

# COMMISSION ON UNIFORM STATE LAWS

The North Dakota Commission on Uniform State Laws was established to promote uniformity in state laws on subjects on which uniformity is deemed desirable and practicable among the states.

North Dakota Century Code (NDCC) Section 54-55-01 specifies the membership of the commission. Members appointed by the Governor are David J. Hogue, Minot (the member who must be engaged in the practice of law); Judge Gail H. Hagerty, Bismarck (the member who must be a law-trained judge of a court of record); Candace M. Zierdt, University of North Dakota School of Law (the member who must be the dean or a full-time member of the faculty of the law school); and William E. Kretschmar, Venturia (a member who has been previously appointed to at least five years of service on the commission). The members appointed by the Legislative Council are Representative Lawrence R. Klemin, Bismarck (the member who must be a member of the House of Representatives), and Senator Dave Nething, Jamestown (the member who must be a member of the Senate), who was appointed to the commission to fill the vacancy created when Senator Thomas L. Trenbeath, Cavalier, resigned from the Legislative Assembly November 24, 2006. The member appointed by the Legislative Council chairman is Jay E. Buringrud, Bismarck (the member who must be a member of the Legislative Council staff). Owen L. Anderson, Binford (currently at the University of Oklahoma College of Law, Norman, Oklahoma), Frank F. Jestrab, Williston (currently in Gaithersburg, Maryland), and Michael B. Unhjem, Fargo, are members of the commission due to their status as life members of the national conference.

The commission chairman is William E. Kretschmar, and the commission secretary is Jay E. Buringrud.

## **NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS**

### **History of the National Conference**

In 1889 the New York Bar Association appointed a special committee on uniformity of laws. In 1890 the New York Legislature authorized the appointment of commissioners to examine subjects of national importance which seemed to show conflict among the laws of the states and to determine whether it would be advisable to invite the other states to send representatives to a convention to draft uniform laws to be submitted for approval and adoption of the several states. In 1890 the American Bar Association passed a resolution recommending that each state provide for commissioners to confer with the commissioners of other states on the subject of uniformity of legislation on certain subjects. In August 1892 the first National Conference of Commissioners on Uniform State Laws convened. By 1912 every state was participating in the national conference.

North Dakota has participated in the national conference since 1893.

### **Operation of the National Conference**

As it has developed in its 115 years, the national conference is a confederation of state interests. It arose out of the concerns of state government for the improvement of the law and for better interstate relationships. Its sole purpose is service to state governments and improvement of state laws.

The national conference is convened once a year. It meets for a period of eight days, usually in late July or early August. During the interim between annual meetings, drafting committees composed of commissioners meet to work on the drafts that are considered at the annual meeting. At each national conference the work of the drafting committees is read and debated. Each Act is considered over a substantial period of years. No Act becomes officially recognized as a uniform Act until the national conference is satisfied that the Act is ready for consideration by state legislatures. The Act is then put to a vote of the members from all of the states in attendance, during which each state's commissioners vote as a unit.

The governing body of the national conference is the Executive Committee, which is composed of the officers, certain ex officio members, and members appointed by the president of the national conference. Certain activities are conducted by standing committees. For example, the Committee on Scope and Program considers all new subject areas for possible uniform Acts, and the Legislative Committee superintends the relationships of the national conference to state legislatures.

A small staff located in Chicago operates the office of the national conference. The office handles meeting arrangements, publications, legislative liaison, and general administration for the national conference.

The national conference maintains relations with several organizations. Official liaison is maintained with the American Bar Association, the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures. Liaison and activities may be conducted with other associations as interests and activities necessitate.

### **Current Projects of the National Conference 2006-07 Drafting Committees**

The Executive Committee of the national conference appoints each drafting committee, with a directive to draft a proposal for a uniform law on the subject assigned to the committee. The Executive Committee selects subjects upon which uniformity is desirable and practicable, primarily based on recommendations of study committees. Drafting committees may be assigned to draft new uniform Acts, revise existing uniform Acts, or prepare amendments to existing uniform Acts. Drafting committees continue from appointment through final adoption of a uniform Act by the national conference, which may take several years. Current drafting committees are:

- Drafting Committee on a **Business Organizations Act**.
- Drafting Committee on a Uniform **Interstate Depositions and Discovery of Documents Act**.
- Drafting Committee on Rules Relating to the **Discovery of Electronically Stored Information Act**.
- Drafting Committee on a **Misuse of Genetic Information in Employment and Insurance Act**.
- Drafting Committee on a **Relocation of Children Act**.
- Drafting Committee to Revise Model **State Administrative Procedure Act**.
- Drafting Committee to Amend Uniform **Common Interest Ownership Act**.
- Drafting Committee to Amend Uniform **Cooperative Association Act**.
- Drafting Committee on a Uniform **Emergency Volunteer Health Practitioners Act**.
- Drafting Committee on a Uniform **Adult Guardianship and Protective Proceedings Jurisdiction Act**.
- Drafting Committee on a **Transfer on Death for Real Property Act**.
- Drafting Committee on a **Collaborative Law Act**.
- Drafting Committee on a Uniform **Collateral Sanctions and Disqualifications Act**.
- Drafting Committee to Amend **Intestacy Provisions of the Uniform Probate Code**.
- Drafting Committee on a **Certification of Unsworn Foreign Declarations Act**.
- Drafting Committee on a Uniform **Statutory Trust Entity Act**.

#### **2006-07 Study Committees**

The Committee on Scope and Program recommends to the Executive Committee areas of study for potential drafting projects. As a result of a study committee's recommendation, a drafting committee may be appointed to prepare a draft for consideration of the national conference. Current study committees are:

- Study Committee on **Disposal of Electronic Products**.
- Study Committee to Revise the Uniform **Law in Notarial Acts**.
- Study Committee on **Administrative Procedures for Interstate Compact Entities**.
- Study Committee on **DNA Evidence**.
- Study Committee on **Implementation of International Conventions and Treaties**.
- Study Committee on **Insurance Coverage for Substance Abuse-Related Injuries or Sickness**.
- Study Committee on **Law of Payment Systems**.
- Study Committee on **Regulation of Charities**.
- Study Committee on **Environmental Controls and Hazards Notice System**.
- Study Committee on the **Hague Convention on Protection of Children**.
- Study Committee on **Health Care Information Interoperability**.

- Study Committee on **Electronic Recording of Custodial Interrogations**.
- Study Committee on **Bank Deposits Act**.
- Study Committee on **Notice and Repair of Construction Defects**.

### **ACTIVITIES OF THE NORTH DAKOTA COMMISSION Members**

Owen L. Anderson is a member of the Drafting Committee to Amend Uniform Common Interest Ownership Act, a member of the Study Committee on Implementation of International Conventions and Treaties, a member of the Standby Committee on Uniform Real Property Electronic Recording Act, and a member of the Committee on International Legal Developments.

Gail H. Hagerty is a member of the Drafting Committee on a Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, and a member of the Standby Committee to Revise Uniform Anatomical Gift Act.

Lawrence R. Klemin is a member of the Drafting Committee on Rules Relating to the Discovery of Electronically Stored Information Act, a member of the Study Committee on DNA Evidence, and a member of the Study Committee to Revise the Uniform Law in Notarial Acts.

William E. Kretschmar is the North Dakota liaison member of the Legislative Committee.

Candace M. Zierdt is a member of the Committee on Liaison with American Indian Tribes and Nations.

#### **Meetings of the North Dakota Commission**

The North Dakota Commission on Uniform State Laws meets during the national conference to review activities, handle administrative matters, and determine whether to recommend legislative action regarding uniform Acts.

Generally, the commission reviews uniform Acts under consideration by the national conference and amendments to uniform Acts that have been enacted in North Dakota. The commission has followed a policy of recommending amendments recommended by the national conference for those uniform Acts enacted in North Dakota as a means to maintain the currency of those Acts. Under the constitution of the national conference, the Executive Committee can approve amendments, which are deemed approved by the national conference unless a commissioner files an objection. Generally, amendments approved by the Executive Committee cure technical errors. In limited instances the Executive Committee recommends substantive changes, which the committee describes fully when giving notice to the commissioners and the opportunity to object.

#### **114th National Conference (2005)**

The commissioners attended the 114th national conference (2005). The national conference recommended:

1. The Uniform Assignment of Rents Act.
2. The Uniform Certificate of Title Act.
3. The Uniform Debt-Management Services Act.
4. The Uniform Foreign Country Money Judgments Recognition Act.
5. The Model Entity Transactions Act.

### **115th National Conference (2006)**

The commissioners attended the 115th national conference (2006). The national conference recommended:

1. The Uniform Anatomical Gift Act.
2. The Uniform Child Abduction Prevention Act.
3. The Uniform Emergency Volunteer Health Practitioners Act.
4. The Limited Liability Company Act.
5. The Uniform Power of Attorney Act.
6. The Uniform Prudent Management of Institutional Funds Act.
7. The Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings Act.
8. The Model Registered Agents Act.

### **Considerations of the Commission**

Commission members considered several issues during discussion of possible recommendations to the Legislative Council and the Legislative Assembly. As a result of the commission's recommendations to the Legislative Assembly in 2005, the Legislative Council's interim Judiciary Committee was studying the feasibility and desirability of enacting Uniform Commercial Code Revised Article 1 and the Uniform Trust Code. If recommended by the interim Judiciary Committee, those Acts would be major recommendations for consideration during the 2007 legislative session. Commission discussion also noted that North Dakota had enacted the 1987 version of the Uniform Anatomical Gift Act in 1989, and the 2006 version of that Act could be a possibility for submission to the Legislative Assembly. Discussions were to the effect that the Uniform Emergency Volunteer Health Practitioners Act may need more study before being recommended to the North Dakota Legislative Assembly.

### **Recommendations of the Commission to the Legislative Council in 2005-06**

The commission is authorized by NDCC Section 54-55-04 to submit its recommendations for enactment of uniform and model laws to the Legislative Council for the Council's review and recommendation. Under Section 54-35-02, the Legislative Council is to receive, review, and make recommendations on uniform and model laws recommended to it by the commission. During the 2005-06 interim, the Legislative Council delegated its responsibility under that section to the interim Judiciary Committee.

As the result of commission discussions about the interim Judiciary Committee's current studies of Uniform Commercial Code Revised Article 1 and the Uniform Trust Code, the commission did not make specific recommendations to the committee during the 2005-06 interim.

As a result of the studies and recommendations of the interim Judiciary Committee and discussions with individual legislators, the Legislative Council introduced House Bill Nos. 1034 and 1035, and individual legislators introduced Senate Bill No. 2163:

1. **House Bill No. 1034 - Uniform Trust Code.** The Uniform Trust Code (2004) was recommended by the national conference in 2000, with amendments approved in 2001, 2003, and 2004. The code provides a comprehensive model for codifying the law on trusts, which is fundamentally common law. The Uniform Trust Code has been adopted in 18 states and the District of Columbia.
2. **House Bill No. 1035 - Uniform Commercial Code Revised Article 1.** Revised Article 1 was recommended by the national conference in 2001. The revised article updates the general provisions applicable to the Uniform Commercial Code to harmonize those provisions with recent updates of other articles of the code. Revised Article 1 has been adopted in 23 states and the United States Virgin Islands.
3. **Senate Bill No. 2163 - Uniform Anatomical Gift Act.** The Uniform Anatomical Gift Act (2006) was recommended by the national conference in 2006. The Act revises the 1968 and 1987 uniform Acts, which are the basis for organ donation throughout the United States. The revised Act reflects the current system of allocations of organs for transplant purposes. The Uniform Anatomical Gift Act (2006) has been adopted in seven states.

### **Action by the Legislative Assembly**

The Legislative Assembly approved the three bills enacting or updating current uniform Acts, and the bills have been signed by the Governor.

**House Bill No. 1034 - Uniform Trust Code.** The Legislative Assembly approved the bill on March 6, 2007, and the Governor signed the bill on March 13.

**House Bill No. 1035 - Uniform Commercial Code Revised Article 1 - General Provisions.** The Legislative Assembly approved the bill on March 5, 2007, and the Governor signed the bill on March 12.

**Senate Bill No. 2163 - Uniform Anatomical Gift Act.** The Legislative Assembly approved the bill on March 28, 2007, and the Governor signed the bill on April 9.