

MONTANA COMMISSIONERS ON UNIFORM STATE LAWS

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ANNUAL REPORT 2019

I. PREAMBLE

To: Governor Steve Bullock; President of the Senate Senator Scott Sales; Senate Minority Leader Senator Jon Sesso; Speaker of the House Representative Greg Hertz; House Minority Leader Representative Casey Schreiner; State Legislative Council; and Chief Justice Mike McGrath. The Montana Commissioners on Uniform State Laws respectfully submit this annual report.

II. OVERVIEW OF UNIFORM LAW COMMISSION

The Uniform Law Commission (ULC), also known as the National Conference of Commissioners on Uniform State Laws, has worked for the uniformity of state laws since 1892. It is comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners appointed. Most jurisdictions provide for their commission by statute. The statutory authority governing Montana's uniform law commission can be found at Montana Code Annotated Title 1, chapter 12.

There is only one fundamental requirement for the more than 300 uniform law commissioners: that they are members of the bar. While some commissioners serve as state legislators and other state officials, most are practitioners, judges, and law professors. Uniform law commissioners serve for specific terms and receive no salaries or fees for their work with the Uniform Law Commission.

Commissioners study and review the law of the states to determine which areas of law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable. The ULC can only propose – no uniform law is effective until a state legislature adopts it.

The work of the ULC simplifies the legal life of businesses and individuals by providing rules and procedures that are consistent from state to state. Representing both state government and the legal profession, it is a genuine coalition of state interests. It has sought to bring uniformity to the divergent legal traditions of more than 50 jurisdictions – and has done so with significant success.

III. HISTORY

On August 24, 1892, representatives from seven states – Delaware, Georgia, Massachusetts, Michigan, New York, New Jersey, and Pennsylvania – met in Saratoga Springs, New York, to form what is now known as the Uniform Law Commission. By 1912, every state was participating in the ULC. The U.S. Virgin Islands was the last jurisdiction to join, appointing its first commission in 1988.

Very early on the ULC became known as a distinguished body of lawyers. The ULC has attracted some of the best of the profession. In 1901, Woodrow Wilson became a member. This, of course, was before his more notable political prominence and service as President of the United States. Several persons, later to become Justices of the Supreme Court of the United States, have been members: former Justices Brandeis, Rutledge, and Souter, and former Chief Justice Rehnquist. Legal scholars have served in large numbers, including Professors Wigmore, Williston, Pound and Bogert. Many more distinguished lawyers have served since 1892.

In each year of service, the ULC steadily increased its contribution to state law. Since its founding, the ULC has drafted more than 200 uniform laws on numerous subjects and in various fields of law, setting patterns for uniformity across the nation. Uniform Acts include the Uniform Probate Code, the Uniform Partnership Act, the Uniform Limited Partnership Act, the Uniform Anatomical Gift Act, the Uniform Interstate Family Support Act, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Prudent Management of Institutional Funds Act.

Most significant was the 1940 ULC decision to attack major commercial problems with comprehensive legal solutions – a decision that set in motion the project to produce the Uniform Commercial Code (UCC). Working with the American Law Institute, the UCC took ten years to draft and another 14 years before it was enacted across the country. It remains the signature product of the ULC.

Today the ULC is recognized primarily for its work in commercial law, family law, the law of probate and estates, the law of business organizations, health law, and conflicts of law.

The Uniform Law Commission arose out of the concerns of state government for the improvement of the law and for better interstate relationships. Its sole purpose has been, and remains, service to state government and improvement of state law.

IV. DIVERSITY STATEMENT

Each member jurisdiction determines the number of uniform law commissioners it appoints to the Uniform Law Commission, the terms of uniform law commissioners, and the individuals who are appointed from the legal profession of that jurisdiction. The Uniform Law Commission encourages the appointing authorities to consider, among other factors, diversity of membership in their uniform law commissions, including race, ethnicity, and gender in making appointments. The Uniform Law Commission does its best work when the uniform law commissioners are drawn from diverse backgrounds and experiences.

V. PROCEDURES

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

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

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

The ULC maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which provides advisors to all ULC drafting committees and many ULC study committees. Liaison is also maintained with the American Law Institute, the Council of State Governments, the National Conference of State Legislatures, the National Association of Secretaries of State, the Conference of Chief Justices, and the National Center for State Courts on an on-going and as-needed basis. Liaison and activities are conducted with other organizations as interests and activities necessitate.

VI. ACTIVITIES OF THE MONTANA COMMISSIONERS

A. The Montana Commissioners are:

(1) Jonathon S. Byington, Professor
Alexander Blewett III School of Law
University of Montana
Missoula, Montana

(2) Hon. Gregory G. Pinski, District Judge
Eighth Judicial District
Great Falls, Montana

(3) Jacqueline T. Lenmark
Jackson, Murdo & Grant, P.C.
Helena, Montana

(4) Todd Everts
Montana Code Commissioner
Montana Legislative Services Division
Helena, Montana

(5) E. Edwin Eck, Professor - *Life Member* (more than 20 years of service)
Alexander Blewett III School of Law
University of Montana
Missoula, Montana

B. The ULC committee assignments for Commissioners from Montana are:

- (1) E. Edwin Eck
 - Membership and Attendance
 - Powers of Appointment Act Drafting Committee
- (2) Jonathon S. Byington
 - Default Judgments in Debt Collection Cases Study Committee
- (3) Gregory G. Pinski
 - Model Veterans Treatment Court Drafting Committee
 - Covenants Not To Compete Study Committee
- (4) Jacqueline T. Lenmark
 - Uniform Common Interest Ownership Act Study Committee
 - Uniform Relocation of Non-Utility Easements Drafting Committee
 - Uniform Health Care Decisions Act Study Committee (to amend or revise)
 - Conflict of Laws in Trusts and Estates Drafting Committee
 - Developments in Privacy Law Committee (to monitor developments)
- (5) Todd Everts
 - Legislative Attorneys Committee

C. Other ULC offices held by Commissioners from Montana are: Jacqueline Lenmark is designated the Montana Commission's legislative liaison.

D. Meetings held by the Montana Commissioners in the years 2018 and 2019 were held by telephone conference as needed, especially to coordinate actions regarding ULC bills introduced to the 2019 regular legislative session, and in-person meetings at the ULC Annual Meetings.

E. All five Montana Commissioners attended the ULC 2018 and 2019 Annual Meetings.

F. Legislative appearances by the Montana Commissioners in the year 2019 were:

(1) E. Edwin Eck and Jacqueline Lenmark - **Uniform Probate Code revisions, including or incorporating Uniform Disclaimer of Property Interests Act and Uniform Real Property Transfer-on-Death Act.** Signed by Governor May 7, 2019, Chapter 313, Eff. Date October 1, 2019. (SB 225 <https://leg.mt.gov/bills/2019/billpdf/SB0225.pdf>).

(2) Jacqueline Lenmark - **Uniform Law on Notarial Act** revisions. Signed by Governor Apr. 3, 2019, Chapter 123, Eff. Date October 1, 2019. (HB 370 <https://leg.mt.gov/bills/2019/billpdf/HB0370.pdf>).

(3) Jacqueline Lenmark - **Uniform Parentage Act.** Died in Standing Committee Apr. 25, 2019. (SJ 26 <https://leg.mt.gov/bills/2019/billpdf/SJ0026.pdf>).

VII. A SUMMARY OF NEW ACTS

Summaries are provided for your use and consideration as Exhibit A.

VIII. RECOMMENDATIONS FOR ENACTMENT

Subject to ongoing stakeholder recommendations, the Montana Commissioners recommend that the following Uniform and Model Acts be considered in the legislative session beginning January 2021:

- Uniform Directed Trust Act
- Uniform Electronic Wills Act
- Uniform Trust Decanting Act
- Model Veterans Treatment Court Act
- Uniform Voidable Transactions Act amendments (formerly “Uniform Fraudulent Transfer Act”)
- Uniform Relocation of Non-Utility Easements Act (subject to ULC adoption)
- Uniform Registration of Canadian Money Judgments Act

IX. ENACTMENT RECORD TO DATE

State Enactments 2019 attached as Exhibit B is a listing of the number of Uniform Acts enacted by each state to November 2019.

Respectfully submitted,

MONTANA COMMISSIONERS ON UNIFORM STATE LAWS

By: _____


Jacqueline T. Lenmark

EXHIBIT A

UNIFORM LAW COMMISSION New Acts 2019: Short Summaries

Uniform Automated Operation of Vehicles Act

The Uniform Automated Operation of Vehicles Act regulates important aspects of the operation of automated vehicles. This act covers the deployment of automated vehicles on roads held open to the public by reconciling automated driving with a typical state motor vehicle code. Many of the act's sections – including definitions, driver licensing, vehicle registration, equipment, and rules of the road – correspond to, refer to, and can be incorporated into existing sections of a typical vehicle code. This act also introduces the concept of automated driving providers (ADPs) as a legal entity that must declare itself to the state and designate the automated vehicles for which it will act as the legal driver when the vehicle is in automated operation. The ADP might be an automated driving system developer, a vehicle manufacturer, a fleet operator, or another kind of market participant that has yet to emerge. Only an automated vehicle that is associated with an ADP may be registered. In this way, the Automated Operation of Vehicles Act uses the motor vehicle registration framework that already exists in states – and that applies to both conventional and automated vehicles – to incentivize self-identification by ADPs. By harnessing an existing framework, the act also seeks to respect and empower state motor vehicle agencies.

Uniform Electronic Wills Act

The Uniform Electronic Wills Act permits testators to execute an electronic will and allows probate courts to give electronic wills legal effect. Most documents that were traditionally printed on paper can now be created, transferred, signed, and recorded in electronic form. Since 2000 the Uniform Electronic Transactions Act (UETA) and a similar federal law, E-SIGN have provided that a transaction is not invalid solely because the terms of the contract are in an electronic format. But UETA and E-SIGN both contain an express exception for wills, which, because the testator is deceased at the time the document must be interpreted, are subject to special execution requirements to ensure validity and must still be executed on paper in most states. Under the new Electronic Wills Act, the testator's electronic signature must be witnessed contemporaneously (or notarized contemporaneously in states that allow notarized wills) and the document must be stored in a tamper-evident file. States will have the option to include language that allows remote witnessing. The act will also address recognition of electronic wills executed under the law of another state. For a generation that is used to banking, communicating, and transacting business online, the Uniform Electronic Wills Act will allow online estate planning while maintaining safeguards to help prevent fraud and coercion.

Uniform Registration of Canadian Money Judgments Act

The Uniform Registration of Canadian Money Judgments Act ("Registration Act") creates an administrative procedure for the registration and enforcement of a Canadian money judgments in an enacting state. Once the Canadian judgment is successfully registered in the state, the judgment is enforceable in the same manner as a judgment rendered in that state. The Registration Act only applies to a Canadian judgment if it (1) grants or denies recovery of a sum

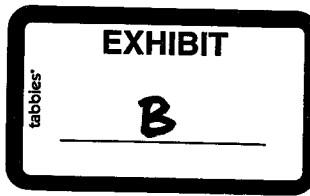
of money; (2) is final, conclusive, and enforceable in Canada; and (3) its recognition is sought in order to enforce the judgment. The Registration Act supplements the Uniform Foreign Country Money Judgments Recognition Act (“Recognition Act”) by providing an alternative method to seeking recognition and enforcement of a foreign judgment. If a state has not enacted the Recognition Act, it may enact this Act at the same time it adopts the Recognition Act as a companion Act. The Registration Act offers an efficient alternative to filing a lawsuit to recognize and enforce a Canadian money judgment in the United States.

Uniform Athlete Agents Act Amendment

The Revised Uniform Athlete Agents Act (RUAAA) updates the 2000 version of the act for the ever-evolving sports commercial marketplace and the increasing activity between athlete agents and student athletes. The RUAAA protects the interests of student athletes, academic institutions, and athlete agents by regulating the activities of athlete agents. The 2015 revision updates the definition of “athlete agent;” requires reciprocal agent licensing; creates a central licensing process; enhances notice requirements to educational institutions; and revised administrative remedies arising from damages resulting from improper athlete agent conduct. An Amendment to the Uniform Athlete Agents Act, approved in 2019, applies to changes that the NCAA made to its bylaws in August of 2018 to provide student athletes playing basketball with more freedom and flexibility to explore the possibility of going professional while retaining their college eligibility. Under the new NCAA bylaws, certified sports agents can cover limited expenses of prospective or enrolled college basketball players and their family for meals, hotel and travel in connection with the agent selection process. Because the NCAA bylaw changes were in conflict with the Athlete Agents Acts, the NCAA asked the ULC to amend the two Uniform Athlete Agents Acts so they will not conflict with the bylaw changes. The Section 14 Amendment was drafted to clear up the conflict; it was also drafted so that it applies beyond the current bylaws to ensure that the ULC will not have to go to state legislatures every time the NCAA broadens its bylaws. The amendment does, however, set forth appropriate safeguards so that it only applies if the NCAA makes further changes.

Uniform Probate Code Amendments

The promulgation of the Uniform Parentage Act (2017) has necessitated amendments to the Uniform Probate Code’s intestacy and class-gift provisions. The 2019 Amendments to the Uniform Probate Code provide a more consistent formula for determining intestate shares within blended families, remove outdated terminology, and incorporate the concept of de facto parentage. The intestacy formulae will also account for the possibility that a child may have more than two parents, and therefore more than two sets of grandparents.



(11/1/19)

Number of Uniform and Model Acts Enacted in Each State

ALABAMA - 112	NEBRASKA - 119
ALASKA - 107	NEVADA - 147
ARIZONA - 118	NEW HAMPSHIRE - 98
ARKANSAS - 124	NEW JERSEY - 92
CALIFORNIA - 105	NEW MEXICO - 155
COLORADO - 132	NEW YORK - 78
CONNECTICUT - 114	NORTH CAROLINA - 103
DELAWARE - 103	NORTH DAKOTA - 178
DISTRICT OF COLUMBIA - 110	OHIO - 88
FLORIDA - 90	OKLAHOMA - 136
GEORGIA - 81	OREGON - 123
HAWAII - 143	PENNSYLVANIA - 116
IDAHO - 139	PUERTO RICO - 30
ILLINOIS - 121	RHODE ISLAND - 108
INDIANA - 109	SOUTH CAROLINA - 89
IOWA - 109	SOUTH DAKOTA - 131
KANSAS - 117	TENNESSEE - 109
KENTUCKY - 102	TEXAS - 98
LOUISIANA - 87	US VIRGIN ISLANDS - 90
MAINE - 114	UTAH - 147
MARYLAND - 122	VERMONT - 101
MASSACHUSETTS - 94	VIRGINIA - 112
MICHIGAN - 122	WASHINGTON - 145
MINNESOTA - 145	WEST VIRGINIA - 108
MISSISSIPPI - 88	WISCONSIN - 142
MISSOURI - 85	WYOMING - 103
MONTANA - 155	