

**2016-17 ANNUAL REPORT
OF THE
MICHIGAN COMMISSION ON UNIFORM STATE LAWS**

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

FORWARD

The Michigan Commission on Uniform State Laws (MCUSL) respectfully submits this annual report for FY 2016-17.

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. Vanessa Guerra, Michigan House of Representatives, Saginaw (2017)
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:

James J. White, University of Michigan Law School, Ann Arbor (1997)

2016-17 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 116 uniform laws, the first being the Uniform Acknowledgments Act in 1895, and the most recent being the Uniform Voidable Transfers Act in 2016. Recent adoptions of uniform laws by the Michigan legislature include:

Uniform Voidable Transfers Act (formerly UFTA) – 2016 – 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

A full listing of legislative adoptions in Michigan from 1892 through 2017, to date, is attached to this report. At the close of FY 2016-17, active legislation introduced in the current session to adopt uniform laws, still pending before the legislature at that time, includes the following:

Uniform Commercial Real Estate Receivership Act – House Bill 4471, Rep. Brandt Iden
Uniform Electronic Legal Materials Act – House Bill 5653, Rep. Robert Kosowski

Draft Michigan form legislation for the following uniform acts has also been provided to representatives of relevant sections or committees of the State Bar of Michigan, with a request for review:

Uniform Assignment of Rents Act
Uniform Business Organizations Code

The Uniform Commercial Real Estate Receivership Act was introduced as a two-bill package by Rep. Iden, with HB 4471 as the main bill. Receivership is an equitable remedy allowing a court to oversee the orderly management and disposition of property subject to a lawsuit. Although the remedy is not new, there is no standard set of receivership rules and the courts of different states have applied widely varying standards. This Uniform Commercial Real Estate Receivership Act applies to receiverships involving commercial real estate, and provides a standard set of rules for courts to apply. It will result in greater predictability for litigants, lenders, and other parties doing business with a company subject to receivership. After the close of the fiscal year, the legislation was passed by both chambers and presented to the Governor (enactment pending).

The Uniform Electronic Legal Materials Act was introduced by Rep. Robert Kosowski, with companion legislation introduced by Rep. Klint Kesto. 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. This session's legislation was altered from last session's introduction to include the option for the Legislative Council Administrator to enter into an agreement with the State Court Administrative Office to include court documents within the act's coverage. Rep. Kesto's companion bill, also new this session, makes necessary changes to the existing Legislative Council Act to accommodate adoption of the Uniform Electronic Legal Materials Act. After the close of the fiscal year, the legislation passed the House of Representatives and awaits further action in the Senate.

The Uniform Assignment of Rents Act establishes a comprehensive statutory model for the creation, perfection, and enforcement of security interests in rents. The Uniform Business Organizations Code (UBOC) offers an integrated, organized statutory structure for uniform unincorporated business and nonprofit entity acts. The UBOC uses the same hub-and-spoke structure used in the Uniform Commercial Code. Article 1 of the UBOC is the "Hub," which contains provisions common to all other Articles. Articles 2 through 8 of the Code are the "spokes." These spokes include: the Model Entity Transactions Act (2007) (Last Amended 2013), Uniform Partnership Act (1997) (Last Amended 2013), Uniform Limited Partnership Act (2001) (Last Amended 2013), Uniform Limited Liability Company Act (2006) (Last Amended 2013), Uniform Limited Cooperative Association Act (2007) (Last Amended 2013), Uniform Unincorporated Nonprofit Association Act (2008) (Last Amended 2011), and Uniform Statutory Trust Entity Act (2009) (Last Amended 2013).

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 serves on the Executive Committee of the national ULC and serves as Treasurer of the national organization, having been re-elected in 2017 by that body. He concluded his service on the Drafting Committee on the Regulation of Virtual Currency Businesses Act with the adoption by national ULC of the final act, and serves on the Drafting Committee to Revise UCC Articles 1, 3, and 9. He also serves as the chair of the national ULC's Standing Committee on Technology and as chair of its Drafting Committee on Highly Automated Vehicles. 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 also concluded his service on the Drafting Committee on the Regulation of Virtual Currency Businesses Act with the adoption by national ULC of the final act

in 2017. 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. Rep. Klint Kesto is working with former MCUSL appointee Rep. Robert Koswoski toward the adoption of the Uniform Electronic Legal Materials Act, and all of the legislative members continue to assist with the introduction and passage of uniform acts in Michigan.

Going forward, MCUSL will continue to work with ULC to identify opportunities for 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. 2017 ULC Approved Uniform and Model Acts

At the 126th Annual Conference of the national ULC held in 2016 at San Diego, California seven new Uniform and Model Acts were promulgated, as follows:

The Uniform Regulation of Virtual Currency Businesses Act creates a statutory framework for regulating virtual currency business activity, which includes businesses engaged in the exchange of virtual currencies for cash, bank deposits, or other virtual currencies; the transfers of virtual currency between customers; and certain custodial or fiduciary services. The act includes provisions on licensing requirements; reciprocity; consumer protection; cybersecurity; anti-money laundering; and supervision of licensees.

An increasingly common practice in contemporary estate planning and asset management is the naming of a trustee that is given custody of the trust property, but with one or more of the investment, distribution or administration functions of the trusteeship being given to a person or persons who are not formally designated as trustees. This is the problem of divided trusteeship. Much uncertainty exists about the fiduciary status of nontrustees who have control or potential control over a function of trusteeship and about the fiduciary responsibility of trustees with regard to actions taken by such nontrustees. The **Uniform Directed Trust Act** addresses the division of a trustee's traditional responsibilities among several specialists. The Act clarifies the duties and responsibilities of both directed trustees and those who have the power to direct them.

The **Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act** is an updated version of the Uniform Guardianship and Protective Proceedings Act, originally promulgated in 1969 as part of the Uniform Probate Code, and revised in 1982 and 1997. This new version is a modern guardianship statute that better protects the individual rights of both minors and adults subject to a guardianship or conservatorship order. The act encourages courts to use the least-restrictive means possible and includes a set of optional forms to help courts implement its provisions effectively.

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

The **Uniform Protected Series Act** provides a comprehensive framework for the formation and operation of a protected series limited liability company. A protected series LLC has both “horizontal” liability shields, as well as the standard “vertical” liability shield. About 15 jurisdictions have some kind of series statute, but they vary widely. The Act integrates into any existing LLC Act, whether it is the Uniform Limited Liability Company Act or not.

Veterans’ courts have been created in many judicial districts around the United States to ensure that veterans in the criminal justice system receive the treatment and support necessary to rehabilitate them into being productive members of society. Very few states have legislation on veterans’ courts, but many local judicial districts have effectively created veterans’ courts by rule or practice. The **Model Veterans Treatment Court Act** provides guidelines for the establishment of veterans’ courts while permitting substantial local discretion necessary to accommodate circumstances in different communities. The Act provides that participation in the veterans’ treatment program requires approval of the prosecutor, but expressly reserves to the court all power regarding punishment including probation, conditions of probation, and consequences of violation of terms of participation in the treatment program. This Act can also be implemented as a set of court rules.

Other drafts which were debated at the ULC annual meeting include the Criminal Records Accuracy Act, the Non-Parental Child Custody and Visitation Act, the Uniform Fiduciary Principal and Income Act, Amendments to Uniform Commercial Code Articles 1, 3, and 9, and the Civil Remedies for Unauthorized Disclosure of Intimate Images Act.

In addition to the completed acts, the Executive Committee of the Uniform Law Commission (ULC) authorized the appointment of four new drafting committees and three new study committees, including:

Drafting Committee on UCC Article 8 Companion Act to the Uniform Regulation of Virtual Currency Businesses Act. This committee will draft a UCC Article 8 related statute as a companion act to the Uniform Regulation of Virtual Currency Businesses Act based on the current Section 502 of the Act.

Drafting Committee to Amend the Revised Uniform Law on Notarial Acts. This committee will draft amendments to the Revised Uniform Law on Notarial Acts to authorize remote notarization without geographic limits on the location of the signer and to address interstate recognition of notarial acts.

Drafting Committee to Regulate the Management of Funds Raised Through Crowdfunding Efforts. This committee will draft a uniform or model act to regulate the management of funds raised

through crowdfunding efforts to require transparency, and to provide civil sanctions and remedies for non-compliance.

Drafting Committee on Anti-SLAPP (Strategic Lawsuit Against Public Participation) Legislation. This committee will draft an Anti-SLAPP Act. The drafting committee will address the breadth of the act; limitations, if any, to be imposed after a motion to strike is made; the standard of review relating to the motion to strike; appeal rights from the grant or denial of a motion to strike; and whether the court should award attorney's fees and costs.

Study Committee on Garnishment of Wages in Bank Accounts. This committee will study the need for and feasibility of state legislation specifically on garnishment of wages in bank accounts or more generally on exemption of asset classes from claims of creditors.

Study Committee on Adverse Possession. This committee will study the need for and feasibility of state legislation on modifications to the law of adverse possession in light of modern technology affecting boundary disputes, changing public perceptions, and recent developments in the law.

Study Committee on Data Breach Notification. This committee will study the need for and feasibility of state legislation on data breach notification. The committee will consider the personal information that should be protected and the methods and manner of notice.

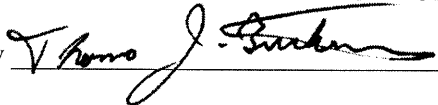
More detailed information on the new acts and committees can be found at ULC's website, www.uniformlaws.org.

V. Conclusion

The 2018 Annual Conference will meet in Louisville, Kentucky from July 20-26. 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. More information on MCUSL may be found at MCUSL's website, <http://council.legislature.mi.gov/CouncilAdministrator/MCUSL>. The 2019 Annual Conference has been scheduled to meet in Anchorage, Alaska from July 12-18.

RESPECTFULLY SUBMITTED, on February __, 2017.

MICHIGAN COMMISSION ON UNIFORM STATE LAWS

By 

Cc: Members, Michigan Commission on Uniform State Laws
Craig Ryan, Chief of Staff, Senate Majority Leader Arlan Meekhof
Dan Pero, Chief of Staff, Speaker Tom Leonard
Susan Cavanagh, Legislative Council Staff Specialist
Richard D. McLellan, Chair, Michigan Law Revision Commission
Liza M. Karsai, Executive Director, Uniform Law Commission

Attachments