

**2015-16 ANNUAL REPORT  
OF THE  
MICHIGAN COMMISSION ON UNIFORM STATE LAWS**

Hon. Arlan Meekhof, Senate Majority Leader, Chair  
Hon. Tom Leonard, Speaker of the House, Alternate Chair

**FORWARD**

The Michigan Commission on Uniform State Laws (MCUSL) respectfully submits this annual report for FY 2015-16.

MCUSL is created in section 301 of the Legislative Council Act, 1986 PA 268, MCL 4.1301. The current members of the commission include:

Thomas J. Buiteweg, Hudson Cook LLP, Ann Arbor (2004), *Chair*  
Kieran P. Marion, Michigan Department of State, Grand Ledge (2013)  
James P. Spica, Dickinson Wright, Grosse Pointe Farms (2016)  
Hon. Tonya Schuitmaker, Michigan Senate, Lawton (2014)  
Hon. Steve Bieda, Michigan Senate, Warren (2014)  
Hon. Klint Kesto, Michigan House of Representatives, Commerce Township (2015)  
Hon. Robert Kosowski, Michigan House of Representatives, Warren (2016)  
Jennifer Dettloff, Legislative Council Administrator, Lansing, *Ex Officio* (2016)

The national Uniform Law Commission (ULC) also recognizes as a life member of the national organization from Michigan, due to over 20 years of service:

Charles Joiner, Retired, Naples FL (1963)  
James J. White, University of Michigan Law School, Ann Arbor (1997)

**2015-16 ANNUAL REPORT**

**I. History**

On August 24, 1892, representatives from seven states – Delaware, Georgia, Massachusetts, Michigan, New York, New Jersey and Pennsylvania – met in Saratoga Springs, New York, to form what is now known as the Uniform Law Commission (ULC). By 1912, every state was participating in the ULC, and the District of Columbia, Puerto Rico, and the U.S. Virgin Islands (USVI) also participate, with USVI being the last jurisdiction to join in 1988. There have been 124 Annual Conferences since 1892, convening at least once every year since the national organization's founding, with the exception of 1945. Over the course of its history, the ULC has become known as a distinguished body of lawyers. Its members include judges, academics, practitioners, and legislators. President Woodrow Wilson became a member in 1901, and several Justices of the United States Supreme Court, including former Justices Brandeis, Rutledge, and Souter, and former Chief Justice Rehnquist have all served as commissioners. Legal scholars have served in large numbers, including Professors Wigmore, Williston, Pound, and Bogart. The dedicated and distinguished make-up of this group has assured that the products of the ULC are of the highest quality.

Chief Justice Rehnquist served as one of Arizona's delegation members from 1963 until 1969. He expressed what that service meant to him. "My most vivid recollection of the annual meetings," the Chief Justice said, "is the high quality of the floor debate about a pending proposed uniform law . . . . I have seen many deliberative bodies before and since," he observed, "but in none were the discussions of the same high quality." The "real genius" of the Conference, he explained, lay in "creat[ing] and maintain[ing] an organization which could deal with the need for national uniformity of laws without displacing the state courts." He regarded it as inspiring "at a time when the profession seems increasingly driven by the need to earn money," as he put it, that most of the Conference members he knew "discovered the hidden benefits of this form of *pro bono* service." "We were not compensated for our time as lawyers," he noted, "but we had the privilege of working in a group of diverse and stimulating members of the profession in a very useful and productive effort to benefit the legal system. Such work is its own reward." William H. Rehnquist, *Forward*, in WALTER P. ARMSTRONG, JR., A CENTURY OF SERVICE: A CENTENNIAL HISTORY OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS (1991).

In each year of service, the ULC steadily increased its contribution to state law. Since its founding, the ULC has drafted more than 200 uniform laws on numerous subjects and in various fields of law, setting patterns for uniformity across the nation. Uniform Acts include the Uniform Probate Code, the Uniform Partnership Act, the Uniform Limited Partnership Act, the Uniform Anatomical Gift Act, the Uniform Interstate Family Support Act, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Prudent Management of Institutional Funds Act. Among the most significant items was the decision to attack major commercial problems with comprehensive legal solutions in 1940 – a decision that set in motion the project to produce the Uniform Commercial Code (UCC). Working with the American Law Institute, the UCC took ten years to complete and another 14 years before it was enacted across the country. It remains the signature product of the ULC, with several modernizing updates promulgated to its articles within the past decade. Today the ULC is recognized primarily for its work in commercial law, family law, the law of probate and estates, the law of business organizations, health law, and conflicts of law. The ULC arose out of the concerns of state government for the improvement of the law and for better interstate relationships. Its sole purpose has been, and remains, service to state government and improvement of state law.

## **II. Operation of the National ULC**

The ULC is convened as a body once a year, meeting for a period of seven or eight days, usually in July or August. In the interim period between the annual meetings, drafting committees comprised of state commissioners meet to prepare the working drafts of proposed acts that are to be considered at the annual meeting. At each annual meeting, the work of the drafting committees is read and debated. Each act must be considered over a substantial period of years. No act becomes officially recognized as a Uniform Act until the ULC is satisfied that it is ready for consideration in the state legislatures. At the end of each meeting, after the various acts have been debated, there is a vote of the states, each state having one vote, to determine whether an act, as amended by debate, should be promulgated. A majority of the states present, but no fewer than twenty states, must vote for approval of an act before it can be officially adopted as a uniform act. Once this is accomplished, the acts are carried by the commissioners of the various states to their respective legislatures for consideration and possible enactment.

The governing body of the ULC is the Executive Committee, which is comprised of the officers, certain ex-officio members, and members appointed by the president of the ULC. In addition, certain activities are conducted by standing committees. For example, the Committee on Scope and Program

considers new subject areas for possible uniform acts and the Legislative Committee oversees the relationships between the ULC and the various state legislatures. A small staff of fourteen full-time employees, located in the Conference Headquarters in Chicago, IL operates the National Office of the ULC. The National Office handles meeting arrangements, publications, legislative liaison and general administration for the ULC.

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

### **III. MCUSL Activities and Participation**

As a member of the founding seven states of the ULC in 1892, Michigan has a strong tradition of participation in the ULC through its Michigan delegation, embodied in the Michigan Commission on Uniform State Laws in our modern statutes. To date, Michigan has adopted 113 uniform laws, the first being the Uniform Acknowledgments Act in 1895, and the most recent being the Uniform Child Abduction Prevention Act in 2014, at the close of the 2013-14 legislative session. Recent adoptions of uniform laws by the Michigan legislature include:

Uniform Voidable Transfers Act (formerly UFTA) – 2017 – Sen. Tonya Schuitmaker  
Uniform Fiduciary Access to Digital Assets Act – 2016 – Rep. Anthony Forlini  
Uniform Interstate Family Support Act (2008 Amendments) – 2015 – Rep. Robert Kosowski  
Uniform Child Abduction Prevention Act – 2014 – Sen. Rick Jones  
Uniform Collaborative Law Act – 2014 – Sen. Tonya Schuitmaker  
Revised UCC Articles 3 and 4 – 2014 – Sen. Darwin Booher  
Amendments to UCC Article 4A – 2014 – Rep. Robert VerHeulen  
Insurable Interest Amendments to the MTC – 2014 – Sen. Tonya Schuitmaker

A full listing of legislative adoptions in Michigan from 1892 through 2016, to date, is attached to this report. At the close of FY 2015-16, active legislation introduced in the current session to adopt uniform laws, still pending before the legislature at that time, includes the following:

Uniform Athlete Agents Act – House Bills 4838-4839, Rep. Robert VerHeulen  
Uniform Electronic Legal Materials Act – House Bill 5653, Rep. Robert Kosowski

The Uniform Athlete Agents Act was introduced as a two-bill package by Rep. VerHeulen, and testimony was taken before the House Regulatory Reform Committee, which later reported the bills with recommendation for passage. The purpose of the act is to regulate the conduct of agents, and the interaction between student athletes and agents as those athletes transition from amateur to professional sports. As seen in scandals from numerous other states over the past decade, the consequences of agent misconduct can have extreme reputational and fiscal impacts for universities, and ramifications for students as well. The revised version, drafted by ULC in 2015, expands the definition of “athlete agent” and “student athlete” to combat evolving misconduct, continues reciprocal registration between states,

and modernizes requirements for the signing of an agency contract as well as notification requirements. The original 2000 version of the act, embodied in the introduced bill, has been adopted in 40 states, as well as the District of Columbia and USVI. Adoption of revisions may be considered, assuming bills are reintroduced in the 2017-18 legislative session.

The Uniform Electronic Legal Materials Act was introduced by Rep. Robert Kosowski, and initial testimony was taken before the House Judiciary Committee. 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 as to whether the legal material is official, authentic government data that has not been altered, and for the long term, how best to preserve the electronic materials and make them accessible to the public. The act provides states with an outcomes-based approach to enable end-users to verify the trustworthiness of the legal material they are using and to provide a framework for states to preserve legal material in perpetuity and in a manner that allows for permanent access.

Michigan commissioners have been engaged at the national level with the broader ULC. While the majority of the current MCUSL membership has been appointed recently (during the past four years), experienced members remain very active and newer members are energetic. As noted above, legislator members (and former legislator members) have actively introduced uniform laws legislation here in Michigan, and commissioners and staff from the National Headquarters have engaged as a resource for legislators, providing information and testimony as requested.

Currently, Commissioner Thomas J. Buiteweg was appointed Chair of MCUSL by the Legislative Council in 2016. For national ULC, he serves on the Executive Committee of the ULC and serves as Treasurer of the national organization. He continues his service on the Drafting Committee on the Regulation of Virtual Currency Businesses Act and the Drafting Committee to Revise UCC Articles 1, 3, and 9; he now also serves on the Study Committee on Identity Management in Electronic Commerce. Commissioner Kieran P. Marion continues service on the Legislative Council of the national organization, representing the Great Lakes Region (MI, IL, OH, WI, IN), and on the Drafting Committee on the Regulation of Virtual Currencies Act. Mr. Marion has been appointed to the Study Committee on Amendments to the Revised Uniform Law on Notarial Acts. Professor White continues his service as an emeritus member on the Permanent Editorial Board for the Uniform Commercial Code, a joint entity of the ULC with the American Law Institute, and advised by the American Bar Association. He stepped down as Chair of MCUSL upon accepting life membership in the national ULC, conferred upon 20 years of service in the organization as part of Michigan's delegation. James P. Spica was selected to fill the statutory vacancy created by Prof. White's transition. He brings a wealth of experience with uniform laws from his practice as well as participation through the American Bar Association. Sen. Tonya Schuitmaker sponsored and enacted legislation to implement the Uniform Voidable Transfers Act (formerly the Fraudulent Transfers Act). Rep. Klint Kesto, has engaged the national organization in discussions on a potential Study and Drafting Committee project, and sponsor legislation in the package to enact the Uniform Interstate Family Support Act (2008 Amendments). Rep. Kosowski was the lead sponsor on the UIFSA package, which was enacted into law, as well as lead sponsor on legislation to enact the Uniform Electronic Legal Materials Act.

Going forward, MCUSL will continue to work with ULC to identify opportunities for newly appointed MCUSL members to participate in national study and drafting committee work. As well, MCUSL will work with the ULC to ensure that: Michigan officials, legislators, and stakeholders that work with uniform laws issues have adequate information and resources to aid them in informed decision making; MCUSL serves as a conduit for Michigan officials, legislators, and stakeholders to have a voice in projects being developed at the national level; and MCUSL serves as a resource for Michigan entities to facilitate beneficial and proactive policy development.

#### **IV. 2015 ULC Approved Uniform and Model Acts**

At the 125<sup>th</sup> Annual Conference of the national ULC held in 2016 at Stowe, Vermont the following Uniform and Model Acts were promulgated: Uniform Employee and Student Online Privacy Protection Act; Uniform Family Law Arbitration Act; Revised Uniform Unclaimed Property Act; Uniform Unsworn Domestic Declarations Act; Uniform Wage Garnishment Act; and an Amendment to the Revised Uniform Law on Notarial Acts.

The growing use of social media has implications in both employment and educational contexts. Employers and educational institutions now sometimes ask current and/or prospective employees and students to grant the employer or school access to social media or other name and password protected accounts. The Uniform Employee and Student Online Privacy Protection Act addresses both employers' access to employees or prospective employees' social media and other online accounts accessed via username and password or other credentials of authentication as well as educational institutions' access to students' or prospective students' similar online accounts.

State laws vary when it comes to arbitrating family law matters such as spousal support, division of property, child custody, and child support. The Uniform Family Law Arbitration Act standardizes the arbitration of family law. It is based in part on the Revised Uniform Arbitration Act, though it departs from the RUAA in areas in which family law arbitration differs from commercial arbitration, such as: standards for arbitration of child custody and child support; arbitrator qualifications and powers; protections for victims of domestic violence. This Act is intended to create a comprehensive family law arbitration system for the states.

The ULC first drafted uniform state legislation on unclaimed property in 1954. Since then, revisions have been promulgated in 1981 and again in 1995. Many technological developments in recent years as well as new types of potential unclaimed property, such as gift cards, are not addressed in the most current uniform act. The Revised Uniform Unclaimed Property Act updates provisions on numerous issues, including escheat of gift cards and other stored-value cards, life insurance benefits, securities, dormancy periods, and use of contract auditors.

The Uniform Unsworn Domestic Declarations Act builds upon the Uniform Unsworn Foreign Declarations Act, which covers unsworn declarations made outside the United States. This new Uniform Act permits the use of unsworn declarations made under penalty of perjury in state courts when the declaration was made inside the U.S. For those states that have not yet enacted the UUFDA, a new act – the Uniform Unsworn Declarations Act – will be available that will essentially combine both the UUFDA and the Uniform Unsworn Domestic Declarations Act into one comprehensive act.

Currently, every state has a different wage garnishment law and process. This means that employers who do business across multiple states must know and abide by a different, and often complex, law for each jurisdiction. If employers make processing errors calculating garnishments, they may face civil penalties. The Uniform Wage Garnishment Act seeks to simplify and clarify wage garnishments for employers, creditors, and consumers by standardizing how the wage garnishment process works and offering plain-language notice and garnishment calculation forms.

The Amendment to the Revised Uniform Law on Notarial Acts authorizes notaries public to perform notarial acts in the state in which they are commissioned for individuals who are located outside the United States. The amendment is optional for the states. The amendment requires the use of audio- and video-technologies for real-time communication, and requires the notary to record the interaction. It authorizes the commissioning agency to regulate the technologies used. The act of the individual in making the statement or signing the record must not be prohibited in the foreign country in which the individual is physically located. The certificate affixed by the notary to the record must indicate that the notarial act took place while the individual was located in a foreign country.

Other drafts debated at the ULC annual meeting, but not scheduled for final approval, include the Limited Liability Company Protected Series Act, the Non-Parental Rights to Child Custody and Visitation Act, the Divided Trusteeship Act, the Amendments to the Uniform Parentage Act, the Revised Uniform Guardianship and Protective Proceedings Act, the Regulation of Virtual Currency Businesses Act, and the Criminal Records Accuracy Act.

In addition to the completed acts, the Drafting Committee on Unauthorized Disclosure of Intimate Images, and three new Study Committees, including the Study Committee on Installment Land Contracts, Study Committee on an Anti-SLAPP Act, and the Study Committee to Amend the Revised Uniform Law on Notarial Acts, have been formed:

The Drafting Committee on Unauthorized Disclosure of Intimate Images will create civil remedies relating to the unauthorized disclosure of intimate images. The inherent potential for unauthorized disclosure of intimate images over the internet and other technologies present a problem that may transcend state boundaries. Only nine states have enacted laws that provide a private right of action against the person making the unauthorized posting. The intentional public dissemination of intimate images without the subject's consent is not clearly a tort in some jurisdictions.

The Study Committee on Installment Land Contracts will study the need for and feasibility of state legislation on installment land contracts, including the nature of the rights and responsibilities held by a purchaser and a seller under an installment land contract, and the remedies available to the seller following purchaser default. Installment land contracts are effectively a form of mortgage substitute. In economic substance, the installment land contract is functionally comparable to a purchase money mortgage in which the seller provides financing of the purchase price. A uniform or model law on the characterization and enforcement of installment land contracts could provide clarity in an area of law and practice with great practical significance for homebuyers who cannot qualify for institutional mortgage financing.

The Study Committee on an Anti-SLAPP Act will study the need for and feasibility of drafting a uniform or model Anti-SLAPP law. The acronym SLAPP stands for Strategic Lawsuit Against Public Participation, meaning a lawsuit of dubious merit brought for the purposes of silencing, intimidating, or retaliating against a defendant who has done nothing more than exercise their lawful rights to free speech and freedom to petition or similar rights. Anti-SLAPP laws seek to protect such rights by allowing such a defendant to make a motion at the outset of the litigation for an expedited review by the Court, with the burden shifted to the plaintiff to show that the lawsuit is meritorious and that the plaintiff will likely prevail at trial.

The Study Committee to Amend the Revised Uniform Law on Notarial Acts will study the need for and feasibility of further amendment to the Revised Uniform Law on Notarial Acts to authorize American notaries to perform notarial acts where the individual appears before the notary by audio, video, or through the use of other technologies.

More detailed information on the new acts and committees can be found at ULC's website, [www.uniformlaws.org](http://www.uniformlaws.org).

#### V. Conclusion

The 2017 Annual Conference will meet in San Diego, California from July 14-20. In the interim, Study and Drafting Committee meetings of the national ULC will meet on various weekends throughout the fall and spring. Links to the meeting schedule may be found at ULC's website, [www.uniformlaws.org](http://www.uniformlaws.org). More information on MCUSL may be found at MCUSL's website, <http://council.legislature.mi.gov/CouncilAdministrator/MCUSL>. The 2018 Annual Conference has been scheduled to meet in Louisville, KY from July 20-26.

RESPECTFULLY SUBMITTED, on January 7, 2017.

MICHIGAN COMMISSION ON UNIFORM STATE LAWS

By 

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Attachments