

WEST VIRGINIA COMMISSION ON UNIFORM STATE LAWS

REPORT TO THE WEST VIRGINIA LEGISLATURE REGULAR SESSION 2016

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 over ninety-one 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 2015.

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 Acts 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 Vessels and the Study Committee for the Computer Database Retrieval System for Land Records, and he is Chairperson of the Study Committee for Involuntary Pornography.

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 Stamp and Cardi attended the 123rd Annual Conference of the Uniform Law Commission in July of 2015. 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 2015 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 Bad Faith Patent Litigation

Patent assertion entities (PAEs) are companies that hold a number of patents but do not manufacture any product under the patent. While some PAEs are legitimate companies that have acquired a patent as an investment in order to license the patent to a producing entity, it is asserted that other PAEs have no such legitimate intentions and instead act in bad faith by sending broad demand letters to companies that produce products that allegedly infringe the patents, hoping that the producing entity will agree to a quick settlement of the infringement claim rather than face the risk and cost of potentially lengthy and costly litigation. At least 18 states have enacted some legislation concerning this form of bad faith patent litigation, and a number of other states have considered such legislation. At least one federal court has ruled that this type of state legislation is preempted by federal patent law. A number of bills that addressed bad faith patent legislation were considered during the recently concluded 113th Congress; one of those bills passed the House, but its companion bill was not presented for a vote in the Senate. This committee will consider the need for and feasibility of enacting uniform or model state legislation concerning bad faith patent litigation.

(2) Study Committee on Declarations of Quarantine

The recent outbreak of the Ebola virus in Africa, and concerns about its possible migration into the United States, have led to increased focus in this country on the ways in which quarantines are declared and on possible income replacement and employment protection for those who are subject to a declared quarantine. About ten states have state legislation concerning employment protection for those who are subject to a quarantine order, and at least one state has legislation providing for some income replacement for those individuals, but that legislation varies widely in its content. In addition, in 2014 the Conference of Chief Justices (CCJ) established a Pandemic and Emergency Response Task Force that will examine legal questions that might arise in

connection with pandemic emergencies and will, inter alia, develop a guidebook that a state could use in developing its own protocol for responding to a pandemic emergency. This Study Committee will follow closely the work of the CCJ Task Force and will consider the need for and feasibility of enacting uniform or model state legislation concerning a declaration of quarantine, and concerning employment protection and income replacement for those subject to quarantine.

(3) Study Committee on Involuntary Pornography

Revenge porn is the common name for what is more accurately termed “nonconsensual pornography,” “the distribution of sexually graphic images of individuals without their consent.” This includes images originally obtained without consent, as well as images originally obtained with consent, usually within the context of a private or confidential relationship. Nonconsensual pornography is particularly problematic when a victim’s name and contact information are disclosed along with the photos. This leads to harassment, stalking, and solicitation by strangers who have seen the images, and can also result in destruction of reputation and lost employment opportunities. The internet compounds such effects because it provides a convenient conduit for nonconsensual pornography to be disseminated and spread rapidly. The Committee will study the need for and feasibility of state legislation to provide remedies for people who are victimized by involuntary pornography.

(4) Study Committee on Model Equal Rights Act

Over the last several years, advancement of civil rights at the federal level has slowed and advancements against discrimination have practically halted. The United States Commission on Civil Rights is no longer as powerful a voice as in the past. One state has enacted legislation prohibiting discrimination in employment based on race, creed, religion, color, national origin, age, physical or mental disability, marital status, or sex (including maternity and pregnancy), and another has enacted equal rights legislation making it illegal for employers and landlords to discriminate on the basis of sexual orientation or gender identity, except in cases involving religious organizations and their affiliates. The study committee will consider the need for and feasibility of model state legislation on a comprehensive equal rights act.

(5) Study Committee on Regulation of Drones

Unmanned aircraft systems, also known as unmanned aerial vehicles or drones, have a range of applications, including law enforcement, wildlife tracking, search and rescue, land

surveillance, border patrol, disaster response, and photography. The FAA's drone regulation largely focuses on regulation of the national airspace, with the ultimate goal of integrating drones into that airspace. Several states have enacted legislation addressing law enforcement use of drones. Some states have created crimes based on unlawful use of a drone, and have created civil penalties; these enactments, as well as those limiting police drone usage, aim to protect civilian privacy. While Congress has considered three privacy-related drone bills, it has not enacted any of those bills. Given the federal focus on airspace regulation, issues such as privacy and police use of drones has fallen to the states. This Committee will study the need for and feasibility of state legislation concerning the regulation of the use of drones, or unmanned aerial vehicles.

(6) Study Committee on Possible Amendments to the Uniform Parentage Act, and other ULC Acts, in Light of Potential Supreme Court Decisions Concerning Same-Sex Marriage

The ULC adopted the Uniform Parentage Act in 2000, which was a complete revision of a 1973 uniform act, and the UPA was amended in 2002. The UPA covers a number of topics, including: the parent-child relationship, voluntary acknowledgements of paternity, a registry of paternity (intended in part to facilitate adoption proceedings), genetic testing, proceedings to adjudicate parentage, and children of assisted reproduction. The UPA has been adopted in nine states. Significant recent developments – in particular the recent grant of certiorari by the Supreme Court to consider whether the fourteenth amendment prohibits a state from refusing to permit same-sex individuals to marry and whether a state that does not permit same-sex marriages must recognize a marriage of same-sex individuals that was lawfully performed in another state -- suggest it is appropriate to consider whether to revise or amend the UPA and other ULC acts in light of judicial and other developments in the states concerning same-sex marriage. This Study Committee will follow closely developments in the matters before the Supreme Court and consider the need for and feasibility of enacting amendments to or a revision of the UPA and other ULC acts as a result of the Supreme Court's decision and other developments in the states concerning same-sex marriage.

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 2015, four new drafting committees were created to begin working on new Acts. These are:

- (1) **Drafting Committee on a Model Veterans' Court Act**
Veterans' courts have been created in a number of judicial districts around the United States to ensure that veterans in the criminal justice system receive the treatment and support necessary to rehabilitate them into being productive members of society. Very few states have legislation on veterans' courts, but many local judicial districts have effectively created veterans' courts by rule or practice. This drafting committee will develop model state legislation that provides guidelines for the establishment of veterans' courts while permitting substantial local discretion necessary to accommodate particular circumstances in different communities. Some of the issues that the model act will address include: what subset of veterans are entitled to diversion into a veterans' court; for what type of offenses is diversion into a veterans' court appropriate; what rights should victims have to participate in proceedings in veterans' courts; and how, in general, should veterans' courts be organized and operated.

- (2) **Drafting Committee on Amendments to the Model Tribal Secured Transaction Act**
The ULC, working closely with representatives of Indian tribes and organizations, promulgated the Model Tribal Secured Transaction (MTSTA) in 2005. The act has been adopted by a substantial number of tribal governments and is being considered by others. In the meantime, in 2010 the ULC adopted various amendments to Article 9 of the Uniform Commercial Code (upon which the MTSTA is based), particularly to provide greater guidance as to the name of an individual debtor that should be provided on a financing statement. To date, the 2010 amendments have been adopted by 51 jurisdictions. The Committee, working closely with representatives of Indian tribes and organizations, will draft amendments to the MTSTA that incorporate, as appropriate, some of the 2010 amendments to Article 9. The Committee may also consider preparing other amendments to the MTSTA, such as provisions providing protections for tribal cultural property.

(3) Drafting Committee for a Uniform Electronic Registry for Residential Mortgage Notes

The development of securitization as a common practice with regard to residential mortgage notes has created the need for a more efficient and less costly means than the current paper-based rules of UCC Article 3 to identify who is entitled to enforce a residential mortgage note and how the debt evidenced by the note is transferred. A more efficient system will benefit not only those engaged in the secondary mortgage market, but also note obligors who will have a clear, certain and easily accessible way to determine who is the person entitled to enforce their obligation, and thus the person with whom they must deal with regard to enforcement related issues such as payoff and loan modification. Given the importance of the secondary mortgage market to the availability of capital for residential mortgage loans, a more efficient system is likely to benefit home buyers seeking residential mortgage loans as well. The drafting committee will develop a uniform electronic registry for residential mortgage notes that will be national in its effect, taking into account *inter alia* the appropriate relationship between the registry and other law. The ULC is committed to this field.

(4) Drafting Committee to Revise the Uniform Principal and Income Act

Originally enacted in 1931 and then revised in 1962, UPAIA was last comprehensively revised in 1997. Much has changed in the nearly two decades since then. The drafting committee will undertake a number of revisions to bring the UPAIA up to date and to add a unitrust provision. Modern trust law requires a trustee to invest for the best total return and simultaneously to treat income and remainder beneficiaries impartially. In order to fulfill these duties, a trustee should be able to make adjustments between income and principal or to make a unitrust election. The drafting committee will address many other issues, including (1) the treatment of money that a trust receives in partial liquidation of an entity in which the trust owns an interest and (2) the allocation of capital gains to income for income tax purposes.

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) **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.
- (2) **Proposed Amendment to Revised Uniform Law on Notarial Acts:**
U.S. citizens residing or traveling abroad have encountered intractable problems when seeking notarizations to satisfy U.S. federal or state law. To remedy this problem, an amendment to the Revised Uniform Law on Notarial Acts has been proposed. The amendment would permit a notary in an enacting state to remotely notarize a document for a U.S. citizen residing or traveling abroad.
- (3) **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.
- (4) **Social Media Privacy**
The use of social media in the United States is burgeoning. That growth has had implications in both the employment and educational institution contexts. Indeed, employers and educational institutions now sometimes ask current and/or prospective employees or students to grant the employer or school access to social media accounts. Educational institutions also sometimes seek to examine the social media presence of current or prospective students. In 2012-2014, nineteen states enacted varying legislation on social media privacy, and numerous additional bills on these topics were introduced during the 2014 legislative sessions. This committee will draft legislation concerning employers' access to employees' or prospective employees' social media accounts and educational institutions' access to students' or prospective students' social media accounts or accounts that require a username and/or password.
- (5) **Revised Uniform Unclaimed Property Act**
The ULC first drafted uniform state legislation on unclaimed property in 1954. That act was then substantially revised in 1981 as

the Uniform Unclaimed Property Act, which was later updated in 1995. While the UUPA (1995) has been adopted in 16 states, and about 40 states have enacted a version of one of the Uniform Acts, there have been few recent adoptions and various states in recent years have adopted revisions to their unclaimed property acts that are not consistent with the uniform act. Many technological developments in recent years as well as new types of potential unclaimed property, such as gift cards, are not addressed in the current uniform act. This committee will draft a revision of the Uniform Unclaimed Property Act in light of those developments.

(6) Wage Garnishment

For many companies, even relatively small businesses if they operate in more than one state, payroll is handled centrally rather than in individual offices. Wage garnishments, however, are governed by widely varying law in all of the states. This creates difficulties and inefficiencies in complying with wage garnishment orders. This committee will draft an act on wage garnishment that may cover the following issues:

- Choice of Law;
- Obligation to Notify Debtor;
- Procedures for Multiple Garnishments;
- Involvement of Court and Court Clerk;
- Definition of Disposable Income, Withholding Calculations, and Process for Claiming Exemptions;
- Length of Time a Garnishment Remains in Effect;
- Liability for Failure to Comply with Garnishment Order;
- Remission of Withheld Funds;
- How a Garnishment Order is Served, and Time for Responding to the Order;
- Administrative Fees; and
- Whether Responding to a Garnishment Order Constitutes the Practice of Law.

VI. NEW ACTS APPROVED BY ULC AND TARGETED ACTS

A. Approval of New Acts and Amendments

At the 2015 meeting, the Commissioners approved the following new Acts and Amendment to Acts for presentation to state legislatures.

(1) Revised Uniform Athlete Agents Act

The Uniform Athlete Agents Act (UAAA) was adopted in 2000, and has been enacted in 42 states. In recent years, however, there have been substantial changes in the marketplace for athletic

agents, and a number of states have recently considered non-uniform amendments to the act, particularly in response to allegations in the past two years of improper conduct by agents with regard to college athletes. The Revised Uniform Athlete Agents Act makes numerous changes to the act, including expanding the definition of “athlete agent” and “student athlete;” providing for reciprocal registration between states; adding new requirements to the signing of an agency contract; and expanding notification requirements.

(2) Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act

This Uniform Act provides for the enforcement of domestic violence protection orders issued by Canadian courts. Reflecting the friendship between the United States and Canada, citizens move freely between the two countries, freedom that in certain limited circumstances can work against victims of domestic violence. Canada has granted recognition to protection orders of the United States and other countries in the Uniform Enforcement of Canadian Judgments and Decrees Act (UECJDA). By this act, enacting states accord similar recognition to protection orders from Canada.

(3) Uniform Trust Decanting Act

“Decanting” is the term used to describe the distribution of assets from one trust into a second trust, like wine is decanted from the bottle to another vessel. Decanting can be a useful strategy for changing the outdated terms of an otherwise irrevocable trust, but can also be abused to defeat the settlor’s intent. The Uniform Trust Decanting Act includes one stricter set of rules that applies when the settlor gave the trustee limited discretion over distributions, and another more liberal set of rules that applies when the trustee has expanded discretion. The act also limits decanting when it would defeat a charitable or tax-related purpose of the settlor.

(4) Revised Uniform Residential Landlord and Tenant Act

This is an updated version of the Uniform Residential Landlord and Tenant Act, which was last amended in 1974. The act includes new articles covering the disposition of tenant property, lease termination in case of domestic violence or sexual assault, and security deposits. The revised act also allows for notice by email and incorporates certain common law decisions that interpreted provisions of the 1974 act. The revised act also includes an appendix for states that only want to enact the updated provisions.

- (5) **Uniform Home Foreclosure Procedures Act**
The recent wave of residential foreclosure actions revealed flaws in the foreclosure system, particularly in states where court systems were overwhelmed. This act provides a balanced set of rules and procedures to standardize and streamline the foreclosure process. The act protects homeowners by requiring adequate notice and documentation before a foreclosure action can proceed. The act protects lenders by precluding contrary municipal ordinances and expediting foreclosure of abandoned properties. Finally, the act includes rules for pre-foreclosure resolutions and negotiated transfers to encourage non-judicial solutions.
- (6) **Uniform Commercial Real Estate Receivership Act**
Receivership is an equitable remedy allowing a court to oversee the orderly management and disposition of property subject to a lawsuit. Although the remedy is not new, there is no standard set of receivership rules and the courts of different states have applied widely varying standards. This new uniform act applies to receiverships involving commercial real estate, and provides a standard set of rules for courts to apply. It will result in greater predictability for litigants, lenders, and other parties doing business with a company subject to receivership.
- (7) **Revised Uniform Fiduciary Access to Digital Assets Act**
The revised act clarifies the application of federal privacy laws and gives legal effect to an account holder's instructions for the disposition of digital assets. While the 2014 UFADAA provided fiduciaries with default access to all digital information, the revised act protects the contents of electronic communications from disclosure without the user's consent. Fiduciaries can still access other digital assets unless prohibited by the user.

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 2016 Targeted Acts not yet adopted in West Virginia.

- (1) **Uniform Collaborative Law Act (2009)(2010)**
The Uniform Collaborative Law Act (UCLA) 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 12 states including Alabama, District of Columbia, Hawaii, Maryland, Michigan, Montana, Nevada, New Jersey, 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 UDPCVA has been enacted in 10 states including Arkansas, Colorado, Minnesota, Nebraska, 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 12 states including California, Colorado, Connecticut, Delaware, Hawaii, Idaho, Illinois, Minnesota, Nevada, North Dakota, Oregon, Pennsylvania.*

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

The Uniform Emergency Volunteer Health Practitioners Act (UEVHPA), 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 including 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 Fiduciary Access to Digital Assets Act Revised (2015)

The Revised Uniform Fiduciary Access to Digital Assets Act clarifies the application of federal privacy laws and gives legal effect to an account holder’s instructions for the disposition of digital assets. While the 2014 UFADAA provided fiduciaries with default access to all digital information, the revised act protects the contents of electronic communications from disclosure without the user’s consent. Fiduciaries can still access other digital assets unless prohibited by the user. *UFADAA has been enacted in one state, Delaware.*

(6) 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 21 states including Alabama, California, Colorado, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, Montana, Nevada, New Mexico, North Carolina, Oklahoma, Oregon, Virginia, and Washington.*

(7) 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 15 states including Alabama, California, District of Columbia, Florida, Idaho, Iowa, Minnesota, Nebraska, New Jersey, North Dakota, South Dakota, Utah, Vermont, Washington, and Wyoming.*

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

The Uniform Limited Partnership Act (2001) (ULPA) 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 20 states including Alabama, Arkansas, California, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Kentucky, Maine, Minnesota, Mississippi, Montana, Nevada, New Mexico, North Dakota, Oklahoma, Utah, and Washington.*

(9) 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 15 states including California, Colorado, District of Columbia, Hawaii, Kentucky, Missouri, Montana, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, and Utah.*

(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 (UPoAA) 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 two states, Colorado and Montana.*

(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 (UAPRHT) 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. West Virginia has enacted some portions of this Act. *UAPRHT 2013 has been enacted in seven states including Delaware, Louisiana, Montana, New Hampshire, North Dakota, Pennsylvania.*

(12) Uniform Unsworn Foreign Declarations Act (2008)

The Uniform Unsworn Foreign Declarations Act (UUFDA) 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 22 states including Alabama, Colorado, Connecticut, Delaware, District of Columbia, Idaho, Indiana, Michigan, Minnesota, Montana, Nevada, New Mexico, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Washington, and Wisconsin.*

(13) Uniform Voidable Transactions Act (2014 Amendments)

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 UVTA 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. The 2014 Amendments to UVTA have been enacted in eight states including Georgia, Idaho, Kentucky, Minnesota, New Mexico, North Carolina, and North Dakota.*

VII. 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 2016 session.

(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.

URPERA has been enacted in 30 states including 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.

(2) 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 seven states including Delaware, Louisiana, and New Hampshire.

(3) 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 six states including Alabama, Georgia, Montana, and Nevada.

- (4) **Uniform Fiduciary Access to Digital Assets Act Revised (2015)**
The **Revised Uniform Fiduciary Access to Digital Assets Act** clarifies the application of federal privacy laws and gives legal effect to an account holder's instructions for the disposition of digital assets. While the 2014 UFADAA provided fiduciaries with default access to all digital information, the revised act protects the contents of electronic communications from disclosure without the user's consent. Fiduciaries can still access other digital assets unless prohibited by the user.

UFADAA has been enacted in one state, Delaware.

- (5) **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 UVTA 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 eight states.

- (6) **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 ten states including Colorado, Nevada, North Carolina, North Dakota, South Dakota, and Tennessee.

(7) Revised Uniform Athlete Agents Act

The Uniform Athlete Agents Act (UAAA) was adopted in 2000, and has been enacted in 42 states. In recent years, however, there have been substantial changes in the marketplace for athletic agents, and a number of states have recently considered non-uniform amendments to the act, particularly in response to allegations in the past two years of improper conduct by agents with regard to college athletes. The Revised Uniform Athlete Agents Act makes numerous changes to the act, including expanding the definition of “athlete agent” and “student athlete;” providing for reciprocal registration between states; adding new requirements to the signing of an agency contract; and expanding notification requirements.

The Revised Act is new and has not been enacted in any state.

(8) Insurable Interests Amendment to the Uniform Trust Code

The Insurable Interests Amendment to the Uniform Trust Code has been drafted 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.

The Amendment has been adopted in seven states.

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 23rd day of February 2016,

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



for the Commissioners