



Uniform Law Commission

2010-2011 ANNUAL REPORT

# ANNUAL REPORT 2010-2011

The Uniform Law Commission (ULC), now 120 years old, promotes uniformity of law among the several states on subjects as to which uniformity is desirable and practicable. The ULC improves the law by providing states with non-partisan, carefully-considered, and well-drafted legislation that brings clarity and stability to critical areas of the law. The ULC's work supports the federal system, seeks to maintain an appropriate balance between federal and state law, and facilitates the movement of individuals and the business of organizations with rules that are consistent from state to state.

Uniform Law Commissioners must be lawyers, qualified to practice law. They are lawyer-legislators, attorneys in private practice, state and federal judges, law professors, and legislative staff attorneys, 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 where uniformity is desirable and practical.

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For information about the ULC, go to [www.uniformlaws.org](http://www.uniformlaws.org).

## OFFICERS AND EXECUTIVE COMMITTEE

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John A. Sebert



Uniform Law Commission  
2010 - 2011 Annual Report

**CONTENTS**

President's Message

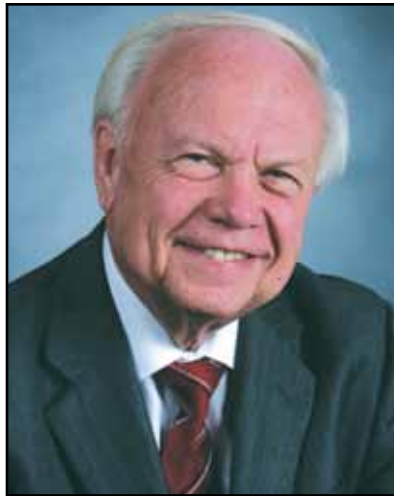
Legislative Report

New Acts Approved

Financing the ULC

Current Committees

ULC Members



Robert A. Stein

As I stated at the 120th Annual Meeting of the Uniform Law Commission, I am pleased to report that, notwithstanding the difficult economic environment currently facing the states, the ULC is strong and thriving, and our important work continues to be accomplished at our traditional high quality.

To ensure that the quality of our work remains high, the ULC Executive Committee has recently devoted time to strategic planning issues regarding the ULC. Some strategic initiatives that have been implemented in the past two years include:

- earlier input from the Style Committee on draft Acts from the inception of a drafting project and throughout the drafting process;
- using our website to identify and appoint a more broadly representative group of observers to our drafting projects, and scheduling more stakeholder meetings to ensure our projects receive the broadest and most effective commentary possible from interested parties;
- enhancing the first reading of a draft Act by asking the drafting committee to provide an executive summary and issues memorandum with the draft for the Commissioners to review; and
- developing succession plans for ULC representatives on each of our joint editorial boards.

In addition to the strategic planning work of the Executive Committee, we created a Committee to Review the ULC Drafting Process. At the 2011 ULC annual meeting, the Committee submitted its final report on the drafting process. The report was the culmination of two years of work, and includes both recommendations to improve the drafting process, and observations and descriptions about the current processes that are working well. The Committee's Final Report is a collection of the Committee's observations from personal experience and discussions with other Commissioners, "best practices" currently being employed by many Drafting Committees, a reaffirmation of much of the current drafting process, and recommendations for changes and enhancements to that process where that seemed appropriate.

The ULC Constitution provides that it is the purpose of the ULC "to promote uniformity in the law among the several States on subjects as to which uniformity is desirable and practicable." We are accomplishing that mission today as well or better than we ever have, and the challenge grows ever larger with the increasingly global nature of the practice of law.



The challenge of the lack of uniform laws facing many countries in the world today bears some similarity to the challenges facing the United States in our early days as a nation. Lack of uniform laws is a substantial constraint on commerce in an 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.

We continue to develop ever closer relations with our neighbors to the north and south. We are also exploring ways of engaging other nations outside the NAFTA countries in uniform law development projects. These harmonization projects are an important extension of our mission to make our state laws ever more effective in their reach.

Additionally, we have allocated time to developing uniform state laws that would implement private international 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 apply as the law of other nations, but the difficult question has arisen: how should such a treaty be implemented in the United States?

Under the U.S. Constitution, the President negotiates a treaty and it is confirmed by a 2/3 vote of the United States Senate. The problem that arises when a private international law treaty involving an area of law that is traditionally state law, such as family law, is implemented by a federal statute, is that the federal statute will convert that subject from state law to federal law. To avoid that result, we have developed proposals for implementing private international law treaties negotiated by the U.S. government by uniform state laws. New concepts, such as cooperative federalism, and conditional preemption, have emerged.

Developing uniform laws to implement various private international law treaties has been a very challenging task. We need to develop Acts with state law terms that are understandable to judges and lawyers in the United States, and that will also be understood and acceptable to our nation's treaty partners around the world.

In addition to the issues connecting our uniform laws to jurisdictions outside our nation's borders, we also continue to face 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, so that many areas of traditional state law have been preempted by federal statutes and regulations. That phenomenon occurs with more frequency in times of economic crisis in the country, such as the great depression years

of the 1930s. The difficult economic challenges of the last few years have raised the specter of expanded federal preemption of many areas of traditional state law, such as mortgage foreclosure law, insurance regulation and securities law.

In 2009, the ULC created a Committee on Federalism and State Law. In 2010, a Symposium on "Federalism, Preemption and State Law" was held in Washington, DC. The purpose of the Symposium was to explore the roles of the federal and state governments in areas of shared responsibility and to begin a dialogue among representatives of federal, state and local governments and other entities, such as the ULC, that are interested in the intersection of and balance between state and federal regulation in areas of shared federal/state interest.

The Symposium was jointly sponsored and supported by the National Governors Association, the National Conference of State Legislatures, the Council of State Governments, the National Association of Attorneys General, the National Center for State Courts, and the Conference of Chief Justices, among others. The Symposium was an invitation-only event, and more than 100 Commissioners, representatives of the co-sponsoring organizations, and others (including Congressional staff) attended. Our leadership and influence among the many state governmental organizations has increased, and I am pleased that our Executive Committee has voted to make the Council of State Governments an Advisory Member of the Uniform Law Commission.

To sum up: the ULC is strong and thriving, the work continues to be accomplished with our traditional high quality, and the morale of our Commissioners, supporters and staff is high.

It has been an enormous honor to serve as ULC President during the past two years. The Uniform Law Commission has been a central part of my life for over 35 years. I am proud of what we have been able to accomplish over the past two years to promote uniformity in the law and to establish a better and broader understanding of the importance of state law in our federal system. Thank you for the privilege of serving as President.



Robert A. Stein

## 2011: Another Excellent Year

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 practical. 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 jurisdictions.

In 2009, the ULC tied an all-time record for the most enactments with 130 enactments and 272 introductions. In 2010, the ULC tied another all-time record for the most enactments in an *even-numbered* year (many states have no sessions or short sessions in even-numbered years) with 93 enactments. Though no records were tied or broken in 2011, it was an excellent year. The 2011 legislative year ended with 230 introductions and 104 enactments.

### Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) was enacted in ten states in 2011, bringing its total number of enactments to 30. 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.

### 2010 Amendments to UCC Article 9, Secured Transactions

The 2010 Amendments to Article 9 of the UCC were adopted in nine states in 2011. UCC Article 9, which governs secured transactions in personal property, has been adopted in every state. The 2010 Amendments to UCC9 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). 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 2010 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 Military and Overseas Voters Act**

The Uniform Military and Overseas Voters Act (UMOVA) was enacted in six states in 2011. Military personnel and overseas civilians face a variety of challenges to their participation as voters in U.S. elections, despite repeated congressional and state efforts to facilitate their ability to vote. The federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), as well as the various state efforts, have not been wholly effective in overcoming difficulties that these voters face. Further, American elections are conducted at the state and local levels under procedures that vary dramatically by jurisdiction, and many are conducted independent of the federal elections to which UOCAVA and the MOVE Act do apply. Lack of uniformity, and lack of application of the federal statutes to state and local elections, complicates efforts to more fully enfranchise these voters.

*“Though no records were tied or broken in 2011, it was an excellent year. The 2011 legislative year ended with 230 introductions and 104 enactments.”*

The 2010 UMOVA establishes reasonable, standard timetables for application, registration, provision of ballots and election information for covered voters, and submission of ballots, and provides for the determination of the address that should be used for active-duty military and overseas voters. The act simplifies and expands, in common sense fashion, the class of covered voters and covered elections. UMOVA allows voters to make use of electronic transmission methods for applications and receipt of registration and balloting materials, tracking the status of applications, and expands use of the Federal Post Card Application and Federal Write-In Absentee Ballot. Finally, UMOVA obviates non-essential requirements that could otherwise invalidate an overseas ballot. The new Act uses and builds upon the key requirements of UOCAVA and MOVE, and extends the important protections and benefits of these acts to voting in applicable state and local elections.

**UCCJEA Turns 51**

In 2011, Vermont became the 51st state or territory to adopt the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The UCCJEA is now the law in 49 states, the District of Columbia, and the U.S. Virgin Islands. Only Massachusetts and Puerto Rico have not enacted this act.

The UCCJEA has established clarity and predictability with regard to interstate custody rules, and resolves several significant jurisdictional questions that arose over the years concerning the

Uniform Child Custody Jurisdiction Act (UCCJA) of 1968. The UCCJA was designed to prevent a fairly common legal standoff of the day, whereby one parent gained legal custody of a child in one state, and the other parent managed to take the child to a “haven state” in search of a court willing to change the initial lawful custody order. Developments of federal law addressing parental kidnapping created interpretive differences across the country and further confused the clarity once provided by UCCJA. The UCCJEA addresses these differences and ensures effective custody orders.

The UCCJEA harmonizes federal law and developments in case law by prioritizing home state jurisdiction. Additionally, the UCCJEA sets forth the concept of “continuing exclusive jurisdiction.” The order of a state with continuing exclusive jurisdiction is entitled to be enforced in every other state. No other state can modify the order unless the first state relinquishes jurisdiction. This

brings certainty to custody and visitation determinations.

Moreover, the UCCJEA provides enforcement mechanisms which prevents kidnapers from hiding behind divergent state laws and ensures that missing children return home even if they cross state lines. The act also expands protections for victims of domestic violence. Additionally, the act establishes procedures for interstate enforcement of custody orders including registration, expedited enforcement, and the use of other civil remedies by prosecutors and law enforcement.

The UCCJEA was approved by the ULC in 1997.

**UPMIFA Turns 50**

In 2011, Florida became the 50<sup>th</sup> state to enact the Uniform Prudent Management of Institutional Funds Act (UPMIFA), important legislation that establishes rules for the management of endowment funds. UPMIFA is now the law in every state except Mississippi, Pennsylvania, and Puerto Rico.

During the current economic times, nonprofits and foundations have suffered on several fronts. Donations have declined and the value of many endowment funds has decreased. Before UPMIFA, the law on expenditures was inflexible – to the point that a large number of charities could not use their funds because of the restrictions placed on investments or spending. UPMIFA provides a better framework that gives nonprofits and foundations more

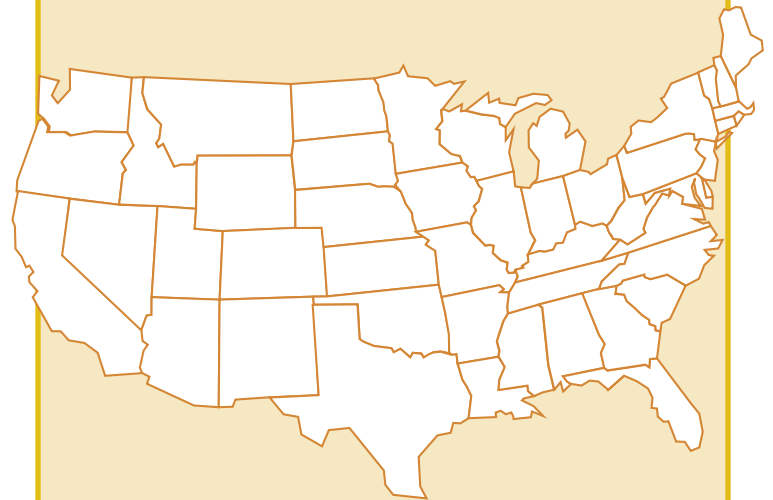
flexibility to meet their core missions through use of the funds that are meant for these purposes, but will also provide a more robust standard for preserving these funds long term and guarding against inappropriate expenditures in both good and bad times.

UPMIFA was approved by the ULC in 2006. It is a revision of the Uniform Management of Institutional Funds Act (UMIFA) of 1972, which was adopted in 48 states.

UPMIFA expressly addresses the needs of charities by providing for diversification of assets, pooling of assets, total return investment, and whole portfolio management. It does so in a comprehensive manner that is consistent with modern practices in trust and not-for-profit corporation law.

Under UPMIFA, the rules governing expenditures from endowment funds have been modified to give a governing board more flexibility in making expenditure decisions, so that the board can cope with fluctuations in the value of the endowment. It does this by providing investment freedom, and by providing updated rules on the expenditure of funds.

The Uniform Prudent Management of Institutional Funds Act provides the nonprofit sector a better legal foundation to weather today's economy, continue to meet their core missions, and maintain the strongest measures of accountability to donors and to the public. ■



Complete information on the ULC's legislative activity in the states can be found at the ULC's website at:

[www.uniformlaws.org](http://www.uniformlaws.org)



## New Uniform Acts Approved in 2011

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 120th Annual Meeting in Vail, Colorado, July 7-13, 2011, four new 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 Electronic Legal Material Act

The Uniform Electronic Legal Material Act establishes an outcomes-based, technology-neutral framework for providing online legal material with the same level of trustworthiness traditionally provided by publication in a law book.

Increasingly, state governments are publishing laws, statutes, agency rules, and court rules and decisions online. In some states, important state-level legal material is no longer published in books, but is only available online. While electronic publication of legal material has facilitated public access to the material, it has also raised concerns. Is the legal material official, authentic, government data that has not been altered? For the long term, how will this electronic legal material be preserved? How will the public access the material 10, 50, or 100 years from now? The Uniform Electronic Legal Material Act provides a consistent approach to solving these problems.

The Act requires that official electronic legal material be:

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

If a state preserves legal material electronically, it must provide for back-up and recovery, and ensure the integrity and continuing usability of the material.

At a minimum, legal material that is covered by the Act includes the state constitution, session laws, codified laws or statutes, and state agency rules with the effect of law. In addition, states may choose to include court rules and decisions, state administrative agency decisions, or other legal material.

For each type of legal material, the state must name a state agency or official as the "official publisher." For official electronic legal material of that type, the official publisher has the responsibility to authenticate, preserve, and provide access.

If legal material defined by the Act is published *only* electronically, then it must be designated "official" and meet the requirements of the Act. If there is a print version of the legal material, an official publisher



may designate the online version “official,” but the requirements of the Act to authenticate, preserve, and provide access must be met.

The Act does not affect any relationships between an official state publisher and a commercial publisher, leaving those relationships to contract law. Copyright laws are also unaffected by the Act. The Act does not affect the rules of evidence; judges continue to make decisions about the admissibility of electronic evidence in their courtrooms.

### **Uniform Certificate of Title for Vessels Act**

The Uniform Certificate of Title for Vessels Act establishes a certificate of title system for boats and other watercraft.

In the United States, record ownership of vessels is governed by a composite of state and federal law. Some large commercial vessels must be documented with the U.S. Coast Guard National Vessel Documentation Center. Other vessels – those used mainly for recreational purposes – may be, but need not be, documented with the U.S. Coast Guard.

Less than one percent of vessels in the United States are documented; most of the remainder are pleasure boats operated as undocumented vessels. Federal law requires that most undocumented vessels equipped with an engine be issued a number by the state in which the vessel is used.

Congress enacted the Vessel Identification System (VIS) in 1988 to create a central database of information, maintained by the Coast Guard, about vessels and their owners. States are not required to make their boat numbering and titling information available to VIS, but they are encouraged to do so.

Although all 50 states and the territories have boat numbering systems that comply with the federal regulations, there is far less uniformity with respect to state certificate of title laws for undocumented vessels. Though the majority of states require certain undocumented vessels to be covered by a certificate of title, many states have *no* certificate of title law for vessels. Even among the states that require certificates of title for undocumented vessels, the variation in those laws is substantial.

However, no state’s certificate of title law for undocumented vessels has received the requisite Coast Guard approval. One of the main purposes of this Act is to provide states with a model that the Coast Guard will approve.

The major objectives of the Uniform Certificate of Title for Vessels Act are to: (1) qualify as a state titling law that the Coast Guard will approve; (2) facilitate transfers of ownership of a vessel;

(3) deter and impede the theft of vessels by making information about the ownership of vessels available to both government officials and those interested in acquiring an interest in a vessel; (4) accommodate existing financing arrangements for vessels; and (5) provide certain consumer protections when purchasing a vessel through the Act’s branding initiative.

The Act’s branding rules may be its greatest innovation. No state currently brands the title of vessels through its statutory language, with the result that vessels with hidden hull damage can be resold after cosmetic repairs without disclosure of the damage. By establishing a model vessel brand “hull-damaged,” this Act provides a mechanism for consumers, insurers, and lenders to receive valuable information, which in turn can prompt further investigation, help ensure that necessary repairs are made, and aid in boating safety. The Act encourages compliance with its branding rules by imposing an administrative penalty on owners and insurers who fail to comply.

### **Harmonized Uniform Business Organizations Code**

The primary purposes of the Harmonized Uniform Business Organizations Code are: (i) to harmonize the language of all of the unincorporated entity laws, and (ii) to revise the language of each of those acts in a manner that permits their integration into a single code of entity laws. States that choose to adopt this new Code will also have the option of including all of their corporation and non-profit corporation acts within the Uniform Code.

The harmonization process involved the revision of the following acts:

- Model Entity Transactions Act
- Model Registered Agents Act
- Uniform Partnership Act (1997)
- Uniform Limited Partnership Act (2001)
- Uniform Limited Liability Company Act (2006)
- Uniform Statutory Trust Entity Act
- Uniform Limited Cooperative Association Act
- Uniform Unincorporated Nonprofit Association Act (2008)

The harmonized version of each of these acts will remain available as stand-alone acts, and can be adopted as such in the states. States can also choose to adopt the entire Uniform Business Organization Code as a single Code, or, in states that have adopted one or more of these acts, those states can simply amend the already-enacted acts to harmonize with the others.

### **Model Protection of Charitable Assets Act**

The Model Protection of Charitable Assets Act, approved by the Uniform Law Commission at its recent annual meeting, articulates

and confirms the role of the state Attorney General in protecting charitable assets.

American charities provide a large variety of services and benefits, improving the quality of life for many people. Charitable organizations are formed and operate under state law. Although many are large and operate across state lines, most are local and regional in nature.

Public confidence in charities helps maintain the strength of the charitable sector. If potential donors worry that charities will misuse contributed funds, donors are unlikely to contribute. The good work charities do will suffer if reports of abuse, fraud, or other types of misbehavior reduce public confidence in the sector.

The regulation of charities remains minimal, and yet the importance of public confidence points to the need for some degree of protection for the assets entrusted to charities. In the charitable sector, self-regulation has always been important and will continue to be important.

While the IRS has begun to increase its role in charitable supervision, it has neither the authority, the resources, or the ability to protect the assets of charitable entities. Historically, the states have had that central authority. The goal of the Model Protection of Charitable Assets Act is to protect the role of the states with respect to charitable assets, by clarifying the role of the Attorney General.

The Model Act will articulate and confirm the role of the state Attorney General in protecting charitable assets. The Attorney General's authority in most states is broad and this Act will not limit or narrow that authority, while providing in many states the first clear statutory articulation of that authority.

The Model Act provides the Attorney General (the term is used in the Act to mean the charity regulator in the state) with an inventory of basic information without overburdening the charities or the Attorney General with excessive reporting requirements. The Act specifies which transactions and legal proceedings require notice to the Attorney General and provides for registration and annual reports for many charities.

The Act does not cover governmental entities and private businesses, except to the extent that those non-charities hold charitable assets.

As a whole, the Act is designed to produce a basic structure for those states that lack any significant legislation, although all states can benefit from its concepts and clarity. ■



## 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.uniformlaws.org](http://www.uniformlaws.org).



# Federalism and State Law:

## the Role of the Uniform Law Commission

In August 2009, the ULC established a Committee on Federalism and State Law to study and make recommendations to the States, Congress, and the Executive Branch of the federal government on ways to ensure a more cooperative and productive relationship between States and the Federal government and reduce conflicts regarding whether and to what extent Federal law preempts State law.

With the continued growth and expansion of the Federal Government into areas in which the States have traditionally governed, maintaining a healthy and efficient balance of Federal and State responsibilities has become more difficult and challenging.

“Cooperative Federalism” requires a process and procedure by which Congress and Executive Agencies carefully balance the need for uniform and effective federal action in developing and improving laws and regulation, while striving, where practical, to avoid unnecessary intrusion into areas of law that are primarily the province of state legislation. Similarly, the States have a responsibility to address issues that need attention with effective state legislation or regulation where appropriate and in harmony with federal actions.

The ULC Committee on Federalism and State Law has been studying and making recommendations on ways to emphasize the importance of state law and to maintain to the extent

possible the balance of federal and state law in our federal system, while recognizing that there will be some situations in which the most effective way to address a national problem will be by federal preemptive legislation. The committee is also focusing on identifying ways to establish a more cooperative and productive relationship between States and the Federal government, and on ways to avoid unintended or unclear federal preemption of state law by federal statutes and regulations.

The Federalism Committee co-sponsored a Symposium on Federalism, Preemption and State Law in 2010 at George Washington University Law School in Washington, DC. Co-sponsoring organizations for the Symposium included the National Governors Association, the Council of State Governments, the National Conference of State Legislatures, the National Center for State Courts, the National Association of Attorneys General, and the Conference of Chief Justices

Since then, the ULC has also developed a Discussion Draft of "Principles of Federalism." The ultimate objective is to have a number of influential state and local government entities adopt or endorse the Principles.

In order to fulfill the objectives of the Federalism Project, the Committee on Federalism and State Law has developed a number of initiatives it plans to undertake over the next 18 months. These include:

- Providing educational briefings on federalism and preemption issues for Congressional staff, including the staffs of the Senate and House Judiciary Committees;
- Undertaking educational briefings on federalism and preemption issues for Washington, D.C. representatives of state governments;
- Providing an educational program on federalism and preemption issues for the Appellate Judges Educational Conference, and possibly for the Conference of Chief Justices;
- Making presentations to the annual meetings of key state government organizations, such as the National Governors Association, the Council of State Governments, the National Conference of State Legislatures, and the National Association of Attorneys General;
- Refining the Draft Statement of Federalism Principles and meeting with leaders of organizations representing state and local government officials (such as the National Governors Association, the Council of State Governments, the National Conference of State Legislatures, and the National Association of

Attorneys General, the National League of Cities, and the National Association of Counties) to seek their support for the Principles;

- Undertaking discussions concerning how to improve the handling of preemption issues at the federal government level with representatives of the Executive Branch, such as the Office of Information and Regulatory Affairs in the Office of Management and Budget, the White House Office of Intergovernmental Affairs, and the White House Counsel's Office;
- Undertaking discussions with the Administrative Conference of the United States, which recently promulgated "Agency Procedures For Considering Preemption of State Law," concerning those procedures and monitoring agency compliance with those procedures;
- Sponsoring another national Symposium on federalism, preemption and state law in the first half of 2013 to assess the extent to which there have been improvements in the ways in which Congress, the Executive Departments, and the federal regulatory agencies handle preemption issues and to identify priorities for seeking further improvements in these regards.

By encouraging a dialogue on the issues of federalism and preemption, the ULC hopes to educate key law makers and executive officers both at the state and federal levels concerning the risks of federal legislative or regulatory preemption of state law, so as to prevent costly, drawn-out litigation concerning preemption issues.

The ULC also seeks to suggest techniques of "cooperative federalism" that can be used in order to minimize the extent to which federal preemptive legislation or regulations affect areas of existing state law. One effective example of "cooperative federalism" is the Electronic Signatures in Global and National Commerce Act, which was enacted by Congress in 2000 and which contains a provision exempting from preemption states that have adopted the Uniform Electronic Transactions Act (UETA), which the ULC approved in 1999. To date, 49 states have adopted UETA.

Our recent study of federalism and the necessary balance between federal and state interests and the protection and continuing vitality of state law has made the ULC a recognized leader among sister state organizations and federal stakeholders. Through continued symposia on federalism, sensible joint ventures with state judicial and legislative organizations, and vigorous assertion of the rights and benefits of state law, especially when federal legislation or regulations threaten preemption, the ULC will continue its role as a leader among state organizations in the education and advocacy for state law and against unintended and inappropriate preemption. ■

## Financial Support and Budget

The Uniform Law Commission has worked for the uniformity of state laws since 1892. It receives the predominant portion of its financial support from state appropriations. Every state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands is assessed a specific amount for the maintenance of the ULC. All jurisdictions are also requested to reimburse the expenses of their commissioners incurred in attending the annual meeting. In return, the ULC provides the states with two related services: drafting uniform state laws on subjects where uniformity is desirable and practical, and then supporting the effort to enact completed acts.

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 reimbursement 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, and the annual value of that donated effort is estimated to exceed \$10 million.

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. 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, 2011 was approximately \$2,913,000, with support from state governments in the total amount of \$1,843,000, accounting for 63% 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.

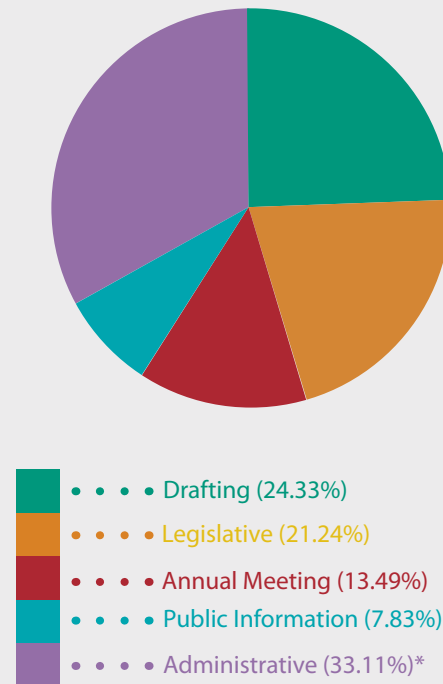
The ULC has consciously limited the size of its staff to keep its operating costs as low as possible. The full-time staff of 13, located in Chicago, provides all of the staff support for the drafting and legislative efforts.

As the economic slowdown has continued and state revenues continue to remain depressed, many of the states have made significant reductions in their budgets. Because of reductions or elimination of dues payments from some states, the ULC has also carefully examined and trimmed its budget. ULC staff and leadership continue to work to identify opportunities for cost savings. Over the past several years, the ULC has taken major steps to reduce expenses,, including:

- Utilizing new technologies in the work of the drafting committees;
- Switching document distribution from paper to electronic format, whenever possible resulting in both cost savings and a positive environmental impact;
- Limiting the size of the staff by leaving one legislative attorney position unfilled.

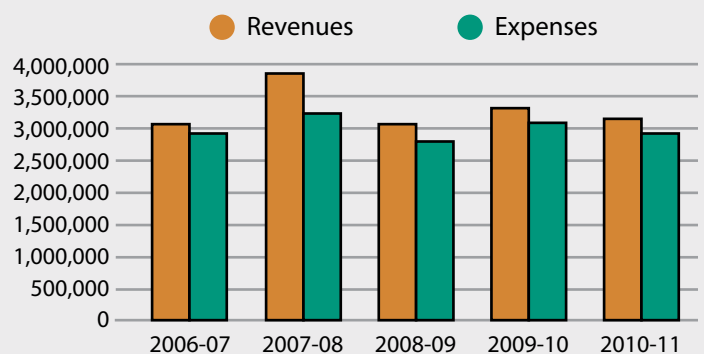
Even in today's economic climate, with states across the country continuing to struggle with their budgets, the process of drafting a uniform law remains an immensely cost-effective endeavor. ■

## BUDGET FOR FISCAL YEAR ENDING JUNE 30, 2011



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

## REVENUES & EXPENSES



## Drafting 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.uniformlaws.org](http://www.uniformlaws.org). Tentative drafts are not submitted to the entire Commission until they have received extensive committee consideration.

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.

There are currently nine 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.

### Drafting Committee on an Asset Freezing Orders Act

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. The committee presented a draft for consideration at the 2011 Annual Meeting, and it is expected that a draft for final approval will be presented at the 2012 Annual Meeting.

### Drafting Committee on a Deployed Parents Visitation and Custody Act

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 presented a draft for consideration at the 2011 Annual Meeting, and it is expected that a draft for final approval will be presented at the 2012 Annual Meeting.

#### **Drafting Committee on the Uniform Choice of Court Agreements Convention Implementation 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, 2010 and 2011 ULC Annual Meetings and has worked closely with representatives of the State Department and others to harmonize the draft of uniform state legislation and the draft of federal implementing legislation.

#### **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. The Committee will have its first in-person meeting in the fall of 2011 and will present an initial draft for consideration at the July 2012 Annual Meeting.

#### **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 presented a draft for consideration at the July 2011 Annual Meeting, and it is expected that a draft for final approval will be presented at the July 2012 Annual Meeting.

#### **Drafting Committee on a Powers of Appointment Act**

This Committee will draft an act on powers of appointment. This project was recommended by the Joint Editorial Board on Uniform Trust and Estate Acts. The JEB noted that, as the use of long-term trusts increases, there has been a significant increase in the use of powers of appointment, but that there is a dearth of statutory and case law on powers of appointment. The provisions of the Restatement (Third) of Property on powers of appointment, which were approved by the ALI in 2006, provide a useful basis for the Committee’s work. The Committee will have its first in-person meeting in the fall of 2011 and is expected to present a draft for initial consideration at the July 2012 Annual Meeting.

#### **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 presented a draft for consideration at the July 2011 Annual Meeting, and it is expected that a draft for final approval will be presented at the July 2012 Annual Meeting.

#### **Drafting Committee on an Act on the Prevention of and Remedies for Human Trafficking**

This committee will draft legislation concerning the prevention of and remedies for human trafficking. The scope of the project is specifically focused on (a) human trafficking for sexual purposes, in which a sex act is induced by force, fraud or coercion, or in which the person induced to perform a sex act has not attained the age of majority, and (b) human trafficking in which force, fraud or coercion is used to obtain the labor or services of an individual under circumstances that amount to involuntary servitude. The committee will have its first in-person meeting in the fall of 2011, will present a draft act for a first reading in July 2012, and expects to present an act for final approval in July 2013.

#### **Drafting Committee on a Revision of the Uniform Residential Landlord and Tenant Act**

This committee will prepare revisions of the Uniform Residential Landlord and Tenant Act (1972). The 1972 Act has been adopted in 21 states and has influenced statutory developments in many other states. Since 1972, however, there have been many new statutory and common law developments that affect residential landlord

and tenant law, and the committee will seek to codify best current practices in a revised act. This project was recommended by the Joint Editorial Board on Uniform Real Property Acts. This committee is expected to present an initial draft for consideration at the July 2012 Annual Meeting.

## Other Projects

### 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 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 Appointment and Powers of Real Estate Receivers
- Study Committee on Choice of Law for Fraudulent Transfers
- Study Committee on an Eyewitness Identification Procedures Act
- Study Committee on an Act to Implement the Consular Notification Requirements of Article 36 of the Vienna Convention on Consular Relations
- Joint Uniform Law Commission/Uniform Law Conference of Canada Study Committee on Inter-Jurisdictional Recognition of Life Planning Documents
- Study Committee on Model Tribal Legislation on Probate Transfer of Interests in Real Property
- Study Committee on Mortgage Foreclosures
- Study Committee on Regulation of Lawsuit Loans
- Study Committee on a Relocation of Easements Act
- Study Committee on Series of Unincorporated Business Entities

## 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. The Editorial Boards are made up of members from the Uniform Law Commission, the American Bar Association, the American Law Institute, and other organizations.

- 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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## 2011 Activity

- ✓ During the 2011 legislative year, there were 230 introductions of uniform acts and 104 enactments.
- ✓ The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act topped the list of legislative enactments with ten adoptions in 2010, bringing its total number of enactments to 30.
- ✓ The 2010 Amendments to Revised UCC Article 9 had nine enactments in 2010.
- ✓ The District of Columbia led all jurisdictions with nine enactments in 2011.
- ✓ The Uniform Electronic Legal Material Act and the Uniform Certificate of Title for Vessels Act were among four new acts approved at the 2011 Annual Meeting in Vail, Colorado.
- ✓ There are nine drafting committees working on projects that include drafting a new state law on the topic of resolving visitation and custody issues affecting deployed military personnel and their families to a committee working on state legislation concerning the prevention of human trafficking.
- ✓ There are ten study committees considering specific areas of law for possible future drafting, including a new committee studying the issue of improving procedures for eyewitness identifications.





## Uniform Law Commission

### ABOUT THE UNIFORM LAW COMMISSION

The Uniform Law Commission (ULC), now in its 120th 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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