

To: New Jersey Law Revision Commission
From: Laura C. Tharney, Executive Director
Re: Current work of the ALI and ULC
Date: November 7, 2022

MEMORANDUM

The current work of The American Law Institute and the Uniform Law Commission were mentioned at the Commission's October 20, 2022, meeting. The following summary information is provided to update the Commission regarding the current projects of both organizations.

The American Law Institute

The American Law Institute (ALI) was founded in 1923 and describes itself as “the leading independent organization in the United States producing scholarly work to clarify, modernize, and otherwise improve the law.”¹ The ALI's website describes its work in the following manner:

What are ALI Projects?

The Institute's mission is “to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work.” It achieves this goal through the development of Institute projects, which are categorized as Restatements, Codes, or Principles.

Restatements are primarily addressed to courts and aim at clear formulations of common law and its statutory elements, and reflect the law as it presently stands or might appropriately be stated by a court. Although Restatements aspire toward the precision of statutory language, they are also intended to reflect the flexibility and capacity for development and growth of the common law. That is why they are phrased in the descriptive terms of a judge announcing the law to be applied in a given case rather than in the mandatory terms of a statute.

Principles are primarily addressed to legislatures, administrative agencies, or private actors. They can, however, be addressed to courts when an area is so new that there is little established law.

Codes (model or uniform) are addressed to legislatures with a view toward legislative enactment. They are written in prescriptive statutory language.²

¹ The American Law Institute, About ALI, <https://www.ali.org/about-ali/> (last visited October 31, 2022).

² The American Law Institute, About ALI, How the Institute Works, <https://www.ali.org/about-ali/how-institute-works/> (last visited October 31, 2022).

The ALI explains that it “employs a careful, deliberative process in the drafting of its projects and the approval of drafts for publication. The primary projects and publications are Restatements of the Law, Principles of the Law, the Model Penal Code, and the Uniform Commercial Code (with the Uniform Law Commission).”³

The “Current Projects” page of the ALI’s website identifies the following projects:

<i>Title</i>	<i>Type</i>
Children and the Law*	Restatement of the Law
Compliance and Enforcement for Organizations	Principles of the Law
Conflict of Laws	Restatement of the Law
Constitutional Torts	Restatement of the Law
Consumer Contracts*	Restatement of the Law
Copyright	Restatement of the Law
Corporate Governance	Restatement of the Law
Data Economy	Principles for a [sic]
Government Ethics*	Principles of the Law
The U.S. Law of International Commercial and Investor-State Arbitration	Restatement of the Law
Policing	Principles of the Law
Property	Restatement of the Law
Sentencing	Model Penal Code
Sexual Assault and Related Offenses*	Model Penal Code
Student Sexual Misconduct: Procedural Frameworks for Colleges and Universities	Principles of the Law
Torts: Concluding Provisions	Restatement of the Law
Torts: Defamation and Privacy	Restatement of the Law
Torts: Intentional Torts to Persons	Restatement of the Law
Torts: Remedies	Restatement of the Law
Uniform Commercial Code*	Model Code ⁴

*The NJLRC has worked on some aspect of these areas in recent years.

Uniform Law Commission

The Uniform Law Commission (ULC, formerly known as the National Conference of Commissioners on Uniform State Laws), established in 1892, explains that it “provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical

³ The American Law Institute, Current Projects, <https://www.ali.org/projects/> (last visited October 31, 2022).

⁴ *Id.*

areas of state statutory law.”⁵ The criteria established by the ULC for proposing and considering uniform and model acts, includes language explaining that:

Every act drafted by the ULC should be guided by the following considerations:

(1) Whether there a need for an act on the subject.

(2) Whether there is a reasonable probability that an act, when approved, either will be accepted and enacted into law by a substantial number of states or, if not, will promote uniformity indirectly. In other words, the act’s preparation is likely to be a practical step toward uniformity of state law or at least toward minimizing the diversity of state law.

(3) Whether the subject of the act must be such that uniformity of law among states will produce significant benefits to the public through improvements in the law. Such public benefits include (i) facilitating interstate economic, social, or political relations; (ii) responding to a need common to many states as to which uniform legislation may be more effective, more efficient, and more widely and easily understood; and (iii) avoiding significant disadvantages likely to arise from diversity of state law (for example, the tendency of diverse laws to mislead, prejudice, inconvenience, or otherwise adversely affect the citizens of the states in their activities or dealings in other states or with citizens of other states or in moving from state to state).

(4) Whether the act will maintain the integrity of well-balanced and well-settled law in areas traditionally governed by the states.⁶

The ULC’s website identifies acts added to the ULC’s slate of work in recent years. The list below is excerpted from the ULC website and contains the name and year of the projects as well as the brief descriptions that follow the names of the acts on the relevant web page. The bracketed information contained in the list below is not included on the ULC’s webpage but has been added to indicate work done or considered by the NJLRC in recent years. The ULC’s recent projects (listed in reverse chronological order) are as follows:

Alcohol Direct-Shipping Compliance Act - 2022

This act enhances each state’s ability to detect and stop unlawful direct-to-consumer (DTC) shipments of alcoholic beverages to the state’s residents.

⁵ Uniform Law Commission, About ULC, Overview, <https://www.uniformlaws.org/aboutulc/overview> (last visited October 31, 2022).

⁶ Uniform Law Commission, Projects, Overview, New Project Criteria, <https://www.uniformlaws.org/projects/overview/newprojectcriteria> (last visited October 31, 2022).

Currently, 47 states permit DTC wine shipments by wineries, and approximately a dozen states permit DTC shipments of other alcoholic beverages....

Telehealth Act - 2022

In recent years, improvements in telecommunication technologies have transformed the delivery of health care. The arrival of the Covid-19 pandemic greatly expanded patient demand for telehealth services. To meet patient needs, many states chose to modify licensure and other requirements that...

Electronic Estate Planning Documents Act - 2022

This new act will fill a gap in the law regarding the execution of certain estate planning documents, including trusts and powers of attorney. The Uniform Electronic Transactions Act (UETA) authorizes the electronic execution of bilateral contracts if the parties to a transaction agree. The...

UCC, 2022 Amendments to - 2022

The 2022 amendments to the Uniform Commercial Code address emerging technologies, providing updated rules for commercial transactions involving virtual currencies, distributed ledger technologies (including blockchain), artificial intelligence, and other technological developments. The...

Law on Notarial Acts, Revised (2021 update) – 2021 [The NJLRC worked in this area based on NJ law and this Act, a version of it was enacted in NJ in 2021.]

The Revised Uniform Law on Notarial Acts (2021) governs actions by a notary public, including taking an acknowledgment, administering an oath or affirmation, witnessing or attesting a signature, and certifying a copy of a document. The Act allows electronic notarization using technologies....

Common Interest Ownership Act (2021 update) – 2021 [The NJLRC worked on this Act, a version of it was conditionally vetoed by the Governor in 2020.]

The Uniform Common Interest Ownership Act governs the formation, management, and termination of common interest communities, including condominiums, homeowner associations, and real estate cooperatives. The 2021 amendments to the Act update it to address recent legal and technological developments.

Community Property Disposition at Death Act - 2021

Uniform Community Property Disposition at Death Act (UCPDDA). Community property acquired by a married couple retains its character as community property even when the couple relocates to reside in a non-community property state. This result creates potential distribution problems at the death...

College Athlete Name, Image, or Likeness Act - 2021

Until recently, college athletes have not been allowed to receive compensation for the use of their name, image, or likeness (NIL) while still maintaining athletic eligibility. The Uniform College Athlete Name, Image, or Likeness Act allows college athletes to earn compensation for the use of...

Personal Data Protection Act - 2021

The Uniform Personal Data Protection Act applies fair information practices to the collection and use of personal data from consumers by business enterprises. The Act provides a reasonable level of consumer protection without incurring the compliance and regulatory costs associated with some...

Cohabitants' Economic Remedies Act - 2021

The rate of nonmarital cohabitation within the U.S. is increasing rapidly. Today, states have no consistent approach for addressing whether and how cohabitants can enforce contract and equitable claims against each other when the relationship ends. The Uniform Cohabitants' Economic Remedies...

Restrictive Employment Agreement Act - 2021

This Act regulates restrictive employment agreements, which are agreements that prohibit or limit an employee or other worker from working after the work relationship ends. Uniformity in this area of the law benefits both employers and employees by enhancing clarity and predictability in our...

Interstate Enforcement of Domestic Violence Protection Orders Act – 2021 [The NJLRC worked on the Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act, which was released as a Final Report in 2021.]

The Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (UIEDVPOA) establishes procedures that enable courts to recognize and enforce valid domestic protection orders issued in other jurisdictions. For more information about enacting the UIEDVPOA, please contact ULC...

UCC Article 9, Secured Transactions, Amendments to 9-406 and 9-408 - 2020

Amendments to UCC Article 9 Sections 9-406 and 9-408 modify the anti-assignment override provisions, thereby excluding security interests in ownership interests of general partnerships, limited partnerships, and limited liability companies from the override provisions.

Public Expression Protection Act – 2020 [In 2009, the NJLRC considered and declined to work on the issue of SLAPP suits (brought to the Commission's attention by Professor Frank Askin of the Rutgers School of Law, Newark, and Renee Steinhagen, Executive Director of the New Jersey Appleseed Public Interest Law Center).]

The Uniform Public Expression Protection Act is designed to prevent an abusive type of litigation called a “SLAPP,” or “strategic lawsuit against public participation.” A SLAPP may be filed as a defamation, invasion of privacy, nuisance, or other type of claim, but its real purpose is to silence...

Easement Relocation Act - 2020

The Uniform Easement Relocation Act allows the owner of real estate burdened by an easement to obtain a court order to relocate the easement if the relocation does not materially impair the utility of the easement to the easement holder, or the physical condition, use, or value of the benefited...

Pretrial Release and Detention Act – 2020 [In 2014, NJ enacted the New Jersey Criminal Justice Reform Act (Bail Reform Act).]

The Uniform Pretrial Release and Detention Act (UPRDA) creates a comprehensive procedural framework for release and detention determinations. UPRDA provisions address: (1) the use of citations in lieu of arrest for minor offenses; (2) a time limit on when a hearing must be conducted for an...⁷

Conclusion

Commission Staff annually reviews ULC Acts after the ULC’s annual meeting, generally focusing on Acts designated as Targets and Targets to Complete. In addition, Staff checks the work of the ALI and the ULC when working on any project to determine whether either organization is working, or has worked, on the issue under consideration by the Commission or in a related area. There are also circumstances under which the work of either organization is brought to Staff’s attention for consideration.

Staff is happy to provide a memorandum to the Commission in this format annually — or more frequently if the Commission prefers — so that the Commission, as well as Staff, is aware of the ongoing work of the two organizations identified in N.J.S. 1:12A-8(c) and can more easily direct Staff to focus on a particular Act if it chooses to do so.

⁷ Uniform Law Commission, Acts, Current Acts, <https://my.uniformlaws.org/search?s=tags%3a%22Uniform+Act%22&executesearch=true&rf=%5E> (last visited October 31, 2022).