



Uniform Law Commission

More than a century of service to the states.

# ANNUAL REPORT

2009-2010

# THE UNIFORM LAW COMMISSION IN ACTION

## 2010

- During the 2010 legislative year, there were 198 introductions of uniform acts and 93 enactments.
- The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the Uniform Anatomical Gift Act, and the Uniform Unsworn Foreign Declarations Act topped the list of legislative enactments with 7 adoptions each in 2010.
- U.S. Virgin Islands led all jurisdictions with 19 enactments in 2010.
- The Uniform Military and Overseas Voters Act and Amendments to Article 9 of the Uniform Commercial Code were among 10 new acts approved at the 2010 Annual Meeting in Chicago, Illinois.
- There are 10 drafting committees working on projects that include drafting new state regulations that will provide guidance to states on authenticating and preserving state electronic legal materials to the issue of resolving visitation and custody issues affecting military personnel and their families.
- There are 9 study committees considering specific areas of law for possible future drafting, including a new committee studying the issue of drafting statutory remedies for the prevention of human trafficking.

## OFFICERS AND EXECUTIVE COMMITTEE

### Officers 2009-2010

Robert A. Stein, *President*

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Richard T. Cassidy, *Secretary*

Charles A. Trost, *Treasurer*

Martha Lee Walters, *Immediate Past President*

Michael Houghton, *Chair, Executive Committee*

Harriet Lansing, *Chair, Scope and Program Committee*

Robert J. Tennessen, *Chair, Legislative Committee*

### Appointed Members of Executive Committee

Michael Houghton, *Chair*

Terry J. Care

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### Executive Director

John A. Sebert

# PRESIDENT'S MESSAGE

**THE MISSION** of the Uniform Law Commission is to promote uniformity in the law among the several states on subjects as to which uniformity is desirable and practicable. I believe we are accomplishing that mission today as well or better than we ever have, but the challenge grows even larger with the increasingly global nature of our practice and of the profession.

In addressing the opportunities and challenges that face the ULC, I would like to briefly review our history. The problem of lack of uniformity of laws was a challenge for our nation from our earliest days. A Conference of the States in 1786 was called to consider: "How far a uniform system in the commercial requirements of the states would be necessary to their common interest and their permanent harmony." A resolution adopted at that Conference in 1786 led to the Constitutional Convention held in Philadelphia the following year.

That new Constitution established a structure upon which a body of uniform federal laws would be enacted by Congress in the years to come, but the Constitution made clear in the 10th Amendment that "Powers not delegated to the United States by the Constitution, nor prohibited to the states, are reserved to States respectively, or to the people."

The problem of uniformity or lack thereof of state law continued to be a major challenge for the new nation and a severe constraint on commercial development throughout the first century of our country. Periodically, conferences were called to address the problem, with limited success. One of the purposes of the American Bar Association, founded in 1878, was to solve the problem of lack of uniformity of state law. When the ABA adopted its constitution, it provided that one of its purposes was to promote uniformity of legislation throughout the union, which in 1878 consisted of 38 states.

It was the ABA that created a committee in 1889 to "promote uniformity of law," and that committee proposed a freestanding entity that is now the Uniform Law Commission, created in 1892. Seven states were members of the ULC at that first meeting in 1892 – Delaware, Georgia, Massachusetts, Michigan, New York, New Jersey, and Pennsylvania. The minutes of that first annual meeting somewhat immodestly describe the meeting in this way: "It is probably not too much to say that this is the most important juristic work undertaken in the United States since the adoption of the Federal Constitution."



Robert A. Stein

Today all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands are members. Our work has prospered over the years and today we proudly note 377 uniform and model laws have been adopted by the ULC and promulgated to the states.

The history of the ULC is useful as background to the international dimension of our work and on current challenges to the importance and the applicability of state law.

With regard to international issues, the challenges of lack of uniform laws facing the world today are somewhat similar to those challenges facing the United States and the Articles of Confederation in our earliest days. Lack of uniform laws is a substantial constraint on commerce in this increasingly global economy. Our founders realized that law must continue to apply with uniform results across state borders, and today that trans-border imperative is true across national as well as state borders. In order for state law to be most effective, it needs to connect where business and commerce is occurring. And that is why initiatives such as the Uniform Unincorporated Nonprofit Association Act that was undertaken jointly with the Uniform Law Conference of Canada and the Mexican Center on Uniform Laws is significant.

This year the Executive Committee approved a new initiative with Canada to invite a representative of the Uniform Law Conference of Canada to participate in our Drafting Committee on Asset Freezing Orders. Similarly, the Uniform Law Conference of Canada invited us to name a Uniform Law Commissioner to participate in a Canadian project concerning cross-border recognition

and enforcement of civil protection orders. Recently, the leadership of the ULC discussed with the leadership of the Uniform Law Conference of Canada other drafting subjects for potential collaboration. These harmonization projects are an important extension of our mission to make our state laws more effective in their reach.

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Additionally, in recent years we have allocated time to draft uniform state laws to implement private law treaties entered into by the United States. The United States has negotiated treaties with other nations that would extend the substantive law of some of our uniform acts to the law of other nations, but the difficult challenge has arisen: how to implement such treaties in the United States? Under the Constitution, the President negotiates a treaty and it is confirmed by two-thirds vote of the United States Senate; the treaty then needs to be implemented in this country as part of our obligation to our treaty partners. If a federal law is enacted implementing a private law treaty, that converts the substantive law that may have been reflected in our uniform acts to federal law rather than state law. To avoid this result, we have developed concepts for implementing private law treaties negotiated by the United States government by uniform state laws.

New concepts have emerged, such as cooperative federalism and conditional preemption. The ULC will continue to work through and develop these ideas of how the law of the United States – with more than 50 sovereign jurisdictions – can connect up to the unitary law of other countries through international private law treaties.

The ULC is also dealing with current challenges to the applicability and importance of state law. Through the years, the Supreme Court has given broad interpretation to the interstate commerce clause of the Constitution, resulting in many areas of traditional state law being preempted by federal statutes. The difficult economic challenges of recent years raise the specter of expanded federal preemption of many areas of traditional state law.

In anticipation of these developments, a ULC Committee on Federalism and State Law was created last year. This committee has been hard at work during the past year, with the participation of a large number of related state organizations, such as the National Conference of State Legislatures, the Council of State Governments, the National Center for State Courts, the Conference of Chief Justices, the National Governors Association, the National Association of Secretaries of State, and the National Association of Attorneys General. A very successful Symposium was held at George Washington University Law School this fall to examine issues of federalism.

The focus of our Committee on Federalism is not the constitutional scope of preemption law, but rather the principles that should determine the appropriate balance between state and federal law. The issue isn't so much whether an area can be preempted by federal law, but rather should it be? And what are the principles that help make that determination? When is it better to have a federal law on a subject or a uniform state law? The committee has begun developing a set of principles of federalism.

In raising this issue as we have through our Federalism and State Law Committee and the initiatives we have taken with regard to international private law treaties and many other federal-state law issues that have arisen, we have found that many of the organizations that we have been working with are looking to the Uniform Law Commission for leadership. These issues are critically important to the future of our nation and the future of our federal system. I believe that our leadership and influence on these questions has never been greater. We are playing a leadership role for the States in advocating for the continued importance of state law.

Thank you for the support you have provided to the Uniform Law Commission as we carry out our important responsibilities. Together, we are achieving great accomplishments, in which we can all take pride.



Robert A. Stein

# LEGISLATIVE REPORT

## 2010: Another Record Year in the Legislatures

THE UNIFORM Law Commission promotes the principle of uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable and practicable. However, the ULC can only propose – no uniform law is effective until a state legislature adopts it. To that end, uniform law commissioners work toward enactment of ULC acts in their home jurisdiction.

The 2010 legislative year was a very successful year, with 93 enactments of uniform acts and 198 introductions. As a matter of fact, 2010 tied the mark for most enactments in an even-numbered year.

### Uniform Anatomical Gift Act

The Uniform Anatomical Gift Act (UAGA) was enacted in seven states in 2010, bringing its total number of enactments to 45. UAGA, a comprehensive revision of previous acts (and which are the basis for organ donation throughout the United States), is designed to increase the number of organs available for transplant and improve the system for allocating organs to recipients. UAGA makes it easier to document the desire to donate, particularly as provided on drivers' licenses; specifies an expanded list of persons who may make an anatomical gift on behalf of the deceased; more clearly provides for a document of refusal if an individual does not wish to donate; and encourages the creation of donor registries, whether by states or by other entities. Without changing the basic concept that an individual may execute a document of gift to donate organs, UAGA 2006 makes the act more usable than the earlier acts.

### Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) was enacted in seven states this year, bringing its total number of enactments to 20. The UAGPPJA addresses the issue of jurisdiction over adult guardianships, conservatorships, and other protective proceedings, providing a mechanism for resolving multi-state jurisdictional disputes. It contains specific guidelines to specify which court has jurisdiction to appoint a guardian or conservator for an incapacitated adult. The objective is that only one state will have jurisdiction at any one time.

### Uniform Interstate Depositions and Discovery Act

The Uniform Interstate Depositions and Discovery Act

(UIDDA) was enacted in six states this year, bringing its enactment total to 16. The UIDDA provides simple procedures for courts in one state to issue subpoenas for out-of-state depositions. The act is simple and efficient: it establishes a simple clerical procedure under which a state subpoena in the “trial state” can be used to issue a subpoena in another state. The act has minimal judicial oversight; the goal is to simplify and standardize the current patchwork of procedures across the various states for deposing witnesses for purposes of out-of-state litigation.

### Uniform Unsworn Foreign Declarations Act

The Uniform Unsworn Foreign Declarations Act (UUFDA) was enacted in seven states this year, bringing its enactment total to 10. The 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.

### Uniform Principal and Income Act

The 2008 Amendments to the Uniform Principal and Income Act (UPIA) were enacted in six states this year, bringing its enactment total to 25. The 2008 UPIA Amendments update the act to reflect current policy of the Internal Revenue Service (IRS) and clarify technical language regarding withholdings. Section 409 of the Act has been changed to satisfy a 2006 IRS ruling regarding marital deductions. The new language comports with the

ruling and the underlying tax policies of the IRS. Further, the 2008 amendments include a change to Section 505, which addresses the amount of money which must be withheld from a distribution to pay the tax on the undistributed income. The amendment clarifies the section and removes any ambiguity that could lead to litigation.

### Uniform Prudent Management of Institutional Funds Act

The Uniform Prudent Management of Institutional Funds Act (UPMIFA) was enacted in five states this year, bringing its enactment total to 50. The UPMIFA, like its predecessor the Uniform Management of Institutional Funds Act of 1972, provides statutory guidelines for management, investment, and expenditures of endowment funds held by charitable institutions – institutions such as colleges, universities and hospitals. The new act, incorporating the provisions of modern portfolio theory, expressly provides for diversification of assets, pooling of assets, and total return investment, to implement whole portfolio management, bringing the law governing charitable institutions in line with modern investment and expenditure practice. The goal of UPMIFA remains the same as UMIFA's goal was in 1972: to give charities the freedom to make more effective use of endowment and other investment funds and encourage more productive management of such funds.

### Uniform Commercial Code

UCC Article 1 and UCC Article 7 continue to do well in the legislatures. UCC1 was enacted in two states this year, bringing its total to 40 enactments. UCC1, the general provisions section of the UCC, was updated and amended to harmonize with recent revisions of the UCC.

UCC7, the article dealing with documents of title, was enacted in three states this year, bringing its enactment total to 38. Documents of title – either bills of lading or warehouse receipts – are commonly used in the shipment and storage of goods. The purpose of the revised UCC7 is twofold: to provide a framework for the further development of electronic documents of title and to update the article for modern times. To the extent possible, the rules for electronic documents of title are the same or as similar as possible to the rules for tangible documents of title.

The Uniform Commercial Code is a joint project of the ULC and the American Law Institute.

## The Uniform Law Commission Welcomes Ideas for Uniform or Model Acts

Ideas for new uniform or model acts are considered by the ULC Committee on Scope and Program, which welcomes requests from the organized bar, state governmental entities, private interest groups, uniform law commissioners and private citizens. Any party wishing to suggest an idea for a uniform or model act may contact the ULC headquarters office in Chicago, which will forward the suggestion to the Committee on Scope and Program.

Guidelines concerning the submission of ideas for new uniform or model acts can be found at the ULC's website at [www.nccusl.org](http://www.nccusl.org) or [www.uniformlaws.org](http://www.uniformlaws.org).

# NEW UNIFORM ACTS APPROVED IN 2010

THE CULMINATION of the work of the Uniform Law Commission takes place at its annual meeting each summer, when the Commission convenes as a Committee of the Whole. At its 119th Annual Meeting in Chicago, Illinois, July 9-16, 2010, ten new uniform acts or amendments to uniform acts were considered and approved. After receiving the ULC's seal of approval, a uniform act is officially promulgated for consideration by the states, and state legislatures are urged to adopt it.

## Uniform Military and Overseas Voters Act

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 the federal Uniformed and Overseas Citizens Absentee Voting Act of 1986, and the Military and Overseas Voter Empowerment Act of 2009, and extends the important protections and benefits of these acts to voting in applicable state and local elections.

## 2010 Amendments to Article 9 of the Uniform Commercial Code

The 2010 amendments to Article 9, which governs secured transactions in personal property, address filing issues as well as other matters that have arisen in practice following over a decade of experience with the revised Article 9 (last revised in 1998 and enacted in all states and the District of Columbia). Of most importance, the 2010 amendments provide greater guidance as to the name of an individual debtor to be provided on a financing statement. The amendments also improve the system for filing financing statements. More detailed guidance is provided for the debtor's name on a financing statement when the debtor is a corporation, limited liability company or limited partnership and when the collateral is held in a statutory or common law trust or in a decedent's estate. Some extraneous

information currently provided on financing statements will no longer be required. In addition, the amendments provide greater protection for an existing secured party having a security interest in after-acquired property when its debtor relocates to another state or merges with another entity. Finally, the amendments also contain a number of technical changes that respond to issues arising in the marketplace and a set of transition rules.

## Uniform Electronic Recordation of Custodial Interrogations Act

The Uniform Electronic Recordation of Custodial Interrogations Act addresses difficult problems that accompany interrogations conducted by law enforcement officials. These issues include false confessions and frivolous claims of abuse that ultimately waste court resources. By requiring law enforcement to electronically record custodial interrogations, the Act promotes truth-finding, judicial efficiency, and further protects the rights of law enforcement and those under investigation. The Act is carefully drafted to avoid undue burdens and technical pitfalls for law enforcement officials and prosecutors. The Act does not require law enforcement to make recordings that are unfeasible or that would endanger confidential informants, nor does it punish law enforcement for equipment failures. A uniform statute governing the electronic recordation of custodial interrogations will provide consistent rules between the states and improve the administration of justice.

## Uniform Faithful Presidential Electors Act

The Uniform Faithful Presidential Electors Act (UFPEA) addresses the problem of a presidential elector who decides to vote inconsistently with the way they were elected to vote by the people of the state. The UFPEA creates a procedure that assures that states attempting to appoint a complete complement of electors will succeed and maintains the

sanctity of the electoral process. Under the UFPEA, electors take a pledge of faithfulness. A vote in violation of that pledge constitutes resignation from the office of elector. Correspondingly, the Act provides a mechanism for filling a vacancy created because of this constructive resignation. The UFPEA disallows faithless voting and assures that faithful votes are substituted for faithless ones. In doing so, it provides the voters of the state with the confidence that the votes they have cast will be honored when the Electoral College meets.

### Uniform Partition of Heirs Property Act

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 guidelines 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.

### Uniform Protection of Genetic Information in Employment Act

The need for regulation of genetic information and the desirability of uniformity in the area was recognized at the federal level with the enactment of the Genetic Information Nondiscrimination Act (GINA) of 2008. However, much in the same way that states have supplemented federal employment nondiscrimination acts with their own fair employment acts, there is a role for states in the regulation of genetic information in the workplace.

The Uniform Protection of Genetic Information in

Employment Act is designed to eliminate the preemption problems created by GINA for existing state statutes. It thus incorporates the key definitions and concepts of GINA. It also complements and supplements GINA with additional provisions that are more protective of employees, following the pattern of many state fair employment laws that supplement Title VII and other federal statutes. The Act comprehensively regulates acquisition, use, retention, and disclosure of genetic information in the employment setting.

### Model State Administrative Procedure Act

The Model State Administrative Procedure Act (MSAPA) was first promulgated by the Uniform Law Commission (ULC) in 1946. The MSAPA has since been revised three times: 1961, 1981 and the most recent revision was completed and adopted by the ULC in July of 2010. The 2010 MSAPA maintains continuity with the provisions of the 1961 Act, and to a lesser degree, the 1981 Act. This Act returns to the external hearing rights approach followed in the 1961 Act, but also includes constitutionally required hearings in the mix of sources of hearing rights law. This Act is designed especially for adoption by states that currently have the 1961 Act, but would like to replace that act with a more modern up to date administrative procedure act. The Act is composed to ensure fairness in administrative proceedings, increase public access to the law administered by agencies, and promote efficiency in agency proceedings by providing for extensive use of electronic technology by state governments. The Act has been drafted to be less detailed and less comprehensive than the 1981 Act. Consistent with both the 1961 MSAPA and the 1981 MSAPA, the Act provides for a uniform minimum set of procedures to be followed by agencies subject to the act. The Act creates only procedural rights and imposes only procedural duties. Throughout the Act there are provisions that refer generally to other state laws governing related topics. When specific state laws are inconsistent with the provisions of the Act, those specific state laws will be controlling.

### Revised Uniform Law on Notarial Acts

The 2010 Revised Uniform Law on Notarial Acts (RULONA) comprehensively revises and replaces the earlier, 1982 Uniform Law on Notarial Acts (ULONA). Since the original promulgation of ULONA, society and technology have advanced considerably, requiring notarial officers and their practice to adapt. In particular, RULONA recognizes the ascendance of electronic commerce and transactions in the public and private sectors, and brings the law governing electronic notarial acts on par with laws governing other forms of electronic transactions. RULONA continues to focus on preservation of the integrity of the notarial



transaction, whether tangible or electronic. References to the notarial seal are replaced with an “official stamp”, and RULONA provides for affixing an official stamp to a notarial certificate for tangible documents or logically associating it with an electronic one. RULONA provides minimal standards for commissioning notarial officers, and handles recognition of notarial acts from other states and certain foreign equivalents. Finally, the revised act addresses deceptive and fraudulent practices and advertising, transactions in which the notary or a spouse is a party or has an interest, and prohibitions on unauthorized practice of law.



### Insurable Interest Amendments to the Uniform Trust Code

Personal life insurance trusts are a key component of most modern estate plans, and trust and estate planners create them routinely. The trustee is typically designated as the owner, and usually also as the beneficiary, of one or more insurance policies held on the life of the trust’s creator (i.e., the “grantor” or “settlor”). These trusts are extremely useful devices for ensuring that life insurance proceeds are managed competently for the beneficiaries of the trust, and, in the case of irrevocable life insurance trusts, for removing life insurance proceeds from an insured’s gross estate. A recent federal district court decision (*Chawla ex rel Giesinger v. Transamerica Occidental Life Insurance Co*) inserted doubt into the estate planning world by ruling, in part, that a trust did not have an insurable interest in the life of the insured who was the settlor and the creator of the trust. Although this portion of the district court’s decision was vacated as being unnecessary by the United States Court of Appeals for the Fourth Circuit, 440 F. 3d 639 (4th Cir. 2006), the amendments attempt to clarify, with respect to trusts, what constitutes an “insurable interest” for purposes of insurance law, while at the same time allowing for the transfer of interest in insurance as property.

### Uniform Collateral Consequences of Conviction Act

The Uniform Collateral Consequences of Conviction Act, promulgated by the Uniform Law Commission in 2009 and subsequently amended in 2010, improves the understanding of penalties that attach when an individual is convicted of an offense, and in appropriate circumstances, offers a mechanism to provide partial relief from the disabilities. The Act facilitates notification of collateral consequences before, during, and after sentencing. Under

the provisions of the Act, states are to create a collection of all collateral consequences, with citations and descriptions of the relevant statutes. Individuals will be advised of the particular collateral consequences associated with the offense for which they are charged at or before arraignment. Notice is also to be given at the time of sentencing, and if an individual is sentenced to prison, at the time of release. 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.

Amendments approved in 2010 responded to the Supreme Court decision in *Padilla v. Kentucky*. This decision mandated that defense counsel must advise a defendant of certain collateral consequences associated to the crime. 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.

The Act provides mechanisms for relieving collateral sanctions imposed by law. The Act creates an Order of Limited Relief, designed to relieve an individual from one or more collateral consequence based on a showing of fitness for reentry. The Order does not automatically remove the consequence, but does remove the automatic disqualification imposed by law. A state agency remains able to disqualify an individual on a case by case basis. The Act also creates a Certificate of Restoration of Rights. The Certificate is granted to individuals who demonstrate a substantial period of law-abiding behavior consistent with successful reentry and desistance from crime. Issuance of a Certificate facilitates reintegration of those individuals who have demonstrated an ability to live a lawful life.

# A closer look at the UNIFORM MILITARY

**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. These include difficulty in registering abroad, frequent address changes, slow mail delivery or ballots and ballot applications that never arrive, difficulty in obtaining information about candidates or issues, the inability to comply with notarization or verification procedures, or the voter's failure to properly comply with non-essential requirements for absentee materials. 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. The federal laws do not encompass state and local elections. 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. This lack of uniformity, and lack of application of the federal statutes to state and local elections, complicates efforts to more fully enfranchise these voters.

In 2010, the Uniform Law Commission promulgated the Uniform Military and Overseas Voters Act (UMOVA) to address these issues. UMOVA extends to state elections the assistance and protections for military and overseas voters currently found in federal law. It seeks greater harmony for the military and overseas voting process for all covered elections, over which the states will continue to have primary administrative responsibility. Key highlights of UMOVA include:

- The Act simplifies and expands the class of covered voters and covered elections. "Uniformed service" includes the U.S. Army, Navy, Air Force, Marine Corp, Coast Guard, Merchant Marine, commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration of the U.S., National Guard, and state militia units. The definition of "covered voter" is expanded from federal usage to include overseas citizens who have not established a specific residence in the U.S. but who have demonstrable ties to a certain state. The Act applies to primary, general, special, and runoff elections, or their equivalent, at the federal, state, and local levels for elected candidates and ballot issues.
- The Act establishes reasonable, standard timetables for application, registration, and provision of ballots and election information for covered voters. Importantly, the Act requires transmission of ballots and balloting materials to all covered voters who have applied no later than 45 days prior to the election, unless the state has received a waiver under the federal MOVE Act. Further, the Act extends expanded use of the Federal Post Card Application and Federal Write-In Absentee Ballot for registration and voting purposes in covered elections.
- The Act provides for the determination of the address that should be used for active-duty military and overseas voters. An eligible voter's voting address shall be the last residential address in the enacting state, or that of the eligible voter's parent or legal guardian for citizens born outside of the U.S. that have not established residency. If the address is no longer residential, then the voter must be assigned an address.
- The Act allows voters to make use of electronic transmission methods for applications and receipt of registration and balloting materials, and tracking the status of applications. Allowance of electronic submission of voted ballots is left to existing state law. The Act defines the obligations of the state's primary election authority with regard to providing information on voting registration

Further information on the Uniform Military and Overseas Voters Act can

# AND OVERSEAS VOTERS ACT

procedures, ballot casting procedures, and the form and content of necessary declarations to accompany such, for covered voters. If provided, a voter's e-mail address may not be disclosed to third parties, and may only be used by the election authority for communications about the voting process, transmission of ballots and materials, and necessary verifications related to the Act.

- Under the Act, a ballot is timely cast if received by the local election official before the close of polls on election day, or submitted for mailing or transmission no later than 12:01 AM on the date of the election. A ballot must be counted if it is delivered to the appropriate state or local election official by the close of business on the business day before the final deadline for completing the canvass or other tabulation to finalize election results.
- The Act requires votes to be counted where non-essential requirements are not complied with, and obviates notarization requirements where the proper declaration is made and subject to penalty of perjury.

The new UMOVA uses and builds upon the key requirements of UOCAVA and MOVE, and extends the important protections and benefits of these Acts to voting in covered state and local elections. UMOVA will help to facilitate compliance with the federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), and help to more fully and effectively enfranchise our military personnel and overseas civilians.

At its 2010 Annual Meeting, the Council of State Governments (CSG) adopted a policy resolution urging *all* states to adopt UMOVA. Similar policy positions in support of UMOVA had previously been adopted by the CSG Southern Legislative Conference, with 15 member states, as well as the CSG-West, with 13 member states.

The CSG also approved UMOVA as "Suggested State Legislation." Suggested State Legislation is a compilation of draft legislation from state statutes on topics of current interest and importance to the states. UMOVA was adopted as "Suggested State Legislation" by the CSG's Suggested State Legislation Committee.



UNIFORM MILITARY AND OVERSEAS VOTERS ACT

# FINANCING THE ULC

THE ULC permits the states to tap the skills and resources of the legal profession for very little cost. No Uniform Law Commissioner is paid for his or her services. Commissioners receive compensation only for actual expenses incurred. The ULC estimates that each commissioner devotes an average 150 hours a year to ULC work, including work on various drafting committees and attendance at the ULC Annual Meeting. These are hours mainly spent in research and drafting work – solid, substantive hours. The cumulative value of this donated time in the development of uniform and model acts represents thousands of hours of legal expertise.

Every Uniform or Model Act promulgated by the ULC is developed over the course of two to three years, at intensive weekend meetings, and each Act is read and debated on the floor of ULC Annual Meetings at least twice before all of the assembled commissioners sitting as a Committee of the Whole. All uniform law commissioners are attorneys; assuming a (low) rate of \$200/hour, each promulgated Act therefore represents at a minimum of somewhere between \$1 and \$2 million in donated legal expertise per project. Many states would find it both difficult and expensive to replicate the work of the ULC on their own, especially with regard to highly complex subjects such as commercial law or the law of probate and estates.

Moreover, because ULC drafting projects are national in scope, the ULC is able to attract a broad range of advisors and observers to participate in the various projects, resulting in a drafting process that has the benefit of a greater range and depth of expertise than could be brought to bear by any individual state's legislative effort.

In addition, the ULC contracts for professional services to aid in many of the drafting efforts. These professional "reporters" are engaged at very modest honoraria to work with drafting committees on specific acts. Most often they are law professors with specific expertise in the area of law addressed in the act they draft.

The budget of the ULC for the fiscal year ending June 30, 2010 is approximately \$3,220,000, with support from state governments in the total amount of \$1,966,000, accounting for 61% of the budget.

Grants from foundations and the federal government are occasionally sought for specific educational and drafting efforts. All money received from any source is accepted with the understanding that the Commission's drafting work is completely autonomous. No source may dictate the contents of any Act because of a financial contribution. By seeking grants for specific projects, the Commission expands the value of every state dollar invested in its work.



The Uniform Commercial Code (UCC) is a joint venture between the ULC and the American Law Institute (ALI). The ALI holds the Falk Foundation funds that are allocated to work on the UCC. The original Falk Foundation grant came in the late 1940s for the original development of the UCC. Proceeds from copyright licensing of UCC materials provide revenue to replenish the Falk Foundation corpus. At any time work on the UCC commences, a percentage of ULC and ALI costs are paid from Falk Foundation income.

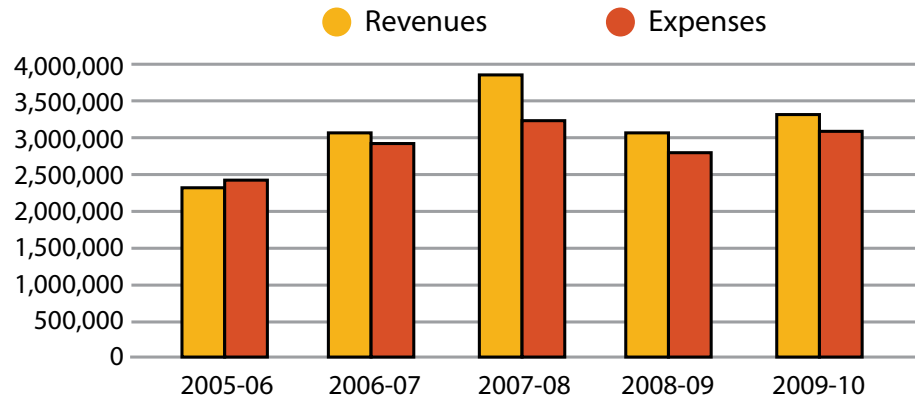
In addition, the Commission has established royalty agreements with major legal publishers which reprint the ULC's uniform and model acts in their publications.

The ULC has consciously limited its staff to prevent needless administrative costs. The full-time staff numbers 13 people, located in Chicago. The small staff provides support for drafting and legislative efforts.

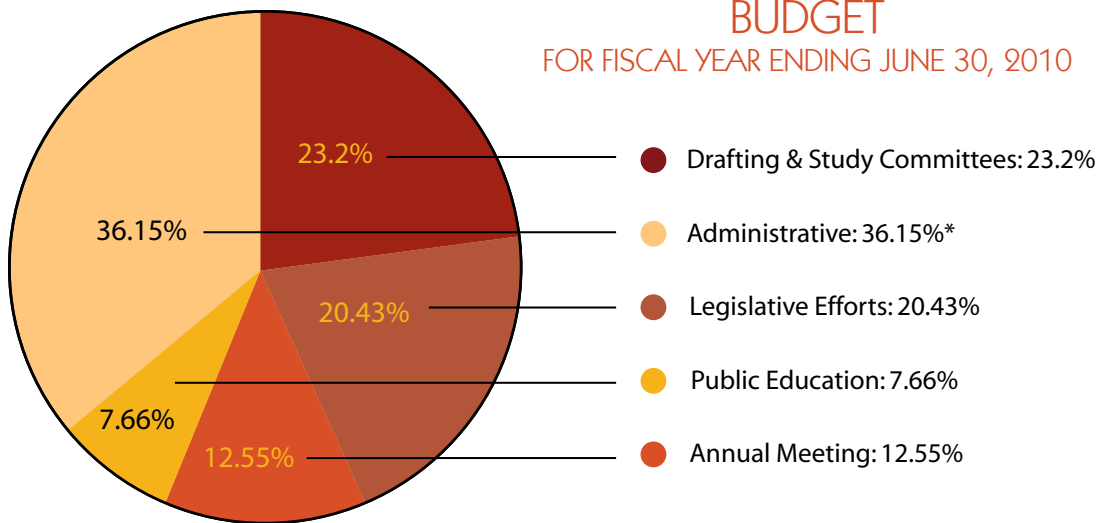
As the economic crisis developed and state revenues dropped considerably, nearly all states carefully examined their budgets to identify reductions. Because of reductions or elimination of dues payments from some states, the ULC has also carefully examined its budget. Starting last year, ULC staff and leadership worked to identify opportunities for cost savings, including taking the major following actions: travel was reduced when possible; vendor contracts for the ULC headquarters office were renegotiated; and one legislative staff position remains unfilled.

Even in today's economic climate, with states across the country continuing to struggle with their budgets, the process of drafting a uniform law remains an immensely cost-effective endeavor.

## REVENUES & EXPENSES



## BUDGET FOR FISCAL YEAR ENDING JUNE 30, 2010



\*This category includes occupancy costs, costs related to the ULF and to ULC governance, general administrative and other expenses.



# CURRENT DRAFTING & STUDY COMMITTEES

**DRAFTING COMMITTEES** composed of commissioners from the various states, with participation from advisors, observers, and expert reporter-drafters, meet throughout the year. All drafting committees are open to the public, and everyone is encouraged to participate fully in the discussion. All drafts are available online at the ULC's website at [www.nccusl.org](http://www.nccusl.org) or [www.uniformlaws.org](http://www.uniformlaws.org). Tentative drafts are not submitted to the entire Commission until they have received extensive committee consideration.

There are currently ten drafting committees working on new and revised uniform and model acts. Proposed acts are subject to rigorous examination and debate at Commission annual meetings before they become eligible for designation as Uniform Law Commission products. The final decision on whether an act is ready for promulgation to the states is made near the close of an annual meeting, on a vote-by-states basis, with an affirmative vote of 20 or more states necessary for final approval.

Uniform Law Commission drafting committees consist of a chair, several uniform law commissioners from various states, and a reporter (usually a law professor with expertise in the subject matter). ULC seeks to have one or more ABA section advisors appointed to every drafting committee. Other interested groups are also invited to send representatives, known as observers. ULC drafting committees typically meet two or three times a year for at least two years.

## Drafting Committees

### Drafting Committee on Asset Freezing Orders

This committee will prepare an act that provides authority for the granting of in personam orders that prevent a defendant in an action pending in one jurisdiction from dissipating assets that the defendant holds in another jurisdiction and that are necessary to ensure that assets are available to ensure payment of a judgment granted in the other jurisdiction. The committee will, among other matters, consider provisions that should be included in the act to provide appropriate protection for the interests of defendants in such actions. The act shall exclude coverage of asset freezing orders against consumer debtors or in domestic relations matters, and other similar matters. It is expected that the committee will present a draft for consideration at the 2011 Annual Meeting and a draft for final approval at the 2012 Annual Meeting.

### Drafting Committee on Authentication and Preservation of State Electronic Legal Materials

This committee will prepare an act that provides guidance to states on authenticating and preserving state electronic legal materials. The committee presented a draft for initial

consideration at the July 2010 Annual Meeting and is expected to present its act for final approval in July 2011.

### Drafting Committee on a Certificate of Title Act for Vessels

This committee will draft an act establishing a certificate of title system for boats. Many states do not have certificate of title laws governing watercraft, and those that do have considerable differences in terms. The committee will coordinate its work with the United States Coast Guard and developments concerning the Coast Guard's vessel identification and documentation systems. The committee presented a draft for initial consideration at the July 2010 Annual Meeting and is expected to present its act for final approval in July 2011.

### Drafting Committee on the Uniform International Choice of Court Agreements Act

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

on Choice of Court Agreements. The committee has presented drafts for consideration at the 2009 and 2010 ULC Annual Meetings and continues to work to harmonize the draft of uniform state legislation and the draft of federal implementing legislation.

### Drafting Committee on Harmonization of Unincorporated Business Entity Acts

This Committee will work to harmonize provisions of the various unincorporated business entity acts already promulgated by the ULC, such as the Uniform Partnership Act, the Uniform Limited Partnership Act, the Uniform Limited Liability Company Act, the Uniform Limited Cooperative Association Act, the Uniform Unincorporated Nonprofit Association Act, and the Uniform Statutory Trust Entity Act. The committee presented a draft for initial consideration at the July 2010 Annual Meeting and is expected to present its act for final approval in July 2011.

### Drafting Committee to Implement the Hague Convention on Protection of Children

This committee will draft uniform state legislation that will implement the recognition and enforcement provisions of the Hague Convention on the Protection of Children.

### Drafting Committee on a Manufactured Housing Act

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

located on leased land affects that characterization; the continued priority and appropriate characterization of security interests in manufactured housing after conversion; and appropriate transition provisions. The committee expects to present a draft for initial consideration in July 2011 and to present a draft for final approval in July 2012.

### Drafting Committee on an Oversight of Charitable Assets Act

This committee will draft an act to address state oversight of charitable assets. The committee will focus on state attorneys general authority with regard to the protection of charitable assets, notice requirements, remedies, and principles to guide attorneys general in interstate and multi-state cases. The committee presented a draft for initial consideration at the July 2010 Annual Meeting and is expected to present its act for final approval in July 2011.

### Drafting Committee on a Premarital and Marital Agreements Act

This Committee will draft an act that provides standards and procedural requirements concerning the scope and enforceability of marital and premarital agreements between persons in legally recognized relationships. This project was jointly recommended by the JEBs on Family Law and Trusts and Estates Law. The committee expects to present a draft for initial consideration in July 2011 and to present a draft for final approval in July 2012.

### Drafting Committee on Visitation and Custody Issues Affecting Military Personnel and Their Families

This committee will prepare an act that provides standards and procedures for resolving visitation and custody issues affecting military personnel and their families, which may include resolution of matters in intrastate, interstate, and international contexts. The committee is expected to present a draft for first reading at the 2011 Annual Meeting.

## Other Projects

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### Committee on the Hague Securities Convention

This committee will work with the U.S. Department of State to assist in the implementation and ratification of the Hague Convention on Securities Held by Intermediaries and to ensure proper interface between the provisions of the Convention and of Articles 8 and 9 of the Uniform Commercial Code.

## Study Committees

ULC Study Committees review an assigned area of law in light of defined criteria and recommend whether ULC should proceed with a draft on that subject. Study Committees typically do not meet in-person, but when appropriate Study Committees hold meetings with those interested in the area that the committee is exploring in order to assist in gauging the need for uniform state legislation in an area, the likely scope of any drafting project, and the potential support for a project. ABA advisors are appointed to Study Committees when such an appointment appears particularly useful.

The current study committees are:

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

Study Committee on Model Tribal Legislation on Probate Transfer of Interests in Real Property

Study Committee on Model Tribal Legislation Concerning Child Custody and Domestic Violence

Study Committee on a Mortgage Subrogation Act

Study Committee on Payment Issues

Study Committee on an Act on Prevention of and Remedies for Human Trafficking

Study Committee on a Protection of Genetic Information in Insurance Act

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

Study Committee on a Revision of the Uniform Residential Landlord and Tenant Act

## Editorial Boards



There are six Editorial Boards which have been appointed with respect to Uniform Acts in various subject areas. These Boards are responsible for monitoring new developments which may have an impact on the Acts and for making recommendations for revising existing Acts or drafting new Acts in their subject areas.

Permanent Editorial Board for Uniform Commercial Code

Joint Editorial Board on Uniform Family Law

Joint Editorial Board on International Law

Joint Editorial Board for Uniform Real Property Acts

Joint Editorial Board for Uniform Trust and Estate Acts

Joint Editorial Board on Uniform Unincorporated Organization Acts



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## About the Uniform Law Commission

The Uniform Law Commission (ULC), now in its 119th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.
- ULC statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.
- ULC keeps state law up-to-date by addressing important and timely legal issues.
- ULC's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.
- ULC's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.
- ULC Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service, and receive no salary or compensation for their work.
- ULC's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.
- ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

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