

STATE OF CONNECTICUT



ANNUAL REPORT
for 2017 of the
CONNECTICUT COMMISSION ON UNIFORM LEGISLATION

April, 2018

Room 5100
Legislative Office Building
Hartford, Connecticut 06106

CONNECTICUT
COMMISSION ON UNIFORM LEGISLATION

COMMISSIONERS

2017

David D. Biklen, Chair

Mary M. Ackerly

William R. Breetz

Abbe R. Gluck

Barry C. Hawkins

John H. Langbein

Louise M. Nadeau

Francis J. Pavetti

Suzanne Brown Walsh

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I. PREAMBLE

To the Honorable Dannel P. Malloy, Governor of the State of Connecticut and members of the Connecticut General Assembly. The Connecticut Commissioners on Uniform State Laws respectfully submit this annual report for 2017.

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 Connecticut's uniform law commission can be found at CGS Section 2-80.

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 other 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 CONNECTICUT COMMISSIONERS

A. The Connecticut Commissioners are:

David D. Biklen, Chair	John H. Langbein
Mary M. Ackerly	Louise M. Nadeau
William R. Breetz	Francis J. Pavetti
Abbe R. Gluck	Suzanne Brown Walsh
Barry C. Hawkins	

B. The ULC committee assignments and other positions of Commissioners from Connecticut are:

Mary M. Ackerly

- Standby Committee for Revised Uniform Guardianship, Conservatorship, and Protective Arrangements Act
- Drafting Committee on Fiduciary Income and Principal Act
- Drafting Committee on Electronic Wills Act
- Division A - Chair

David D. Biklen

- Standby Committee on Revised Uniform Fiduciary Access to Digital Assets Act
- Standby Committee on Revised Uniform Law on Notarial Acts
- Drafting Committee on Uniform Non-Parental Child Custody and Visitation Act
- Study Committee on Uniform Event Data Recorders in Cars Act
- Drafting Committee on Amendments to Uniform Commercial Code Articles 1,3,8 and 9 Act
- Drafting Committee on Electronic Registry for Residential Mortgage Notes
- Standby Committee on Revised Uniform Unclaimed Property Act
- Standby Committee on Wage Garnishment Act
- Study Committee on Unregulated Transfers of Adopted Children - Chair
- Standing Committee on Parliamentary Practice - Chair
- Standing Committee on Style

William R. Breetz, Jr.

- Standby and Enactment Committees for Uniform Home Foreclosure Procedures Act – Chair
- Joint Editorial Board for Uniform Real Property Acts – Co-Chair
- Standby Committee on Uniform Manufactured Housing Act
- Standby Committee on Uniform Partition of Heirs Property Act

Abbe R. Gluck

- Committee to Monitor Healthcare Law - Chair

Barry C. Hawkins

- Legislative Committee - Liaison
- Joint Editorial Board for Uniform Real Property Act
- Committee on American Bar Association

- Member Executive Committee
- Drafting Committee on Fiduciary Income and Principal Act
- Standby Committee on Veterans Treatment Court Act

John H. Langbein

- Standby Committee on Uniform Directed Trust Act
- Joint Editorial Board for Uniform Trust and Estate Acts – Emeritus Member
- Drafting Committee on Fiduciary Income and Principal Act
- Drafting Committee on Electronic Wills Act

Louise M. Nadeau

- Criminal Justice Reform Committee – Vice-Chair
- Drafting Committee on Criminal Records Accuracy Act
- Drafting Committee on Unauthorized Disclosure of Intimate Images Committee - Vice Chair
- Committee on Uniform Style
- Committee of Legislative Attorneys
- Drafting Committee on Tort Law Relating to Drones

Francis J. Pavetti

- Standby Committee on Uniform Arbitration Act (2000) - Chair
- Standby Committee on Uniform Recognition and Enforcement of Canadian Domestic-Violence Protection Orders Act

Suzanne Brown Walsh

- Enactment Committee for Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act
- Standby and Enactment Committees for Revised Uniform Fiduciary Access to Digital Assets Act - Chair
- Enactment Committee on Uniform Regulation of Virtual Currency of Businesses Act
- Enactment Committee for Uniform Trust Decanting Act
- Joint Editorial Board for Uniform Trust and Estate Acts
- Standby Committee on Uniform Directed Trust Act
- Drafting Committee on Electronic Wills Act – Chair
- Drafting Committee on Fiduciary Income and Principal Act – Chair
- Drafting Committee on Article 8 Companion Act to the Uniform Regulation of Virtual Currency

- C. Meetings held by the Connecticut Commissioners in the year 2017 were:
1. July 14, 2017 – A meeting held by those Commissioners from Connecticut at the ULC Annual Meeting in San Diego, CA, to plan legislative activities.
- D. Connecticut Commissioners attending the ULC Annual Meeting were:
- | | |
|-------------------|---------------------|
| David D. Biklen | John H. Langbein |
| Mary M. Ackerly | Francis J. Pavetti |
| William R. Breetz | Suzanne Brown Walsh |
| Barry C. Hawkins | |
- E. Legislative appearances by the Connecticut Commissioners in the year 2017 were:
- Barry C. Hawkins, testified on February 24, 2017 concerning Senate Bill No. 816 – UCC Article 4A Amendments (2012) Act, House Bill No. 7135 – Uniform Arbitration Act and the Uniform Recognition of Substitute Decision Making Documents Act (2014), and certain technical amendments to Limited Liability Act.

VII. A SUMMARY OF UNIFORM ACTS ADOPTED BY THE ULC IN 2017

1. Uniform Directed Trust Act

The Uniform Directed Trust Act (UDTA) addresses the rise of directed trusts. In a directed trust, a person other than a trustee has a power over some aspect of the trust's administration. Such a person may be called a "trust protector," "trust adviser," or in the terminology of the UDTA, a "trust director." The division of authority between a trust director and a trustee raises difficult questions about how to divide fiduciary power and duty. The Uniform Directed Trust Act provides clear, functional rules that allow a settlor to freely structure a directed trust while preserving key fiduciary safeguards for beneficiaries. The UDTA also provides sensible default rules for a variety of matters that might be overlooked in the drafting of a directed trust, including information sharing among trustees and trust directors, the procedures for accepting appointment as a trust director, the distinction between a power of direction and a nonfiduciary power of appointment, and many other matters.

2. Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act

The Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act is an updated version of the Uniform Guardianship and Protective Proceedings Act,

originally promulgated in 1969 as part of the Uniform Probate Code and revised in 1982 and 1997. This new version is a comprehensive and modern guardianship statute that better protects the individual rights of both minors and adults subject to a guardianship or conservatorship order. The Act promotes person-centered planning to incorporate an individual's preferences and values into a guardianship order and requires courts to order the least-restrictive means necessary for protection of persons who are unable to fully care for themselves. The act includes a set of optional forms to help courts implement its provisions effectively.

3. Uniform Parentage Act (2017)

The Uniform Parentage Act (2017) is a revision of the Uniform Parentage Act (UPA) of 2000, which has been adopted in 11 states. The UPA covered several topics, including: the parent-child relationship; voluntary acknowledgments of paternity; registry of paternity; genetic testing; proceedings to adjudicate parentage of children of assisted reproduction. As a result of the Supreme Court decision in *Obergefell v. Hodges*, as well as other developments in the states, a revision to the Act became necessary. The revised Act addresses issues related to same-sex couples, surrogacy, the right of a child to genetic information, de facto parentage, and parentage of children conceived through sexual assault.

4. Uniform Protected Series Act

The Uniform Protected Series Act provides a comprehensive framework for the formation and operation of a protected series limited liability company. A protected series LLC has both "horizontal" liability shields, as well as the standard "vertical" liability shield. All modern business entities provide the traditional, "vertical" shield – protecting the entity's owners (and their respective assets) from automatic, vicarious liability for the entity's debts. A "series" limited liability company provides "horizontal" shields – protecting each protected series (and its assets) from automatic, vicarious liability for the debts of the company and for the debts of any other protected series of the company. A horizontal shield likewise protects the series limited liability company (and its assets) from creditors of any protected series of the company. The Act integrates into any existing LLC Act, whether it is the Uniform Limited Liability Company Act or not.

5. Uniform Regulation of Virtual-Currency Businesses Act

The Uniform Regulation of Virtual-Currency Businesses Act (URVCBA) creates a statutory framework for regulating virtual currency business activity, which includes businesses engaged in the exchange of virtual currencies for cash, bank deposits, or other virtual currencies; the transfers of virtual currency between customers; and certain custodial or fiduciary services. Under the Act, "virtual currency" is a digital representation of value that is used as a medium of exchange, unit of account, or store of value and is not legal tender. This technology-neutral definition covers as many types of virtual currency as possible. The URVCBA's unique, three-tiered structure clarifies

whether an individual or company engaging in virtual currency business activity is (1) exempt from the act; (2) must register; or (3) must obtain a license. The URVCBA also contains numerous consumer protections.

6. Model Veterans Treatment Court Act and Rules

Veterans' courts have been created in many 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. The Model Veterans Treatment Court Act provides guidelines for the establishment of veterans' courts while permitting substantial local discretion necessary to accommodate circumstances in different communities. Some of the issues that the model act and rules 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. The Act provides that participation in the veterans' treatment program requires approval of the prosecutor, but expressly reserves to the court all power regarding punishment including probation, conditions of probation, and consequences of violation of terms of participation in the treatment program. This Act can also be implemented as a set of court rules.

VIII. A SUMMARY OF ACTS INTRODUCED IN CONNECTICUT IN 2017

1. Uniform Recognition of Substitute Decision Making Documents Act (2014)

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. The proposed Act was enacted by the 2017 Legislature as Public Act No. 17-91, Sections 1 – 10.

2. UCC Article 4A Amendments (2012)

The UCC §4A-108 Amendments provide that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the Federal Electronic Funds Transfer Act (EFTA). The proposed Act was enacted by the 2017 Legislature as Public Act No. 17-40.

3. Revised Uniform Arbitration Act (2000)

The 2000 Revised Uniform Arbitration Act represents a modified version of its predecessor, the 1955 Uniform Arbitration Act (amended in 1956), which was widely adopted in the states. The 2000 revisions reflect developments in arbitration law, which became an increasingly utilized method of alternative dispute resolution since the time of the original Uniform Arbitration Act. This Act was introduced as H.B. 7135, but was not enacted.

4. Uniform Real Property Transfer on Death Act

The Uniform Real Property Transfer on Death Act (URPTODA) provides a simple process for the non-probate transfer of real estate. The act allows an owner of real property to designate a beneficiary to automatically receive the property upon the owner's death without probate. The property passes by means of a recorded transfer on death (TOD) deed. During the owner's lifetime, the beneficiary of a TOD deed has no interest in the property and the owner retains full power to transfer or encumber the property or to revoke the deed. This Act was introduced as H.B. 6448, but was not enacted.

VIV. RECOMMENDATIONS FOR ENACTMENT IN 2018

1. Revised Uniform Arbitration Act (2000)

The 2000 Revised Uniform Arbitration Act represents a modified version of its predecessor, the 1955 Uniform Arbitration Act (amended in 1956), which was widely adopted in the states. The 2000 revisions reflect developments in arbitration law, which became an increasingly utilized method of alternative dispute resolution since the time of the original Uniform Arbitration Act. This Act was introduced as H.B. 7135, but was not enacted.

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4. Uniform Trust Code

The Uniform Trust Code (UTC) is primarily a codification of the common law of trusts. It was first completed 18 years ago and has since been adopted by 31 states and the District of Columbia. It is a comprehensive statute, governing the creation, administration, modification, and termination of trusts. The UTC imposes strict fiduciary duties on trustees and holds them accountable to trust beneficiaries. The UTC also modernizes the law of trusts, adding flexibility enough to allow settlors and their advisors to tailor the terms of a trust to address the needs of any family. The UTC will also prevent unnecessary litigation by clarifying and codifying current trust laws, many of which are contained only in court decisions.

5. Regulation of Virtual Currency Businesses Act

The Uniform Regulation of Virtual-Currency Businesses Act (URVCBA) creates a statutory framework for regulating virtual currency business activity, which includes businesses engaged in the exchange of virtual currencies for cash, bank deposits, or other virtual currencies; the transfers of virtual currency between customers; and certain custodial or fiduciary services. Under the Act, "virtual currency" is a digital representation of value that is used as a medium of exchange, unit of account, or store of value and is not legal tender. This technology-neutral definition covers as many types of virtual currency as possible. The URVCBA's unique, three-tiered structure clarifies whether an individual or company engaging in virtual currency business activity is (1) exempt from the act; (2) must register; or (3) must obtain a license. The URVCBA also contains numerous consumer protections. This Act was introduced as H.B. 5496, but was not enacted.