

# COMMISSION ON UNIFORM STATE LAWS

The North Dakota Commission on Uniform State Laws was established to promote uniformity in state laws on subjects on which uniformity is deemed desirable and practicable among the states.

North Dakota Century Code (NDCC) Section 54-55-01 specifies the membership of the commission. Members appointed by the Governor are David J. Hogue, Minot (the member who must be engaged in the practice of law); Judge Gail H. Hagerty, Bismarck (the member who must be a law-trained judge of a court of record); Bradley Myers, University of North Dakota School of Law (the member who must be the dean or a full-time member of the faculty of the law school); and Candace M. Zierdt, Stetson University College of Law, Gulfport, Florida, and William E. Kretschmar, Ventura (members who previously have been appointed to at least five years of service on the commission). The members appointed by the Legislative Management are Representative Lawrence R. Klemin, Bismarck (the member who must be a member of the House of Representatives), and Senator Dave Nething, Jamestown (the member who must be a member of the Senate). The member appointed by the Legislative Management chairman is Jay E. Buringrud, Bismarck (the member who must be a member of the Legislative Council staff, and who also is a life member of the national conference). Owen L. Anderson, Binford (currently at the University of Oklahoma College of Law, Norman, Oklahoma), is a member of the commission due to his status as a life member of the national conference. Until their deaths in 2010, Frank F. Jestrab, Williston, and Michael B. Unhjem, Fargo, were members of the commission due to their status as life members of the national conference.

The commission chairman is William E. Kretschmar, and the commission secretary is Jay E. Buringrud.

## NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

### History of the National Conference

In 1889 the New York Bar Association appointed a special committee on uniformity of laws. In 1890 the New York Legislature authorized the appointment of commissioners to examine subjects of national importance which seemed to show conflict among the laws of the states and to determine whether it would be advisable to invite the other states to send representatives to a convention to draft uniform laws to be submitted for approval and adoption of the several states. In 1890 the American Bar Association passed a resolution recommending that each state provide for commissioners to confer with the commissioners of other states on the subject of uniformity of legislation on certain subjects. In August 1892 the first National Conference of Commissioners on Uniform State Laws convened. By 1912 every state was participating in the national conference.

North Dakota has participated in the national conference since 1893.

### Operation of the National Conference

As it has developed in its 119 years, the national conference is a confederation of state interests. It arose out of the concerns of state government for the improvement of the law and for better interstate relationships. Its sole purpose is service to state governments and improvement of state laws.

The national conference is convened once a year. It meets for a period of eight days, usually in late July or early August. During the interim between annual meetings, drafting committees composed of commissioners meet to work on the drafts that are considered at the annual meeting. At each national conference, the work of the drafting committees is read and debated. Each Act is considered over a substantial period of years. No Act becomes officially recognized as a uniform Act until the national conference is satisfied that the Act is ready for consideration by state legislatures. The Act is then put to a vote of the members from all of the states in attendance, during which each state's commissioners vote as a unit.

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

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

The national conference maintains relations with several organizations. Official liaison is maintained with the American Bar Association, the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures. Liaison and activities may be conducted with other associations as interests and activities necessitate.

### Current Projects of the National Conference 2010-11 Drafting Committees

The Executive Committee of the national conference appoints each drafting committee, with a directive to draft a proposal for a uniform law on the subject assigned to the committee. The Executive Committee selects subjects upon which uniformity is desirable and practicable, primarily based on recommendations of study committees. Drafting committees may be assigned to draft new uniform Acts, revise existing uniform Acts, or prepare amendments to existing uniform Acts. Drafting committees continue from appointment through final adoption of a uniform Act by the national

conference, which may take several years. Current drafting committees are:

- Drafting Committee on **Asset Freezing Orders.**
- Drafting Committee on a **Certificate of Title Act for Vessels.**
- Drafting Committee on a Uniform **Deployed Parents Visitation and Custody Act.**
- Drafting Committee on an **Electronic Legal Materials Act.**
- Drafting Committee on the **Hague Convention on Protection of Children.**
- Drafting Committee on the **Harmonization of Business Entity Acts.**
- Drafting Committee on an **International Choice of Court Agreements Act.**
- Drafting Committee on a **Manufactured Housing Act.**
- Drafting Committee on **Powers of Appointment.**
- Drafting Committee on **Premarital and Marital Agreements.**
- Drafting Committee on a **Protection of Charitable Assets Act.**

#### **2010-11 Study Committees**

The Committee on Scope and Program recommends to the Executive Committee areas of study for potential drafting projects. As a result of a study committee's recommendation, a drafting committee may be appointed to prepare a draft for consideration of the national conference. Current study committees are:

- Study Committee on **Article 36 of the Vienna Convention on Consular Relations.**
- Study Committee on **Eyewitness Identification Procedures.**
- Study Committee on a **Mortgage Subrogation Act.**
- Study Committee on **Payment Issues.**
- Study Committee on **Prevention of and Remedies for Human Trafficking.**
- Study Committee on **Recovery of Stolen Cultural and Artistic Property.**
- Study Committee on **Relocation of Easements.**
- Study Committee on **Tribal Legislation Concerning Child Custody and Domestic Violence.**
- Study Committee on **Tribal Legislation on Probate Transfer of Interests in Real Property.**

### **ACTIVITIES OF THE NORTH DAKOTA COMMISSION Members**

Owen L. Anderson is a member of the Standby Committee to Amend the Common Interest Ownership Act.

Jay E. Buringrud is a member of the Committee of Legislative Attorneys.

Gail H. Hagerty is chairman of Division C of the conference, a member of the Study Committee on Model Tribal Legislation Concerning Child Custody and Domestic Violence, a member of the Committee on

Liaison with American Indian Tribes and Nations, and a member of the Standby Committee to Amend the Uniform Interstate Family Support Act.

Lawrence R. Klemin is a member of the Drafting Committee on a Manufactured Housing Act, a member of the Study Committee on a Mortgage Subrogation Act, and a member of the Standby Committee to Revise the Uniform Law on Notarial Acts.

William E. Kretschmar is the North Dakota liaison member of the Legislative Committee.

Bradley Myers is a member of the Drafting Committee on Visitation and Custody Issues Affecting Military Personnel and Their Families.

David Nething is a member of Relations With Other Organizations.

Candace M. Zierdt is chairman of the Study Committee on Model Tribal Legislation Concerning Child Custody and Domestic Violence, a member of the Standby Committee to Revise the Uniform Law on Notarial Acts, and a member of the Committee on Liaison with American Indian Tribes and Nations.

#### **Meetings of the North Dakota Commission**

The North Dakota Commission on Uniform State Laws meets during the national conference to review activities, handle administrative matters, and determine whether to recommend legislative action regarding uniform Acts.

Generally, the commission reviews uniform Acts under consideration by the national conference and amendments to uniform Acts that have been enacted in North Dakota. The commission has followed a policy of recommending amendments recommended by the national conference for those uniform Acts enacted in North Dakota as a means to maintain the currency of those Acts. Under the constitution of the national conference, the Executive Committee can approve amendments, which are deemed approved by the national conference unless a commissioner files an objection. Generally, amendments approved by the Executive Committee cure technical errors. In limited instances the Executive Committee recommends substantive changes, which the committee describes fully when giving notice to the commissioners and the opportunity to object.

#### **118<sup>th</sup> National Conference (2009)**

The commissioners attended the 118<sup>th</sup> national conference (2009). The national conference recommended:

1. The Uniform Collaborative Law Act.
2. The Uniform Collateral Consequences of Conviction Act.
3. The Uniform Law Enforcement Access to Entity Information Act.
4. The Uniform Real Property Transfer on Death Act.
5. The Uniform Statutory Trust Entity Act.

## **119<sup>th</sup> National Conference (2010)**

The commissioners attended the 119<sup>th</sup> national conference (2010). The national conference recommended:

1. The Insurable Interests Amendments to the Uniform Trust Code.
2. The Uniform Military and Overseas Voters Act.
3. The Revised Uniform Law on Notarial Acts.
4. The Uniform Partition of Heirs Property Act.
5. The Uniform Faithful Presidential Electors Act.
6. The Uniform Protection of Genetic Information in Employment Act.
7. The Uniform Electronic Recordation of Custodial Interrogations Act.
8. The Revised Model State Administrative Procedure Act.
9. Amendments to the Uniform Collateral Consequences of Conviction Act.
10. Amendments to Uniform Commercial Code Article 9.

### **Considerations of the Commission**

Commission members considered several issues during discussion of possible recommendations to the Legislative Management and the Legislative Assembly.

In 2009 the national conference identified 14 "target Acts" that states are encouraged to enact so as to complete adoption by most if not all states. Six of the targeted Acts have not been adopted in North Dakota--the Uniform Child Abduction Prevention Act, the Uniform Debt-Management Services Act, the Uniform Environmental Covenants Act, the Uniform Foreign Country Money Judgments Recognition Act, the Revised Uniform Limited Liability Company Act, and the Uniform Real Property Electronic Recording Act.

In 2010 the national conference identified 11 target Acts. Five of the targeted Acts have not been adopted in North Dakota--the Uniform Environmental Covenants Act, the Uniform Foreign Country Money Judgments Recognition Act, the Uniform Interstate Depositions and Discovery Act, the Revised Uniform Limited Liability Company Act, the Uniform Real Property Electronic Recording Act, and the Uniform Unsworn Foreign Declarations Act.

The commission traditionally has maintained uniform Acts North Dakota has enacted. This would include updating uniform Acts to reflect revised Acts as well as "technical amendments" approved by the Executive Committee of the national conference.

### **Recommendations of the Commission to the Legislative Management in 2009-10**

The commission is authorized by NDCC Section 54-55-04 to submit its recommendations for enactment of uniform and model laws to the Legislative Management for review and recommendation. Under Section 54-35-02, the Legislative Management is to receive, review, and make recommendations on uniform and model laws recommended to it by the commission. During the 2009-10 interim, the Legislative Management delegated its responsibility under that section to the interim Judiciary Committee.

At its annual meeting in July 2010, the commission determined its recommendations. The commission presented seven recommendations to the interim Judiciary Committee in September 2010.

### **Interim Studies by the Legislative Management**

During the 2009-10 interim, the Legislative Management's Judiciary Committee studied two uniform Acts--the Uniform Debt-Management Services Act and the Revised Uniform Limited Liability Company Act.

### **Uniform Debt-Management Services Act**

With respect to the Uniform Debt-Management Services Act, the interim committee reviewed a bill draft relating to the regulation of debt-settlement providers which incorporated some of the provisions of the uniform Act but also included provisions modeled after current North Dakota consumer protection as well as provisions contained in Illinois debt-settlement provider legislation. The interim committee recommended that bill draft, which was introduced as House Bill No. 1038. The Legislative Assembly approved House Bill No. 1038 on April 5, 2011.

### **Revised Uniform Limited Liability Company Act**

With respect to the Revised Uniform Limited Liability Company Act, the interim committee received a recommendation of the State Bar Association of North Dakota task force regarding the adoption of the uniform Act to postpone consideration of the revised Act until the 2013 legislative session because of the adoption of the Act in only four states, the significant amendments required after Iowa's adoption, and the fairly current Limited Liability Company Act in North Dakota and whether to adopt the Act as an alternative to current law. The interim committee recommended that the Legislative Management continue its study of the Act.

### **Recommendations of the Commission to the 62<sup>nd</sup> Legislative Assembly**

The commission introduced its recommendations to the 62<sup>nd</sup> Legislative Assembly under Joint Rule 208:

1. **Insurable Interests Amendments to the Uniform Trust Code (House Bill No. 1135).** These amendments address concerns regarding the purchase of life insurance trusts by trustees as it relates to insurable interest law. The amendments were approved by the national conference in 2010.

The Legislative Assembly approved the bill on March 4, 2011.

2. **Revised Uniform Law on Notarial Acts (House Bill No. 1136).** This Act updates the 1982 Act with respect to notary responsibilities, electronic recording, interstate recognition, and remedies. This Act was approved by the national conference in 2010.

The Legislative Assembly approved the bill on April 8, 2011.

3. **Amendments to Uniform Commercial Code Article 9 (House Bill No. 1137).** These amendments modify the existing Article 9 to

respond to filing issues and address other matters that have arisen following a decade of experience with the 1998 version of Article 9, especially as to the name of an individual debtor to be provided on a financing statement. The amendments were approved by the national conference in 2010.

The Legislative Assembly approved the bill on March 14, 2011.

4. **Uniform Real Property Transfer on Death Act (House Bill No. 1138).** This Act allows an owner of real property to pass the property simply and directly to a beneficiary on the owner's death without probate, by means of a recorded transfer on death deed. This Act was approved by the national conference in 2009.

The Legislative Assembly approved the bill on April 6, 2011.

5. **Uniform Military and Overseas Voters Act (Senate Bill No. 2120).** This Act simplifies the process of absentee voting for United States military and overseas civilians who are unable to vote in person. This Act was approved by the national conference in 2010.

The Legislative Assembly approved the bill on March 21, 2011.

On April 7, 2011, Governor Jack Dalrymple signed Senate Bill No. 2120 during a ceremony in Memorial Hall of the State Capitol. In attendance were Captain Bob Carey, Director of the Federal Voting Assistance Program under the Department of Defense, North Dakota Adjutant General David Sprynczynatyk, North Dakota Secretary of State Al Jaeger, the chairmen of the Senate and House Government and Veterans Affairs Committees, and members of the North Dakota Commission on Uniform State Laws.

6. **Uniform Unsworn Foreign Declarations Act (Senate Bill No. 2123).** This Act will permit in state court proceedings unsworn declarations under penalty of perjury to be executed by witnesses physically located outside the United States in lieu of other sworn court filings, similar to federal law allowing an unsworn declaration executed outside the United States to be recognized as the equivalent of a sworn affidavit. This Act was approved by the national conference in 2008.

The Legislative Assembly approved the bill on March 8, 2011.

7. **Uniform Electronic Record of Custodial Interrogations Act (Senate Bill No. 2125).** This Act addresses the use of audio or videotaping to record law enforcement officers' interviews of criminal suspects who are in custody and mandates recordings of interrogations. This Act was approved by the national conference in 2010.

The Legislative Assembly replaced the provisions of the bill with a provision requesting an interim study of the Uniform Electronic Record of Custodial Interrogations Act by the Legislative Management and approved the bill on March 9, 2011.

#### **Continued Interim Study**

**House Concurrent Resolution No. 3011 - Study of the Revised Uniform Limited Liability Company Act.** This resolution, introduced by the legislative members of the commission, requests the Legislative Management to continue its study of the feasibility and desirability of adopting the Revised Uniform Limited Liability Company Act, especially due to revisions to be considered by the national conference in 2011. The Legislative Assembly approved the resolution on March 31, 2011.