

**REPORT  
OF THE ILLINOIS DELEGATION TO  
THE NATIONAL CONFERENCE  
OF COMMISSIONERS  
ON UNIFORM STATE LAWS**



DECEMBER 15, 2004



State of Illinois  
**LEGISLATIVE REFERENCE BUREAU**  
112 State House, Springfield, IL 62706-1300  
Phone: 217/782-6625

December 15, 2004

The Honorable Rod Blagojevich  
Governor  
207 State House  
Springfield, Illinois 62706

Dear Governor Blagojevich:

On behalf of the Illinois delegation to the National Conference of Commissioners on Uniform State Laws, I submit the enclosed annual report for 2004.

Respectfully,

Richard C. Edwards  
Executive Director

Enclosure

Copy to:

President of the Senate  
Senate Minority Leader  
Secretary of the Senate  
Legislative Research Unit  
Members of the Legislative Reference  
Bureau Board  
Illinois Commissioners on Uniform  
State Laws

Speaker of the House  
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**STATE OF ILLINOIS  
REPORT OF THE ILLINOIS DELEGATION TO  
THE NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS (NCCUSL)  
December 15, 2004**

**1. PREAMBLE**

To the Honorable Rod Blagojevich, Governor, and members of the Ninety-Third General Assembly. The Legislative Reference Bureau, on behalf of the Illinois Commissioners on Uniform State Laws, respectfully submits this annual Report.

**2. HISTORY OF NCCUSL**

In 1889, the New York Bar Association appointed a special committee on uniformity of laws. In the next year, the New York Legislature authorized the appointment of Commissioners "to examine certain subjects of national importance that seemed to show conflict among the laws of the several commonwealths, to ascertain the best means to effect an assimilation or uniformity in the laws of the states, and especially whether it would be advisable for the State of New York to invite the other states of the Union to send representatives to a convention to draft uniform laws to be submitted for approval and adoption by the several states." In that same year, 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 in Saratoga, New York, three days preceding the annual meeting of the American Bar Association. There have been annual Conferences since that time.

By 1912, every state was participating in NCCUSL. In each year of service, NCCUSL has steadily increased its contribution to state law. Because of that contribution, it very early became known as a distinguished body of lawyers. NCCUSL has attracted some of the best of the profession. In 1901, Woodrow Wilson became a member. This, of course, was before his more notable political prominence and service as President of the United States. Several persons, later to become Justices of the Supreme Court of the United States, have been members. These men are Justices Brandeis and Rutledge and Chief Justice Rehnquist. Legal scholars have served in large numbers. Examples are Professors Wigmore, Williston, Pound, and Bogart. Very many distinguished lawyers have served since 1892, though their names are not as well known in legal affairs and the affairs of the U.S. This distinguished body has guaranteed that the products of NCCUSL are of the highest quality and are enormously influential upon the process of the law.

As it has developed over its many years, NCCUSL 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 has been, and remains, service to state government and improvement of state law.

### **3. OPERATION OF NCCUSL**

The National Conference is convened as a body once a year. It meets for a period of eight days, usually in late July or early August. In the interim period between the annual meetings, drafting committees composed of Commissioners meet to supply the working drafts that are considered at the annual meeting. At each National Conference, 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 National Conference is satisfied that it is ready for consideration in the state legislatures. It is then put to a vote of the states, during which each state caucuses and votes as a unit.

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

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

NCCUSL maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which contributes an amount each year to the operation of NCCUSL. Liaison is also maintained with the American Law Institute, the Council of State Governments, and the National Conference of State Legislatures on an ongoing basis. Liaison and activities may be conducted with other associations as interests and activities necessitate.

### **4. STATUTORY AND OTHER AUTHORITY**

Support of the uniformity of legislation is included as a function of the Legislative Reference Bureau. The law provides for a delegation to NCCUSL consisting of 5 members appointed by the Governor, 4 members appointed one each by the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate, and the Executive Director of the Legislative Reference Bureau, ex officio. In addition, Section 2.4 of the Constitution of NCCUSL provides for the life members. Commissioners who, for example, have

served for at least 20 years may become life members and continue to serve even if not appointed. Section 2.5 of that Constitution requires that each commissioner be a member of the bar.

## **5. LAW CREATING THE COMMISSION**

Section 5.07 of the Legislative Reference Bureau Act.

(25 ILCS 135/5.07) (from Ch. 63, par. 29.7)

Sec. 5.07. Uniform State Laws. The Legislative Reference Bureau shall examine all subjects on which uniformity is desirable with the laws of other states to ascertain the best means to effect uniformity in the laws of the States. The Legislative Reference Bureau shall supervise the participation of the State of Illinois in the National Conference of Commissioners on Uniform State Laws. To represent the State of Illinois on the National Conference of Commissioners on Uniform State Laws, there shall be 9 persons: 5 persons appointed by the Governor and one each by the President of the Senate, the Senate Minority Leader, the Speaker of the House, and the House Minority Leader, who shall hold office for the term of 4 years, respectively, and until their successors are appointed, and the Executive Director of the Legislative Reference Bureau, who shall be an ex-officio member of the National Conference. The Legislative Reference Bureau shall report to the Governor by December 31 of each year, and the Governor shall submit the report to the General Assembly with his or her recommendations, if any, in reference to the report. The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report as required by Section 3.1 of the General Assembly Organization Act and paragraph (t) of Section 7 of the State Library Act.

(Source: P.A. 87-918.)

## **6. ILLINOIS COMMISSIONERS (year appointed) (appointed by)**

Harry D. Leinenweber (1976) (life member)  
 Howard J. Swibel (1976) (Senate President)  
 Michael B. Getty (1977) (House Speaker)  
 Thomas J. McCracken, Jr. (1988) (Senate Minority Leader)  
 Randall Picker (1991) (Governor)  
 Richard C. Edwards (1993) (ex officio)  
 Diane Ford (2000) (Governor)  
 Steven G. Frost (2001) (Governor)  
 Dimitri Karcazes (2004) (Governor)  
 J. Samuel Tenenbaum (2004) (House Minority Leader)  
 Vacant (Governor)

## **7. ORGANIZATION AND MEETINGS OF THE ILLINOIS DELEGATION.**

The Illinois Delegation met at the National Conference in Portland, OR in 2004. Howard J. Swibel is Chair, and Richard C. Edwards is Secretary.

## **8. CURRENT ACTIVITIES OF THE ILLINOIS DELEGATION.**

Michael B. Getty: Member, Committee on International Legal Developments; Member, Standby Committee on Uniform Child Witness Testimony by Alternative Methods Act; Chair, Standby Committee on Uniform Mediation Act; Member, Study Committee on Misuse of Genetic Information; Chair, Committee on Assignment of Rents Act.

Thomas J. McCracken, Jr.: Illinois Liaison Member for Legislative Committee; Enactment Plan Coordinator, Drafting Committee on Business Trust Act.

Howard J. Swibel: Chair, Executive Committee; Member, Uniform Law Foundation Trustees; Member, Joint Editorial Board on Uniform Unincorporated Organization Acts; Member, Special Committee to Enhance Payment of State Dues and Expenses of Commissioners; Chair, Standby Committee on Uniform Limited Partnership Act; Member, Standby Committee to Revise Uniform Securities Act; Member, Committee on Federal Relations.

Diane Ford: Member, Drafting Committee on Uniform Certificate of Title Act.

Steven G. Frost: Member, Study Committee on an Omnibus Business Organization Code; Member, Committee on Public Information; Member, Standby Committee on Entity Transaction Act; Member, Drafting Committee on Amendments to Uniform Limited Liability Company Act; Chair, Advisory Committee on Website Technical.

Harry D. Leinenweber; Member; Study Committee on Collateral Sanctions in Criminal Sentencing.

## **9. UNIFORM, MODEL, AND OTHER ACTS; STATUS IN ILLINOIS**

Attached is a listing of the status of Uniform and Model Acts in Illinois and the other states, as of September 30, 2004, prepared by NCCUSL. NCCUSL reports that over 95 Uniform and Model Acts have been enacted by Illinois.

## **10. FINANCIAL INFORMATION**

The expenses of the participation by this State in NCCUSL consist of 2 components. One is the State's allocated contribution to the National Conference of Commissioners on Uniform State Laws (based on population) and the other is the expense of attendance at the meeting of the conference by the Illinois Commissioners.

Here is a table of the Commission's recent expenditures reimbursed by the State. The number of members attending the conference is shown in parentheses:

Fiscal Year	Contribution to NCCUSL	Travel Expenses		Registration Fees	Total
1985	23,000	10,921	(9)	1,125	35,046
1986	23,000	9,426	(10)	1,350	33,776
1987	23,700	14,012	(10)	1,500	39,212
1988	24,500	11,181	(9)	1,350	37,031
1989	25,300	10,153	(9)	1,350	36,803
1990	26,600	15,167	(8)	1,400	43,167
1991	28,000	5,626	(9)	1,800	35,426
1992	34,300	9,686	(7)	1,750	45,736
1993	36,100	-----	(9)	-----	36,100
1994	38,000	-----	(9)	-----	38,000
1995	39,900	-----	(9)	-----	39,900
1996	41,900	7,350	(6)	1,950	51,200
1997	44,000	6,337	(5)	1,750	52,087
1998	46,200	9,007	(8)	2,625	57,832
1999	48,600	8,246	(8)	2,625	59,471
2000	51,100	7,498	(6)	2,000	60,598
2001	52,700	7,100	(6)	2,700	62,500
2002	52,700	11,584	(7)	3,500	67,784
2003	53,300	-----	(8)	-----	53,300
2004	54,900	-----	---	-----	54,900
2005	56,600	-----	---	-----	56,600

No State moneys were authorized for payment in FY93, FY94, FY95, FY03, FY04, or FY05 for travel expenses or registration fees. Moneys to pay the FY95 annual contribution were appropriated and paid in FY98.

## 11. SHORT SUMMARIES OF 2004 ACTS

### Uniform Residential Mortgage Satisfaction Act

The Uniform Residential Mortgage Satisfaction Act provides that a mortgage must provide a statement of satisfaction that is recorded in the real property records when a mortgagor has paid off the mortgage. The mortgagor is also entitled to a payoff letter. In the event there is no timely response to a request for a statement of satisfaction (30 days after notice), the mortgagor may provide an affidavit through qualified intermediaries for the real property records in lieu of the statement of satisfaction.

### Uniform Real Property Electronic Recording Act

The Uniform Real Property Electronic Recording Act equates electronic documents and signatures to original paper documents and manual signatures so that electronic documents pertaining to real estate transactions may be electronically recorded. The Act also establishes a state board to establish standards for electronic recording.

### Uniform Wage Withholding and Unemployment Insurance Procedure Act

The Uniform Wage Withholding and Unemployment Insurance Procedure Act strives to provide a harmonized wage base for each state and between each state for computing withholding for income taxes and unemployment compensation taxes. It also provides for one set of reporting and payment requirements and dates for employers to meet.

### Model Entity Transactions Act

The Model Entity Transactions Act provides for procedures for mergers, conversions, interest exchanges and domestications of business and nonprofit entities, including partnerships, limited partnerships, limited liability companies and corporations. Cross entity transactions of these kinds are made more universally possible. The objective is to accomplish such a transaction with appropriate approvals without having to dissolve an entity and without extinguishing any obligations owed by preceding entities in the process.

### Amendments to Uniform Trust Code

An assortment of technical amendments were made to the Uniform Trust Code, including optional provisions for notice to qualified beneficiaries and more specific procedures for termination or modification of an irrevocable trust.

### Amendments to Uniform Money Services Act

Limited technical amendments were made to this uniform Act in 2004.

## **12. SHORT SUMMARIES OF 2003 ACTS**

### 2003 Amendments to Article 2, Uniform Commercial Code

Article 2 of the Uniform Commercial Code governs sales of goods. It was promulgated as part of the Uniform Commercial Code in 1951. It has ancestry in the Uniform Sales Act, originally promulgated in 1906. The amendments incorporate electronic transactions so that sale contracts can be formed and enforced though in electronic media. Other areas of Article 2 are clarified in light of the experience with this Article since 1951, the year it replaced the Uniform Sales Act and the year the Uniform Commercial Code was launched.

### 2003 Amendments to Article 2A, Uniform Commercial Code

Article 2A governs leases of goods in a parallel fashion to the governance of sales of goods in Article 2. Article 2A was added to the Uniform Commercial Code in 1987, and was the first new Article in the Uniform Commercial Code since its original promulgation in 1951. Article 2A was amended in 1990. The primary purpose of the 2003 amendments is to incorporate electronic transactions so that lease contracts can be formed and enforced though in electronic media. There are other clarifications based on the experience with Article 2A since 1987.

### Revised Article 7, Uniform Commercial Code

Article 7 governs the transfer of bills of lading and warehouse receipts as documents of title. Generally, transfer of a document of title from one person to another transfers the rights in the goods represented by the document of title. Article 7 provides for negotiable documents of title, which transfer interests in goods represented in such documents free of any claims or defenses of the issuer or other transferor of the document. The revisions establish the rules for electronic documents of title. It authorizes them, incorporates electronic records and signatures for statute of fraud purposes, provides an analogous system for transfer of electronic documents to the system of negotiable paper documents of title, provides for conversion of electronic documents of title into tangible documents of title and vice versa, and prepares for the expected reliance upon electronic documents of title into the future. A key concept to transfer of electronic documents of title is that of "control". Control occurs when it is possible to identify every transfer of an authoritative copy of an electronic document with absolute certainty and when transfer can occur only when the party in control authorizes transfer.

### Uniform Environmental Covenants Act

This new Uniform Act in 2003 creates an interest in real estate called an "environmental covenant" that assures a plan of rehabilitation for contaminated real property (brownfields) and control of use that may be separately conveyed to and enforced by a relevant third person called a "holder". An underlying plan between state or federal government and a landowner for "remediation" of the property must be in place for an environmental covenant to be created and conveyed. The ultimate objective of this Act is to allow contaminated property to be returned to those uses consistent with prescribed clean-up, essentially making them marketable. The Act provides for the creation of such a covenant, its termination when appropriate, priority over other real estate interests, and enforcement over the time the covenant is in place. An environmental covenant is perpetual unless a specific term is prescribed in the instrument creating it. The interest will be recorded in the real estate records.

### 2003 Revision of the Uniform Estate Tax Apportionment Act

This is a revision of earlier acts, and part of the Uniform Probate Code, that provides for apportioning the burden of federal or state estate taxes between the respective interests of heirs or legatees of an estate, or beneficiaries of a revocable trust, when the fiduciary for an estate or trust is required to pay such taxes. Generally, the tax burden is allocated to the interests of estate or trust beneficiaries in proportion to their interests in the whole of the taxable estate. There are special rules for specific sorts of interests, such as qualified terminable interest property trusts (a kind of marital trust) and when certain kinds of property are insulated from inclusion in the apportionable estate, though they are taxable property. This update takes into account all changes in tax rules arising since the last time this Act was amended.

### 2003 Amendments to Uniform Mediation Act: UNCITRAL Model Act on Commercial Conciliation

The 2003 Amendment to the Uniform Mediation Act provides for adoption of the UNCITRAL Model Act on Commercial Conciliation by incorporating it by reference in the Uniform Mediation Act. The Model Law was adopted by UNCITRAL in 2002 and provides for the appointment of conciliators (mediators) and the conduct of a conciliation between international commercial disputants. Conciliation and mediation are virtually synonymous for the purposes of these Acts.

### 2003 Amendments to the Uniform Trust Code

The 2003 amendments to the Uniform Trust Code (2000) follow a set of amendments approved in 2001. The changes consist of several clarifications and technical corrections, mostly nonsubstantive. An amendment to Section 105(b)(8) clarifies the mandatory rule requiring qualified beneficiaries over the age of 25 to be notified of the existence of an irrevocable trust, the identity of the trustee, and their right to request a trustee's reports. An amendment to Section 411 adds the words "modification or" to correct an inadvertent technical glitch. The Section relates to the modification or termination of a noncharitable irrevocable trust by consent. Amendments to Sections 602 and 603 deal with revocable trusts and who controls the rights of the beneficiaries while the trust is revocable. The objective is to make sure that, in cases of a trust with a joint interest, a settlor is notified if another settlor amends or revokes the trust. Since Section 603 is much broader in scope, the language has been stricken from it and added more precisely into Section 602. An amendment to Section 802 deals with the trustee's duty of loyalty. The amendment to Section 802(f) clarifies the Uniform Trust Code provision on proprietary mutual funds. The amendment provides that Section 802(f) applies to institutional trustees in many contexts other than proprietary mutual funds. The last amendment changes an "or" to an "and" in Section 815, relating to general powers of a trustee. While a technical typographical glitch, its impact is substantive. This amendment clarifies the intent of the drafters that, to the extent the terms of the trust are silent, the trustee powers will be supplemented by those in the Uniform Trust Code.

### 2003 Amendment to the Uniform Tort Apportionment Act

This Act, which was promulgated originally in 2002 and which replaces the Uniform Comparative Fault Act of 1979, received some limited amendments in 2003. Language relating to "strict liability" in Section 3 has been deleted, since the defense of contributory fault has not ordinarily been available in strict liability cases. The Act applies in negligence cases and any other case in which a defense of contributory fault may have been a defense. Other amendments clarify the reallocation provisions, primarily providing for a more precise statement relating to any security position or subrogation rights considered in reallocating damages. A precise time of 90 days has been provided for filing for reallocation in the event a share of a party is uncollectible.

### **13. SHORT SUMMARIES OF 2002 ACTS**

#### Uniform Apportionment of Tort Responsibility Act

This Act provides for a modified form of comparative fault that compares the fault of an injured party with that of all contributing tortfeasors in an action for damages until the injured person's contribution reaches or exceeds 50% of his or her own injury. Then contributory fault is an absolute bar to recovery. Joint and several liability of multiple tortfeasors is limited to certain instances, primarily the one in which multiple tortfeasors act in concert. Otherwise, joint and several liability is abolished. There is a reallocation procedure when there are multiple tortfeasors and it appears reasonably certain that a tortfeasor will not pay compensation to an entitled injured party.

#### Uniform Child Witness Testimony by Alternative Methods Act

This Act authorizes a court to consider whether to allow a child to testify outside the presence of a party and outside a proceeding when not so testifying would impair the testimony of the child witness or subject the child witness to distress. In a criminal proceeding, to obtain an alternative method, it must be proved by clear and convincing evidence that testimony will cause the child great emotional distress. In a civil proceeding, it must be shown that an alternative is in the best interests of the child by a preponderance of the evidence. Party rights to examination and cross-examination are preserved.

#### Amendments to Uniform Commercial Code Articles 3 and 4

Very limited amendments to UCC Articles 3 and 4 were promulgated by the American Law Institute and the Uniform Law Conference in 2002. These articles govern negotiable instruments and bank deposits and collections. The most significant amendment deals with adding suretyship rules from the Restatement of Suretyship to replace the rules for indorsers and accommodation parties when an obligation is released without payment. There are new warranty rules for telephonically generated checks, a new phenomenon. Certain writing requirements are extended to include electronic records. These are examples of these amendments. The primary character of negotiable instruments and checks remains unchanged.

#### Uniform Computer Information Transactions Act (Last amended in 2002)

The Uniform Computer Information Transactions Act (UCITA) is the first comprehensive Act governing the commercial licensing of computer information and network access contracts. It governs all aspects of licensing contracts from formation to remedies in the event there is breach of contract. Computers operate with, produce, and use digitized information. The software that runs the computer and the music that it plays are all the same in that sense. What is transferred from person to person is that digitized information stored electronically. A licensing contract is a contract to transfer the informational rights and copies of the information that the originator of computer information has to a transferee. Usually, the transferor of computer information reserves some of the informational rights—the right to copy being the most commonly withheld right. Computer information can be copied and disseminated instantly and infinitely, and

the license contract protects the transferor's economic interest in computer information by limiting the transferee's subsequent transfer rights. There are special formation rules in UCITA for acquisition of licenses in the mass-market, warranty rules for transfer of information, including special compatibility rules, rules relating to the authentication of transfers of computer information, and rules for memorializing contracts using electronic records. Remedies for breach of an agreement are, generally, damages. 2002 amendments cut off electronic self-help as a remedy, limit the ability to prohibit reverse engineering, and make licensing contracts nonbinding until they are available for review either electronically or in a writing.

#### Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act (Last amended in 2002)

This Act implements the obligation of full faith and credit for domestic violence protection orders required by the U.S. Constitution and the federal Violence against Women Act. There are two principal methods of enforcement: (1) direct enforcement by a court of the domestic violence protection orders of another state; or (2) enforcement by law enforcement officers upon a finding that there is probable cause to believe that a domestic violence protection order from another state has been violated. In addition, a domestic violence protection order from another state may be registered in advance of any possible violation of that order to expedite enforcement by courts or law enforcement officers. The 2002 amendments expressly add anti-stalking orders to the scope of this Act.

#### Uniform Nonjudicial Foreclosure Act

This Act permits the foreclosure of real estate mortgages without a judicial proceeding. It allows traditional sale by auction, placing foreclosed property directly on the real estate market, or strictly foreclosing on the property. Nonjudicial foreclosure of a residential mortgage eliminates deficiency judgments for good faith debtors. Post-sale redemption is eliminated. The premise for this Act is that in the huge majority of cases, the right to foreclose is clear and unequivocal. A judicial proceeding in every case therefore impedes the inevitable result, which is sale of the property to satisfy the debt. There is always recourse to a court if there is doubt about the right to foreclose.

#### Uniform Parentage Act (Last Amended in 2002)

The original Uniform Parentage Act (UpaA) was promulgated in 1973. It removed the legal status of illegitimacy from the law of the U.S. and provided a first modern civil paternity action. The 2002 UpaA augments and streamlines the 1973 UpaA. It includes the basic paternity or parentage action with expanded standing to bring such an action, but provides for a non-judicial acknowledgment of paternity procedure that is the equivalent of an adjudication of paternity in a court, providing that there is no presumed father of the child. The presumption of fatherhood is based on the relationship between a man and woman with respect to a child. The most common presumed father is the man married to the birth mother of the child at the time of conception. The acknowledgment proceeding is predicated on the availability of the precise genetic testing that has developed since 1973. A paternity registry is provided in the 2002 UpaA. There is a

specific, separate judicial proceeding for ordering genetic testing. The 2002 UpaA provides specific standards for genetic testing. Only genetic tests that identify another man as a father or exclude the presumed father may be used to rebut the presumption of fatherhood in a paternity action. Also included in the 2002 UpaA are rules for determining the parents of children whose conception is not the result of sexual intercourse. Included kinds of assisted conception are artificial insemination and in vitro fertilization. The 2002 UpaA also incorporates sections on gestational agreements, but as optional sections because of state law differences on these kinds of contracts. The principal amendments in 2002 return some of the nonmarital presumptions of paternity from the 1973 Act that were eliminated in the 2000 Act.

#### Uniform Securities Act (Last revised in 2002)

A major revision of the Uniform Securities Act was promulgated in 2002. There has been a uniform Act on the issues of securities regulation going back to 1930. This Act replaces both the 1956 Uniform Act and the 1985/88 Uniform Act. It provides basic law for registration of securities issues, broker-dealers and investment advisors, along with enforcement powers for the securities administrator. Coordination with federal law, particularly after the 1996 National Securities Markets Improvement Act, is a primary goal. The 1996 federal Act specifically preempted state securities regulation, making all existing state law out of compliance. The Act also accommodates electronic records and filing systems.

## **14. SHORT SUMMARIES OF 2001 ACTS**

#### Uniform Limited Partnership Act

The Uniform Limited Partnership Act (2001) updates limited partnership law to reflect modern business practices by allowing for greater variety and flexibility in the formation and management relationships within these entities. The ULPA allows for the use of a limited partner's name in the entity's name, and authorizes family limited partnerships, entities which by nature require entrenched management and passive limited partners. It shifts default liability away from limited partners by allowing for limited liability limited partnership status, and allows for easier dissolution upon the consent of all general partners together with a number of limited partners owning a majority of the rights to distributions. The ULPA furthers estate planning considerations by restricting the ability of a limited partner to disassociate from an entity prior to its termination, except for specific circumstances. Finally, the ULPA eliminates the previous rule requiring a termination date to be included in a limited partnership certificate, thereby allowing for the default creation of a perpetual entity. The ULPA is also a free-standing, comprehensive Act, no longer dependent upon general partnership law for rules that are not contained within ULPA. The ULPA represents a significant revision of limited partnership law to reflect modern usages, makes the limited partnership even more appealing to business ventures and estate planners, and will enhance the business climate of those states that adopt it.

### Amendments to the Uniform Interstate Family Support Act

Because of the importance of tracking and enforcing family support orders, every U.S. state and jurisdiction has adopted the Uniform Interstate Family Support Act, as it was amended in 1996. In the intervening years, the state child support enforcement community has depended on the Act in their efforts, and members of that community have suggested further operational improvements. These amendments incorporate those suggestions. First, jurisdictional rules are clarified with respect to efforts to modify existing orders, and in identifying which order is controlling. Second, clearer guidance is given to state support agencies as to the redirection of support payments to an obligee's current state of residence. Third, foreign support orders are recognized and brought within the UIFSA system if a state has established comity with that country or if the U.S. State Department has determined that reciprocity exists. Finally, the amendments incorporate certain technical updates concerning the use of electronic communications, the evolution of specific agency practices and forms, and organizational changes meant to clarify certain provisions. These changes improve the operation of the interstate family support system, without changing any of the underlying functionality or policy choices of the Act.

### Uniform Consumer Leases Act

While federal law and regulations require certain disclosures to be made in connection with consumer leases, with the exception of auto leases most states apply commercial leasing law rules even in consumer contexts. The Uniform Consumer Leases Act (UCLA) is designed to provide substantive contractual and procedural protections to consumer leases of personal property. The UCLA applies to consumer leases (where the property is for personal, family, or household use) with a term of at least 4 months and a total value of less than \$150,000. This excludes short-term rentals, as well as rent-to-own arrangements that may be terminated at will or on a weekly or monthly basis. The protections of the UCLA include a prohibition on taking a broad security interest in a lessee's property (beyond the goods themselves), limits and rules concerning the assessment, cure, and dispute of late, delinquency, and default fees, and protection of a lessee's right to bring actions against assignees of the original lessor. The UCLA also prohibits mandatory gap coverage insurance, imposes reasonable standards on valuation in the event of early termination, and requires lessors to return a trade-in and refund payments received in the event a consumer's lease application is disapproved. The Uniform Consumer Leases Act will help set a fair balance between the need to provide consumer protections and the commercial realities faced by personal property lessors, and should be a valuable addition to state consumer protection law.

### Uniform Mediation Act

The use of mediation as a means of resolving disputes has increased markedly in recent years, and states have enacted over 2,500 separate statutes providing for, or in some way regulating, its use in various contexts. Because mediation depends on the ability of the parties to communicate and negotiate in reaching a voluntary agreement, the candor of the participants is vital to a mediation's success. The multiplicity of potentially applicable statutes, however, makes it difficult for the participants to know which law might apply to a particular proceeding, and thus the participants may be reluctant to

communicate necessary information if they fear it may be used against them if the mediation fails. The Uniform Mediation Act addresses this problem by providing a statute applicable to all mediations that prescribes precise rules about how the mediation communications of the parties, non-party participants, and mediator may be used. At its core, the Act provides that each participant in a mediation proceeding is the holder of a privilege concerning his or her own mediation communications, and may prevent those communication from being disclosed or used in a subsequent formal proceeding. The parties to a mediation hold the additional power to block the disclosure or use of any participant's mediation communication. There are of course exceptions to this broad rule. There is no privilege for ongoing or future crimes, threats of bodily injury, evidence concerning the abuse or neglect where a protective services agency is a participant, and other circumstances. Evidence that is otherwise admissible does not become inadmissible simply because it is referenced or repeated in a mediation communication. The Uniform Mediation Act is the result of a unique joint project between NCCUSL and the American Bar Association, and will further the goals of alternative dispute resolution by promoting the candor of the parties.

#### Revision of Uniform Commercial Code Article 1

Article 1 of the Uniform Commercial Code (UCC) provides definitions and general provisions that apply to transactions covered by other articles of the UCC. As other articles of the UCC have been revised and amended to conform to modern usages and legal developments, the revisions to Article 1 are intended to make both conforming, technical changes, as well as changes clarifying various ambiguities that have arisen over the years. The revisions also make certain substantive changes, including expanding the definition of good faith to include "the observance of reasonable commercial standards of fair dealing," and allowing courts to use evidence of the "course of performances" of a transaction in contract interpretation. But perhaps the most significant change to Article 1 involves the ability of parties to designate the application of a particular state's law by contract. Under the current rule, all transactions must bear a "reasonable relation" to the designated state. Under the Revised Article 1, this requirement is dropped as a general restriction, and parties are instead allowed to designate the law of any state (in a domestic transaction) or that of any country (in an international transaction), subject to a limitation that such a designation is ineffective if that application would be contrary to a fundamental public policy of the state or country whose law would otherwise govern in the absence of a contractual designation. Where one of the parties is a consumer, however, the "reasonable relation" test still applies; more significantly, even if a contractual designation meets this test, the application of that state's law may not deprive the consumer of legal protections afforded by the law of the state or country in which the consumer resides, or where the consumer makes a contract and takes delivery of goods.

### **15. ACTS TARGETED BY NCCUSL**

The following are considered to be "Target Acts" and "Targets to Complete" by NCCUSL. The status of each target in Illinois is indicated in parentheses.

## TARGET ACTS

Arbitration (1956 adopted; 2000 not adopted)  
 Athlete Agents (not adopted)  
 Commercial Code Article 1 (2001 not adopted)  
 Commercial Code Article 7 (2003 not adopted)  
 Custodial Trust (not adopted)  
 Environmental Covenants (not adopted)  
 Foreign Money Claims (adopted)  
 Interstate Enforcement of Domestic Violence Protection Orders (not adopted)  
 Interstate Family Support 2001 Amendments (adopted)  
 Limited Partnership 2001 (adopted)  
 Mediation (adopted)  
 Parentage (1973 adopted substantially similar; 2000 not adopted)  
 Trust Code (not adopted)

## TARGETS TO COMPLETE

Child Custody Jurisdiction and Enforcement (adopted)  
 Commercial Code Article 5 (adopted)  
 Commercial Code Article 6 (adopted by repeal)  
 Determination of Death (not adopted)  
 Electronic Transactions (not adopted)  
 Enforcement of Foreign Judgments (amended version enacted)  
 Fraudulent Transfer (adopted)  
 Partnership (1914 adopted; 1994, 1997 adopted)  
 Principal and Income (1931, 1962 adopted; 2000, 2002 not adopted)  
 Prudent Investor (adopted)  
 TOD Security Registration (adopted)  
 Trade Secrets (adopted)  
 Transfers to Minors (adopted)  
 Unclaimed Property (adopted)

## 16. LEGISLATIVE ACTIVITY IN 2003-2004

In 2003 the following became law: HB1157, Uniform Child Custody Jurisdiction and Enforcement Act, P.A. 93-108; and HB2146, Uniform Mediation Act, P.A. 93-399. In 2003 the following were introduced but did not pass both houses: HB3211, Uniform Arbitration Act (2000); HB3212, Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act; HB3309, Amendments to the Uniform Interstate Family Support Act; HB3406, Uniform Athlete Agents Act; and SB278, Uniform Mediation Act.

In 2004 the following became law: SB922, Uniform Interstate Family Support Act 2001 amendments, P.A. 93-479; and SB2982, Uniform Limited Partnership Act (2001), P.A.

93-967. In 2004 the following was introduced but did not pass both houses: HB4742, Uniform Parentage Act (2000).

Respectfully submitted,

Richard C. Edwards, Executive Director  
Legislative Reference Bureau  
On behalf of the Commissioners













