services.

*UAPRHT 2013 has been enacted in three states: Delaware, Louisiana, and New Hampshire.*

**(6) Uniform Partition of Heirs Property Act (2010)**

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 insure 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.

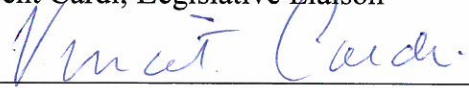
*UPHPA has been enacted in four states: Alabama, Georgia, Montana, and Nevada.*

## 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 2nd day of July 2015,

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

A handwritten signature in blue ink that reads "Vincent Cardi". The signature is written in a cursive style and is positioned above a horizontal line.

for the Commissioners