

To: New Jersey Law Revision Commission
From: Laura C. Tharney, Executive Director
Re: Administrative Update – Consideration of the Work of the Uniform Law Commission
Date: June 6, 2022

MEMORANDUM

It has been some time since Commission staff discussed with the Commission our approach to the consideration of the work of the Uniform Law Commission (ULC). This Memorandum is provided to summarize our review of, and our work on, acts prepared by the ULC.

Statutory Mandate of the NJLRC

The statute that created the current New Jersey Law Revision Commission (N.J.S. 1:12A-1 – 1:12A-9) provides relevant guidance regarding the powers and duties of the Commission at N.J.S. 1:12A-8 subsection c. (the full text of Chapter 12A is contained in the Appendix below).

N.J.S. 1:12A-8. Powers and duties

The commission shall promote and encourage the clarification and simplification of the law of New Jersey and its better adaption to present social needs, secure the better administration of justice and carry on scholarly legal research and work. It shall further be the duty of the commission to:

* * *

c. Receive and consider suggestions and recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally, for the improvement and modification of the general and permanent statutory law of the State, and to bring the law of this State, civil and criminal, and the administration thereof, into harmony with modern conceptions and conditions; and...¹

* * *

Work of the Uniform Law Commission

The website of the Uniform Law Commission states that the “Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws), established in 1892, provides states with non-partisan, well-conceived and well-drafted

¹ N.J. STAT. ANN. § 1:12A-8 (West 2022).

legislation that brings clarity and stability to critical areas of state statutory law.”² The ULC “is a non-profit unincorporated association, comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.”³

The state uniform law commissioners come together as the Uniform Law Commission for one purpose—to study and review the law of the states to determine which areas of law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable.⁴

“The uniform law commissioners participate in drafting specific acts; they discuss, consider, and amend drafts of other commissioners; they decide whether to recommend an act as a uniform or a model act; and they work toward enactment of ULC acts in their home jurisdictions.”⁵

A uniform act is one that seeks to establish the same law on a subject among the various jurisdictions...

The ULC also promulgates “model” acts. An act may be designated as “model” if the act’s principal purposes can be substantially achieved even if the act is not adopted in its entirety by every state.⁶

Since it began work, the ULC has “produced more than 300 uniform acts.”⁷ The ULC “welcomes proposals from state bars, state government entities, private groups, uniform law commissioners, and private individuals.”⁸ If a recommendation is approved, a ULC Drafting Committee is created and a “Reporter” (drafter) is hired who is an expert in the particular field of law.⁹

Every ULC draft act “receives a minimum of two years of consideration,” in a process that involves drafting committees meeting “throughout the year in an open process that draws on the expertise of state-appointed commissioners, legal experts, and advisors and observers” and all of the committee drafts “are posted on the ULC website for review and comment.”¹⁰

“Draft acts are submitted for initial debate of the entire Uniform Law Commission at an

² Uniform Law Commission, About Us, <http://www.uniformlaws.org/aboutulc/overview> (last visited May 26, 2022).

³ Uniform Law Commission, Organization, <http://www.uniformlaws.org/aboutulc/overview> (last visited May 26, 2022).

⁴ *Id.*

⁵ *Id.*

⁶ Uniform Law Commission, FAQs, <https://www.uniformlaws.org/aboutulc/faq> (last visited May 26, 2022).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

annual meeting” and each act must be considered – line-by-line and section by section - at no less than two annual meetings.¹¹ Once an act is approved at an annual meeting, “the final step is a vote by the states, with each state having one vote”; a majority of the states that are present, and no fewer than twenty states, must approve an act.¹² After final approval, acts are submitted for consideration by state legislatures.¹³

The ULC describes its recent achievements on its website as follows:

The ULC, working in conjunction with the ALI, continues its decades-long project to keep the Uniform Commercial Code (UCC) up-to-date and in line with modern commercial practices. Both UCC Article 9 and UCC Article 4A have been recently amended, and now enacted in nearly every state. A new drafting committee to amend UCC Articles 1, 3, and 9 will begin work to revise those Articles to accommodate electronic documentation practices in commercial mortgage transactions.

The ULC has approved important new legislation to combat human trafficking: the Uniform Act on the Prevention of and Remedies for Human Trafficking, a comprehensive law providing states with the key legal tools needed to end human trafficking.

The Revised Uniform Fiduciary Access to Digital Assets Act, approved in 2015, extends the traditional power of a fiduciary to manage tangible property to include management of a person’s digital assets. The act allows fiduciaries to manage digital property like computer files, web domains, and virtual currency, but restricts a fiduciary’s access to electronic communications such as email, text messages, and social media accounts, unless the original user consented in a will, trust, power of attorney, or other record.

The ULC continues its important work in family law, focusing legislative attention on such important statutes as the Uniform Child Custody Jurisdiction and Enforcement Act, the Uniform Interstate Family Support Act, the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act and the Uniform Child Abduction Prevention Act. An important new act – the Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act – provides for the enforcement of domestic violence protection orders issued by Canadian courts.¹⁴

¹¹ *Id.*; See also, Uniform Law Commission, Annual Meeting 2022, <https://www.uniformlaws.org/events/annualmeeting> (last visited May 26, 2022).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

Commission Consideration of ULC Acts

The Commission has considered all of the ULC work highlighted on the web page quoted above. The Commission has traditionally considered all ULC updates to the UCC, and did so most recently in 2012. In February 2022, the Commission formally concluded its work in the area of human trafficking that was begun in response to the ULC's Uniform Act on the Prevention of and Remedies for Human Trafficking. Although the Commission did not formally work on the Revised Uniform Fiduciary Access to Digital Assets Act, Commission staff was asked to, and did, review and participate in the consideration of that Act prior to its enactment in New Jersey in 2017.

In addition, the Commission released a Final Report on the Uniform Child Custody Jurisdiction and Enforcement Act in 1999 that was enacted in 2004. The Commission released a Final Report on the Uniform Interstate Family Support Act in 2014 that was enacted in 2016. The Commission also released a Final Report on the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act in 2016 that did not recommend enactment of the Act in New Jersey since existing law in New Jersey appeared to accomplish the goals of the Act. The Commission released a Final Report regarding the Uniform Child Abduction Prevention Act in 2008 that did not recommend enactment of the Act in New Jersey since the Act did not appear to provide authority beyond the current powers of New Jersey judges in custody matters.

Finally, the Commission recently released a Final Report recommending enactment of the Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act in New Jersey.

In addition to the ULC acts mentioned above, the ULC annually releases a Guide to Uniform and Model Acts. The most recently released Guide is the one for 2021-2022.

Pursuant to the Commission's statutory mandate, Commission staff reviews Acts that have been identified by the ULC as either Targets or Targets to Complete each year. As the ULC Guide explains, "Targets" are

uniform acts that are prioritized in a given legislative session based on several criteria, including:

- the relative importance of the subject matter to the ULC's overall portfolio;
- the likelihood of wide adoption, including a track record to that effect;
- the relative level of stakeholder support;
- the status of the act (are amendments or revisions currently being contemplated?);
- the suitability of the act for direct introduction without significant preparation or lead time;
- the implication of state subject matter jurisdiction (i.e. federal preemption) or involvement of the UCC.¹⁵

¹⁵ Uniform Law Commission, Guide to Uniform and Model Acts 2021-2022, Introduction, p. 1.

“Targets to Complete” “are uniform acts already adopted in a significant number of jurisdictions, where attaining national uniformity is deemed desirable and attainable.”¹⁶

The list of Targets and Targets to Complete for 2021-2022 and the Commission actions taken with regard to each is as follows:¹⁷

TARGET ACTS

Athlete Agents, Revised – NJLRC Final Report released in 2019 concluding work because the Legislature was actively working in the area

Deployed Parents Custody and Visitation – NJLRC Final Report released in 2013 did not recommend enactment because of recently enacted New Jersey law

Directed Trust – ULC Act released in 2017, currently under review by Commission staff

Electronic Legal Material – NJLRC Final Report released in 2016

Foreign-Country Money Judgments Recognition – no formal report was released by the NJLRC, but Commission staff worked to assist during process of enactment; enacted in 2017

Limited Liability Company – NJLRC Final Report released in 2011 in support of Senate bill; enacted in 2012

Limited Partnership – NJLRC Final Report released in 2015

Notarial Acts, Revised Law on – NJLRC Final Report released in 2014; enacted 2021

Partition of Heirs Property – NJLRC Final Report released in 2011 did not recommend enactment because of apparent sufficiency of existing New Jersey law

Power of Attorney – NJLRC Final Report released in 2010

Prevention of and Remedies for Human Trafficking – NJLRC limited Final Report released in 2016; work concluded in 2022

Unclaimed Property, Revised – NJLRC limited Final Report released in 2018

¹⁶ *Id.*

¹⁷ For the list, see *id.* at 43.

Unsworn Declarations – ULC Act released 2016, currently under review by Commission staff

Voidable Transactions – NJLRC Final Report released in 2015; enacted 2021

TARGETS TO COMPLETE

Adult Guardianship and Protective Proceedings Jurisdiction – NJLRC Final Report released in 2011; enacted 2012

UCC Article 4A, Funds Transfers – NJLRC Final Report released in 2012; enacted 2013

UCC Article 7, Warehouse Receipts, Bills of Lading, and Other Documents of Title - NJLRC Final Report released in 2012; enacted 2013

UCC Article 9, Secured Transactions - NJLRC Final Report released in 2012; enacted 2013

Fiduciary Access to Digital Assets, Revised - no formal report was released by the NJLRC, but Commission staff worked to assist during process of enactment; enacted in 2017

Interstate Depositions and Discovery – NJLRC Final Report released in 2012; Court Rules changed in response to Report

Partnership – NJLRC Final Report released in 2018 based on New Jersey case law, not the uniform act

Real Property Electronic Recording – there were several NJLRC Final Reports released in this area of the law: a Final Report regarding Electronic Records and Signatures was released in 1998; a Final Report regarding ESIGN and UETA was released in 2000 and enacted in 2001; a Final Report regarding Electronic Recording was released in 2003 and enacted in 2011; and a Final Report regarding Title Recordation was released in 2003 and enacted in 2011

Trust Code – NJLRC Final Report released in 2012; enacted in 2015

Conclusion

Unless otherwise directed, Commission staff will continue to review the work of the ULC as described above, and also to review additional acts that come to staff's attention in any number

of ways, including at the request of a member of the Commission, the Legislature, or the general public.

If the Commission would like staff to change the manner in which ULC acts are reviewed, staff will certainly do so.

Appendix

N.J.S. 1:12A-1. Creation

There is created in the Legislative Branch of State Government a commission to be known as the New Jersey Law Revision Commission.

Credits

L.1985, c. 498, § 1, eff. Jan. 21, 1986.

N.J.S. 1:12A-2. Membership

The commission shall consist of:

- a. The chairman of the Senate Judiciary Committee, or its successor, who shall serve while chairman of that committee;
- b. The chairman of the Assembly Judiciary, Law, Public Safety and Defense Committee, or its successor, who shall serve while chairman of that committee;
- c. The Deans, or their designees, of Rutgers Law School, Newark; Rutgers Law School, Camden; and Seton Hall Law School; and
- d. Four attorneys admitted to the practice of law in this State, two to be appointed by the President of the Senate, no more than one of whom shall be of the same political party, and two to be appointed by the Speaker of the General Assembly, no more than one of whom shall be of the same political party.

Credits

L.1985, c. 498, § 2, eff. Jan. 21, 1986.

N.J.S. 1:12A-3. Term of office

Of the members of the commission first appointed, two shall be appointed for terms of four years and two for terms of five years. Thereafter, members shall be appointed for terms of five years. Members shall serve until the appointment and qualification of their successors.

Credits

L.1985, c. 498, § 3, eff. Jan. 21, 1986.

N.J.S. 1:12A-4. Vacancies

Vacancies shall be filled for the unexpired terms in the same manner as the original appointments were made.

Credits

L.1985, c. 498, § 4, eff. Jan. 21, 1986.

N.J.S. 1:12A-5. Compensation; expenses

Members of the commission shall not receive any compensation, but they shall be reimbursed for expenses incurred in the performance of their duties.

Credits

L.1985, c. 498, § 5, eff. Jan. 21, 1986.

N.J.S. 1:12A-6. Chairman

The commission shall elect one member thereof as chairman, who shall serve for a term of two years.

Credits

L.1985, c. 498, § 6, eff. Jan. 21, 1986.

N.J.S. 1:12A-7. Personnel

The commission may appoint employees and consultants as may, in its judgment, be necessary, prescribe their qualifications and duties, and fix their compensation within the availability of amounts appropriated for that purpose.

Credits

L.1985, c. 498, § 7, eff. Jan. 21, 1986.

N.J.S. 1:12A-8. Powers and duties

The commission shall promote and encourage the clarification and simplification of the law of New Jersey and its better adaption to present social needs, secure the better administration of justice and carry on scholarly legal research and work. It shall further be the duty of the commission to:

a. Conduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it, for the purpose of discovering defects and anachronisms therein, and to prepare and submit to the Legislature, from time to time, legislative bills designed to

(1) Remedy the defects,

(2) Reconcile conflicting provisions found in the law, and

(3) Clarify confusing and excise redundant provisions found in the law;

b. Carry on a continuous revision of the general and permanent statute law of the State, in a manner so as to maintain the general and permanent statute law in revised, consolidated and simplified form under the general plan and classification of the Revised Statutes and the New Jersey Statutes;

c. Receive and consider suggestions and recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally, for the improvement and modification of the general and permanent statutory law of the State, and to bring the law of this State, civil and criminal, and the administration thereof, into harmony with modern conceptions and conditions; and

d. Act in cooperation with the Legislative Counsel in the Office of Legislative Services, to effect improvements and modifications in the general and permanent statutory law pursuant to its duties set forth in this section, and submit to the Legislative Counsel and the Division for their examination such drafts of legislative bills as the commission shall deem necessary to effectuate the purposes of this section.

Credits

L.1985, c. 498, § 8, eff. Jan. 21, 1986.

N.J.S. 1:12A-9. Annual report

The commission shall report annually to the Legislature on or before February first in each year.

Credits

L.1985, c. 498, § 9, eff. Jan. 21, 1986.