

POTENTIAL RECOMMENDATIONS OF THE NORTH DAKOTA COMMISSION ON UNIFORM STATE LAWS - 2015 LEGISLATIVE SESSION

North Dakota Century Code Section 54-55-01 establishes the North Dakota Commission on Uniform State Laws, consisting of:

- An individual engaged in the practice of law in this state (Mr. Jacob Rodenbiker);
- The dean or a full-time member of the faculty of the law school of the University of North Dakota (Mr. Bradley Myers);
- A law-trained judge of a court of record in this state (District Judge Gail Hagerty);
- A member of the House of Representatives (Representative Lawrence R. Klemin);
- A member of the Senate of the Legislative Assembly (Senator David Hogue);
- A member of the Legislative Council staff (Mr. Jay E. Buringrud);
- Any residents of this state who, because of long service in the cause of uniformity of state legislation, have been elected life members of the National Conference of Commissioners on Uniform State Laws (Mr. Owen L. Anderson, Mr. Jay E. Buringrud); and
- Any residents of this state who have been previously appointed to at least five years of service on the commission (Representative William E. Kretschmar, Mr. David Nething, Ms. Candace M. Zierdt).

Commissioners are required to attend the annual meeting of the National Conference of Commissioners on Uniform State Laws and to promote uniformity in state laws on those subjects where uniformity may be deemed desirable and practicable. Under Section 54-55-04, the commission may submit its recommendations for enactment of the uniform and model laws to the Legislative Management for its review and recommendation.

The commission meets during the annual meeting of the National Conference of Commissioners on Uniform State Laws and determines which uniform or model Acts to recommend to the next session of the Legislative Assembly.

As the result of its meeting on July 6, 2013, the commission is considering six uniform Acts that may be appropriate for recommendation to the Legislative Management for introduction during the 2015 legislative session:

- Uniform Act on Prevention of and Remedies for Human Trafficking. The Act was initiated as the result of a proposal by the American Bar Association (ABA) Center for Human Rights in 2010. The Act was approved by the national conference in July 2013 and by the ABA House of Delegates in August 2013. Attached is a summary of the Act.

- Uniform Powers of Appointment Act, approved by the national conference in 2013. A power of appointment is an estate planning tool that permits the owner of property to name a third party and give that person the power to direct to distribution of that property among some class of permissible beneficiaries. There is very little statutory law governing powers of appointment, and most attorneys rely on state court decisions. This Act basically codifies existing common law.
- Uniform Harmonized Business Organization Code. This Act harmonizes the language of all the uniform unincorporated entity acts, e.g., partnership, limited partnership, limited liability company, registered agents, etc., and permits their integration into a single code of entity laws.
- Amendments to the Uniform Child Custody Jurisdiction and Enforcement Act Pertaining to International Proceedings (1996 Hague Convention), approved by the national conference in 2013. The amendments are on hold until federal implementing legislation is drafted.
- Amendments to Uniform Commercial Code Article 4A (4A-108), which was approved by the national conference in 2012, was introduced in the 2013 legislative session, but which failed to pass the Senate. The amendment provides that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the Federal Electronic Funds Transfer Act. Without this amendment, neither state nor federal law will apply for transfers that may involve mistaken addresses or payees and other issues beyond the initial sending of the transfer. To date, the amendment has been enacted in 38 states, including Minnesota, South Dakota, and Montana.
- Uniform Asset Freezing Orders Act, which was approved by the national conference in 2012, was introduced in the 2013 legislative session, but which failed to pass the Senate. The Act creates a uniform process for issuance of court orders freezing the assets of a defendant in order to prevent a party from dissipating assets prior to judgment.

Please note the commission has not made a decision as to recommendations for the next legislative session. Specific recommendations are scheduled to be made by the commission during its 2014 meeting.

ATTACH:1



Prevention of and Remedies for Human Trafficking Summary

Uniform Act on Prevention of and Remedies for Human Trafficking

Summary

Described as modern-day slavery that victimizes over 27 million people worldwide, human trafficking is a global concern that affects the United States on federal, state, and local levels. By 2012, human trafficking had become the second fastest growing criminal activity in the United States, following drug trafficking.

In recognition of the human trafficking crisis and of the need to “create uniform state anti-human trafficking legislation,” the Uniform Law Commission, in response to a July 2010 proposal from the American Bar Association (ABA) Center for Human Rights, began its work directed against human trafficking. This new uniform state law—the Uniform Act on Prevention of and Remedies for Human Trafficking (UAPRHT)—received final approval at the ULC’s Annual Meeting in July 2013 and at the ABA’s House of Delegates in August 2013.

The UAPRHT offers a comprehensive approach that holds traffickers accountable and provides critical support for victims. The Act has been described as “a major milestone,” a “groundbreaking” act, and a “game-changer” by those working most closely with law enforcement and victims.

Working *with* states to combat human trafficking

The UAPRHT enables states to update and strengthen their existing state laws with state-of-the-art provisions that reflect emerging best practices. Some states have comprehensive criminal laws on most facets of human trafficking. Others have only minimal criminal provisions. Some states cover all forms of labor and sex trafficking and protect all children under eighteen. Others may cover only sex trafficking or fail to protect all children under eighteen. Some states cover all methods that traffickers use to keep their workers as virtual slaves. Others do not cover some methods that traffickers use to ensure their workers remain under their control and unable to escape, such as threatening to hurt or kill the workers’ loved ones, confiscating the workers’ immigration papers, or “debt bondage” (ensnaring victims in ever-rising and often-fictitious debt to be repaid through physical labor that can never satisfy the debt).

The three-pronged fight against human trafficking

The uniform act presents the three-pronged approach that law enforcement and victims’ advocates consider essential. Under the first prong, the uniform act seeks to prevent and to penalize the criminal conduct—trafficking, forced labor, and sexual servitude—at the core of human trafficking. Clear offenses are created that reflect the ways in which human traffickers operate: the act provides states the latitude to align the classification of offenses with existing state law. The act recognizes the forms of coercion that human traffickers use, including threats, force, debt bondage, abuse of the legal process, and use of a victim’s disability/mental impairment.

Section 1 (Short Title) and **Section 2** (Definitions) open the UAPRHT. In the Definitions section, key terms associated with human trafficking—including ‘coercion,’ ‘commercial sexual activity,’ and ‘debt bondage.’

Section 3 (Trafficking an Individual) offers a comprehensive definition tied to the act’s provisions on forced labor (**Section 4**) and sexual servitude (**Section 5**). Trafficking occurs when a person ‘knowingly recruits, transports, transfers, harbors, receives, provides, obtains, isolates, maintains, or entices an

individual.” The crime of forced labor occurs when a person knowingly uses coercion to compel an individual to provide labor or services (with enhanced penalties if the individual is a minor. Similarly, sexual servitude gives rise to an enhanced penalty when a minor is made available or maintained for the purposes of commercial sexual activity.

Two provisions (**Section 6: Patronizing a Victim of Sexual Servitude** and **Section 7: Patronizing a Minor**) augment existing criminal penalties in most states for patrons of commercial sexual activity. Section 6 imposes felony-level punishment when the defendant offers anything of value to engage in commercial sexual activity with an individual that the defendant knows is a victim of sexual servitude. When the defendant intends to engage in commercial sexual activity with a minor and offers anything of value, felony-level penalties are imposed.

Section 8 (Business Entity Liability) establishes liability when an entity knowingly engages in human trafficking or does not effectively stop an employee or agent from doing so (when the entity knows of the human-trafficking activity). The Act creates an aggravating circumstance when the defendant (under Section 3, 4, or 5) recruited, enticed, or obtained the victim from a shelter for human-trafficking victims or others (**Section 9**).

Courts shall order persons convicted under Section 3, 4, or 5 to pay restitution to the victim (**Section 10**). On motion, a court shall order forfeiture of real or personal property used in or derived from human trafficking activities under Section 3, 4, or 5 (**Section 11**). The statute of limitations under the UAPRHT is twenty years (**Section 12**).

Under its second prong, the uniform act provides essential protections for human trafficking victims. The identity and images of the victim and the victim’s family shall be kept confidential unless required for investigation or prosecution (**Section 13**). Consistent with states’ rape shield laws, the act prohibits evidence of the alleged victim’s past sexual behavior (**Section 14**).

Section 15 provides immunity to minors who are human trafficking victims and commit prostitution or nonviolent offenses directly resulting from being a victim and classifies such minors as children in need of services. Immunity for minors and the ability to seek vacation of convictions allow victims to rebuild their lives and restore their future. New York, Illinois, Minnesota, Tennessee, Vermont, Massachusetts, Connecticut, Kentucky, Louisiana, New Jersey, and Washington have ‘safe harbor’ laws; the Texas Supreme Court recently ruled that minors are victims, not criminals, in prostitution cases (The Polaris Project).

An affirmative defense to a charge of prostitution or other non-violent offense is created (**Section 16**). All victims may seek vacation of convictions for prostitution or other non-violent offenses that directly resulted from being a human-trafficking victim (**Section 17**). **Section 18** allows victims to bring a civil action against their traffickers.

The act’s third prong promotes partnerships in the fight against human trafficking, elevates public awareness, and fosters development of coordinated victim services. A human-trafficking council is created to develop a systematic plan to assist victims, collect human trafficking data, and promote awareness (**Section 19**). Public awareness signs and the national human trafficking hotline number are to be posted in locations where victims of human-trafficking are often found (**Section 20**). The act ensures that human-trafficking victims have access to a state’s crime victims’ compensation fund (**Section 21**). The act provides that law enforcement officers shall provide visa information to persons reasonably believed to be human-trafficking victims (**Section 22**). Finally, the act permits the state to grant funds—to the extent that funds are appropriated—to third-party providers of victim services (**Section 23**).

The advantages of uniformity

State enactment of this new uniform law will aid efforts to combat human trafficking in the United States. Uniformity will improve coordination and “promote collaboration among law enforcement officers, prosecutors, NGOs, lawyers, and other stakeholders in the investigation and prosecution of human trafficking,” as stated in the 2010 ABA Proposal to the ULC. The act discourages ‘forum-shopping’ by traffickers who seek to operate in jurisdictions with fewer and/or lower criminal sanctions. National and regional victim-advocates organizations will be better able to advise victims across the country.

During the drafting process, the ULC Drafting Committee worked closely with representatives of a wide range of organizations, including the ABA Center for Human Rights, the ABA Task Force on Human Trafficking, the ABA Section on Business Law, the Polaris Project, the National Association of Attorneys General, the National Violence Against Women Project, the U.S. Department of State Office to Monitor & Combat Trafficking in Persons, Shared Hope International, the Global Freedom Center, LexisNexis, and representatives from a number of state and local prosecutors' offices.

For information or assistance on this act, please contact Legislative Director Terry Morrow at 312-450-6620 or terry.morrow@uniformlaws.org