

**2020 ANNUAL REPORT
TO THE NEBRASKA STATE LEGISLATURE
FROM THE
NEBRASKA COMMISSION ON UNIFORM STATE LAWS
(AS OF DECEMBER 31, 2020)**

I. PREAMBLE

To the Honorable Pete Ricketts and members of the Nebraska Unicameral, the Nebraska Commissioners on Uniform State Laws respectfully submit this Annual Report for the 2020 calendar year.

II. OVERVIEW OF UNIFORM LAW COMMISSION

The Uniform Law Commission (ULC), also known as the National Conference of Commissioners on Uniform State Laws, has worked since 1892 for the uniformity of state laws where uniformity is desirable and practicable. It is 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. Each jurisdiction determines the method of appointment and the number of commissioners appointed. Most jurisdictions provide for their commission by statute. The statutory authority governing Nebraska's uniform law commission can be found at Neb. Rev. Stat §§ 49-901 *et seq.*

There is only one fundamental requirement for the more than 300 uniform law commissioners; they must be members of the bar. While some commissioners serve as state legislators and other state officials, most are practitioners, judges and law professors. Uniform law commissioners serve for specific terms, and receive no salaries or fees for their work with the ULC.

Commissioners 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 and practicable. Obviously, the ULC can only propose – no uniform law is effective until a state legislature adopts it.

The ULC provides state legislatures with expertly drafted legislation on issues of common interest across the nation. The work of the ULC simplifies the legal life of businesses and individuals by providing rules and procedures that are consistent from state to state.

Representing both state government and the legal profession, it is a genuine coalition of state interests. It has sought to bring uniformity to the divergent legal traditions of more

than 50 sovereign jurisdictions, and has done so with significant success.

III. HISTORY

On August 24, 1892, representatives from seven states – Delaware, Georgia, Massachusetts, Michigan, New York, New Jersey, and Pennsylvania – met in Saratoga Springs, New York, to form what is now known as the ULC. By 1912, every state was participating in the ULC. The U.S. Virgin Islands was the last jurisdiction to join, appointing its first commissioner in 1988.

Very early on, the ULC became known as a distinguished body of lawyers. The ULC 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: former Justices Brandeis, Rutledge, Souter, and former Chief Justice Rehnquist. Legal scholars have served in large numbers, including Roscoe Pound from Nebraska and other notable academics such as Wigmore, Williston, and Bogert. Many other distinguished lawyers have served since the organization's founding in 1892.

In each year of service, the ULC steadily increases its contributions to state law, but perhaps its most momentous decision came in 1940. In that year, the ULC made the significant decision to address major commercial problems with comprehensive legal solutions – a decision that set in motion the project to produce the Uniform Commercial Code (UCC). Working with the American Law Institute (ALI), the UCC took ten years to draft initially. It then took another 14 years before it was enacted across the country. Since then, the ULC and the ALI have continuously reviewed and updated the UCC. It remains the signature product of the ULC.

But the ULC has also been active in many other areas. It has drafted more than 200 uniform laws on numerous subjects and in various fields of law, setting patterns for uniformity across the nation. Other uniform acts include the Uniform Probate Code, Uniform Partnership Act, Uniform Limited Partnership Act, Uniform Anatomical Gift Act, Uniform Interstate Family Support Act, Uniform Child Custody Jurisdiction and Enforcement Act, and Uniform Prudent Management of Institutional Funds Act. As this list suggests, the ULC is recognized primarily for its work in commercial law, family law, the law of probate and estates, the law of business organizations, health law, and conflicts of law.

The ULC arose out of the desire of state government for improvement of the law and better interstate relationships. Its sole purpose has been, and remains, service to state

government and improvement of state law.

IV. DIVERSITY STATEMENT

Each member jurisdiction determines the number of uniform law commissioners it appoints to the ULC, the terms of uniform law commissioners, and the individuals who are appointed from the legal profession of that jurisdiction. The ULC encourages appointing authorities to consider diversity in making appointments to their respective uniform law commissions, including race, ethnic and gender diversity. The ULC is also attentive to these concerns internally. For example, the Immediate Past President of the organization is a woman. The ULC does its best work when uniform law commissioners are drawn from diverse backgrounds and experiences.

V. PROCEDURES

The ULC is usually convened as a body once a year, for a period of six or seven days in July or August. In the interim period between these annual meetings, drafting committees composed of Commissioners meet to supply the working drafts that are considered at the annual meeting. At each annual meeting, the work of the drafting committees is read and debated. Each Act is generally considered over a period of two years. No Act becomes officially recognized as a Uniform Act until the Uniform Law Commission 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 ULC Executive Committee, and is composed of the officers, certain ex-officio members, and members appointed by the ULC President. Certain activities are conducted by other standing committees. For example, the Committee on Scope and Program considers new subject areas for possible Uniform Acts, and the Legislative Committee superintends the relationships of the ULC to the state legislatures.

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

The ULC maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which provides advisors to ULC drafting committees and ULC study committees. Liaison is also maintained with the American Law Institute, the Council of State Governments, the National Conference of State Legislatures, the National Association of Secretaries of State, the National Association of Attorneys General, the Conference of Chief Justices, and the National Center for State Courts on an on-going and as-needed basis. Liaison and activities are conducted with other organizations as interests and activities necessitate.

VI. ACTIVITIES OF THE NEBRASKA COMMISSION DURING 2020

A. *Appointments*

The Nebraska Commissioners are appointed for four-year terms by the Governor.

After 20 years of service, Commissioners may become life members upon a positive vote by two-thirds of the ULC membership, which means that they can continue to serve the ULC without further appointment. Upon appointment as a life member, that member's position as a Commissioner may become open for re-appointment.

The current Commissioners with their initial year of appointment and current duties are:

(a) Hon. C. Arlen Beam (1979) (Life Member) – International Choice of Court Agreements Convention Implementation Act Committee.

(b) John P. Lenich (2015) – not yet assigned to committee. Term ends August 2023.

(c) James E. O'Connor (2015) – Drafting Committee for Uniform Collection and Use of Personally Identifiable Data; Study Committee for Cybercrimes; Technology Committee. Term ends August 2023.

(d) Joanne M. Pepperl (1980) (Life member) and (Commissioner until her retirement in December 2020 as Nebraska Revisor of Statutes), Chair of the Nebraska ULC; Legislative Committee; Style Committee.

(e) Harvey S. Perlman (1987) (Life Member) – Chair of Drafting Committee for Uniform Collection and Use of Personally Identifiable Data; Study Committee for Emerging Technologies and the Uniform Commercial Code; Drafting Committee, Economic Rights of Unmarried Cohabitants; Drafting Committee, Student Athlete Name, Image, and Likeness.

(f) Larry L. Ruth (1995) (Life Member) – Faithful Presidential Electors Act, Parliamentary Practice Committee.

(g) Steven L. Willborn (2007) – Style Committee; Legislative Council; Legislative Committee; served as Interim Executive Director of the Uniform Law Commission from 2018-2020; Drafting Committee for Covenants Not to Compete Act; Committee to Monitor Developments in Privacy Law; Study Committee on Supply Chain Transparency. Term ends August 2023.

(h) Marcia McClurg (2020) – Pursuant to Section 49-901.01 and appointment as Revisor of Statutes serves as a Commissioner.

B. *Meetings*

The Uniform Law Commission held its Annual Meeting virtually during July-August, 2020. It was attended by Commissioners Lenich, O'Connor, Pepperl, Perlman, Ruth and Willborn.

The Nebraska Commission held its annual meeting virtually on December 17, 2020 to plan its activities for the upcoming year. It also decided to retain Commissioner Pepperl as Chair and Commissioner O'Connor as Secretary.

C. *Uniform Acts Approved by the ULC During the 2020 Annual Meeting*

Uniform Easement Relocation Act

In many, but not all, states, the owner of the burdened property and the holder of an easement must consent to relocate the easement, such as the legal right to use a driveway that runs from a public road across one property to access another. When the owner of the burdened property asks to relocate an easement to allow further development, an easement holder in a state that follows the mutual consent rule can withhold consent to prevent the development or demand a ransom payment before agreeing to the change. The Uniform Easement Relocation Act allows the burdened estate owner to obtain a court order to relocate an 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 property. The burdened property owner must file a civil action, give other potentially affected real-property interest owners notice, and bear all the costs of relocation. These conditions build on the rule contained in the Restatement (Third) of Property: Servitudes, whose approach to easement relocation has been fully or partially adopted in a number of states. The Uniform Easement Relocation Act excludes conservation easements and public-utility easements from its scope and contains a number of additional safeguards, not found in the Restatement, to protect the easement holder's interest in the use and enjoyment of the easement during and after the relocation.

Uniform Pretrial Release and Detention Act

The Uniform Pretrial Release and Detention Act responds to the need for a comprehensive and balanced statute to guide courts in making pretrial release and detention decisions for the millions of people charged with crimes each year in state court. The Act provides a comprehensive procedural framework for release and detention determinations. Provisions of the Act address many issues, including: (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 individual who is arrested; (3) appointment of counsel; (4) a pretrial risk determination by a court to individualize release or detention; (5) review of a

defendant's financial condition so that inability to pay a fee does not lead to detention; and (6) an obligation on the court to consider restrictive conditional release as an alternative to detention.

Uniform Public Expression Protection Act

The purpose of the Uniform Public Expression Protection Act is to provide a remedy for defendants involved in lawsuits called "Strategic Lawsuits Against Public Participation," or "SLAPPs." SLAPPs are abusive civil lawsuits that may be brought against individuals, entities, or government officials. The topics of these lawsuits range from education and zoning to politics and the environment. Though the claim of the lawsuit may be defamation, tortious interference with business expectations, invasion of privacy, or something else, the real goal of a SLAPP lawsuit is to entangle the defendant in expensive litigation that stifles the defendant's ability to engage in constitutionally protected activities. The Uniform Public Expression Protection Act creates a clear process through which SLAPPs can be challenged and their merits fairly evaluated in an expedited manner. The Act protects individuals' rights to petition and speak freely on issues of public interest while, at the same time, protecting the rights of people and entities to file meritorious lawsuits for real injuries.

D. *Uniform Acts in Nebraska during the 2020 Legislative Session*

- (i) LB 966 Wills Recognition Act (enacted)
- (ii) LB 895 Amendments to Uniform Probate Code (enacted)
- (iii) LB 902 Trust Decanting Act (enacted)

(iv) Uniform Interstate Depositions and Discovery Act was implemented, as follows: One section of LB912 provides that the district court clerks may issue a subpoena for discovery in Nebraska for civil proceedings pending in a foreign jurisdiction when authorized by a Supreme Court rule. The Nebraska Supreme Court Committee on Practice and Procedure submitted to the Supreme Court a proposed rule based on the Uniform Interstate Depositions and Discovery Act. The Court has posted the proposed rule for public comment. The comment period ends on December 31, 2020.

VII. PLANNED ACTIVITIES FOR 2021

During the 2021 session, we will work to have the following acts introduced and considered by the Unicameral:

- (i) Uniform Easement Relocation Act
- (ii) Uniform Pretrial Release and Detention Act

- (iii) Uniform Powers of Appointment Act.

VIII. ENACTMENT RECORD TO DATE

According to the records of the ULC, Nebraska has an outstanding record of enacting uniform and model acts prepared by the ULC. Adoption of these acts has improved the jurisprudence of the State of Nebraska at little cost because of the work done by the ULC in preparing the acts to a high level of technical competence.

List of Uniform and Model Acts Enacted in Nebraska

1. Acknowledgment (1939)(1942): *Enacted 1943*
2. Adult Guardianship and Protective Proceedings Jurisdiction (2007): *Enacted 2011*
3. Anatomical Gift (1968): *Enacted 1971*
4. Revised Anatomical Gift (2006): *Enacted 2010*
5. Appointment of Commissioners, Act to Provide for (1944): *Enacted 1951*
6. Arbitration (1956): *Enacted 1986*
7. Athlete Agents (2000): *Enacted 2009*
8. Attendance of Witnesses from Without a State in Criminal Proceedings, Act to Secure (1936): *Enacted 1937*
9. Business Records as Evidence (1936): *Enacted 1951*
10. Child Abduction Prevention (2006): *Enacted 2007*
11. Child Custody Jurisdiction (1968): *Enacted 1979*
12. Child Custody Jurisdiction and Enforcement (1997): *Enacted 2003*
13. Choice of Forum (1968): *Enacted 1969*
14. Civil Remedies for Unauthorized Disclosure of Intimate Images Act (2020); *Enacted 2020*
15. Commercial Code (1951): *Enacted 1963*
16. Revised UCC Article 1 (2001): *Enacted 2005*
17. UCC Article 2A (1987)(1990): *Enacted 1991*
18. Revised UCC Articles 3 and 4 (1990): *Enacted 1991*
19. UCC Article 4A (1989): *Enacted 1991*
20. Revised UCC Article 5 (1995): *Enacted 1996*
21. Revised UCC Article 6 (Repeal) (1989): *Enacted 1991*
22. Revised UCC Article 7 (2003): *Enacted 2005*
23. Amendments to UCC Article 8 (1977): *Enacted 1989*
24. Revised UCC Article 8 (1994): *Enacted 1995*
25. Amendments to UCC Article 9 (1972): *Enacted 1980*
26. Revised UCC Article 9 (1998): *Enacted 1999*
27. Amendments to Revised UCC Article 9 (1999): *Enacted 2000*
28. Amendments to Revised UCC Article 9 (2010): *Enacted 2011*
29. Common Trust Fund (1938): *Enacted 1953*

30. Composite Reports as Evidence (1936): *Enacted 1951*
31. Condominium (1977)(1980): *Enacted 1983*
32. Conflict of Laws-Limitations (1982): *Enacted 2006*
33. Controlled Substances (1970): *Enacted 1971*
34. Criminal Extradition (1926): *Enacted 1935*
35. Revised Criminal Extradition (1936): *Enacted 1963*
36. Custodial Trust (1987): *Enacted 1997*
37. Deceptive Trade Practices (1964)(1966): *Enacted 1969*
38. Declaratory Judgments (1922): *Enacted 1929*
39. Deployed Parents Custody & Visitation Act (2012): *Enacted 2016.*
40. Determination of Death (1980): *Enacted 1992*
41. Directed Trust Act (2020); *Enacted 2020*
42. Disposition of Unclaimed Property (1966): *Enacted 1969*
43. Divorce Recognition (1947): *Enacted 1949*
44. Durable Power of Attorney (1979): *Enacted 1985*
45. Electronic Transaction (1999): *Enacted 2000*
46. Enforcement of Foreign Judgments (1948): *Enacted 1949*
47. Revised Enforcement of Foreign Judgments (1964): *Enacted 1993*
48. Environmental Covenants (2003): *Enacted 2005*
49. Evidence, Rules of * (1964): *Enacted 1975*
50. Faithful Presidential Electors Act (2010): *Enacted 2014*
51. Federal Lien Registration (1978)(1982): *Enacted 1988*
52. Federal Tax Lien Registration (1966): *Enacted 1969*
53. Revised Fiduciary Access to Digital Assets Act. *Enacted in 2016.*
54. Foreign Depositions (1920): *Enacted 1951*
55. Fraudulent Conveyance (1918): *Enacted 1980*
56. Fraudulent Transfer (1984): *Enacted 1989*
57. Gifts to Minors (1956): *Enacted 1957*
58. Revised Gifts to Minors (1965): *Enacted 1969*
59. Interstate Arbitration of Death Taxes (1943): *Enacted 1976*
60. Interstate Compromise of Death Taxes (1943): *Enacted 1976*
61. Interstate Enforcement of Domestic Violence Protection Orders (2000)(2002):
Enacted 2003
62. Interstate and International Procedure (1962): *Enacted 1967*
63. Interstate Family Support (1992): *Enacted 1993*
64. Amendments to Interstate Family Support (1996): *Enacted 1997*
65. Amendments to Interstate Family Support (2001): *Enacted 2003*
66. Amendments to Interstate Family Support (2016): *Enacted 2016*
67. Intestacy, Wills and Donative Transfers (1991): *Enacted 1993*
68. Judicial Notice of Foreign Law (1936): *Enacted 1947*
69. Limited Cooperative Association (2007): *Enacted 2008*
70. Limited Liability Company (2006): *Enacted 2010*
71. Limited Partnership (1916): *Enacted 1939*
72. Revised Limited Partnership (1976): *Enacted 1981*
73. Management of Institutional Funds (1972): *Enacted 1996*

74. Mediation (2001): *Enacted 2003*
75. Military Justice, Code of * (1961): *Enacted 1969*
76. Multiple Person Accounts (1989): *Enacted 1993*
77. Narcotic Drug (1932): *Enacted 1935*
78. Negotiable Instruments Law (1896): *Enacted 1905*
79. Partnership * (1914): *Enacted 1943*
80. Revised Partnership (1994)(1996): *Enacted 1997*
81. Photographic Copies of Business and Public Records as Evidence (1949):
Enacted 1951
82. Power of Attorney (2006): *Enacted 2012*
83. Premarital Agreement (1983): *Enacted 1994*
84. Principal and Income (1997): *Enacted 2001*
85. Amendments to Principal and Income (2008): *Enacted 2009*
86. Probate Code (1969): *Enacted 1974*
87. Property (1938): *Enacted 1941*
88. Protected Series Act (2017): *Enacted 2020*
89. Prudent Investor (1994): *Enacted 1997*
90. Prudent Management of Institutional Funds (2006): *Enacted 2007*
91. Real Property Transfer on Death Act (2009): *Enacted 2012*
92. Reciprocal Enforcement of Support (1950): *Enacted 1951*
93. Amendments to Reciprocal Enforcement of Support (1952): *Enacted 1957*
94. Amendments to Reciprocal Enforcement of Support (1958): *Enacted 1965*
95. Revised Reciprocal Enforcement of Support (1968): *Enacted 1971*
96. Reciprocal Transfer Tax (1928): *Enacted 1945*
97. Recognition of Acknowledgments (1968): *Enacted 1969*
98. Rendition of Accused Persons (1967): *Enacted 1969*
99. Rendition of Prisoners as Witnesses in Criminal Proceedings (1957): *Enacted 1969*
100. Residential Landlord and Tenant (1972): *Enacted 1974*
101. Rights of the Terminally Ill (1985): *Enacted 1992*
102. Sales (1906): *Enacted 1921*
103. Securities * (1956)(1958): *Enacted 1967*
104. Simplification of Fiduciary Security Transfers (1958): *Enacted 1961*
105. Simultaneous Death (1940): *Enacted 1947*
106. Statutory Rule Against Perpetuities (1986): *Enacted 1989*
107. Stock Transfer (1909): *Enacted 1941*
108. Testamentary Additions to Trusts (1991): *Enacted 1999*
109. TOD Security Registration (1989): *Enacted 1993*
110. Traffic on Highways, Act Regulating * (1926): *Enacted 1931*
111. Transfers to Minors (1983)(1986): *Enacted 1992*
112. Trust Code (2000): *Enacted 2003*
113. Trust Decanting Act (2015); *Enacted 2020*
114. Trust Receipts (1933): *Enacted 1949*
115. Veterans' Guardianship (1928): *Enacted 1929*
116. Revised Veterans' Guardianship (1942): *Enacted 1949*

- 117. Voidable Transactions Act Amendments (2020): *Enacted 2020*
- 118. Voting by New Residents in Presidential Elections (1962): *Enacted 1963*
- 119. Warehouse Receipts (1906): *Enacted 1909*
- 120. Wills Act, Foreign Executed (1910): *Enacted 1941*
- 121. Wills Recognition Act (1977); *Enacted 2020*

The table below demonstrates that Nebraska’s support of the ULC has also had a significant impact on state legislation throughout the United States. One of the main purposes of the ULC, as the name implies, is to draft and propose laws “to promote uniformity in the law among the several States where uniformity is desirable and practicable.” Thus, enactment of these laws in other States also serves Nebraska’s interest in aligning our laws with those of other States and, in so doing, improves comity between States and the overall efficiency of the legal system.

Number of Uniform and Model Acts Enacted in Each State

ALABAMA – 107	ALASKA – 106
ARIZONA – 117	ARKANSAS – 122
CALIFORNIA – 105	COLORADO – 129
CONNECTICUT – 112	DELAWARE – 103
DISTRICT OF COLUMBIA – 109	FLORIDA – 88
GEORGIA – 81	HAWAII – 141
IDAHO – 138	ILLINOIS – 118
INDIANA – 106	IOWA – 106
KANSAS – 117	KENTUCKY – 99
LOUISIANA – 87	MAINE – 112
MARYLAND – 120	MASSACHUSETTS – 93
MICHIGAN – 120	MINNESOTA – 145
MISSISSIPPI – 88	MISSOURI – 84
MONTANA – 152	NEBRASKA – 121
NEVADA – 147	NEW HAMPSHIRE – 97
NEW JERSEY – 92	NEW MEXICO – 155
NEW YORK – 78	NORTH CAROLINA – 103
NORTH DAKOTA – 174	OHIO – 88
OKLAHOMA – 135	OREGON – 122
PENNSYLVANIA – 116	PUERTO RICO – 30
RHODE ISLAND – 104	SOUTH CAROLINA – 89
SOUTH DAKOTA – 130	TENNESSEE – 105
TEXAS – 97	US VIRGIN ISLANDS – 86
UTAH – 143	VERMONT – 100
VIRGINIA – 111	WASHINGTON – 139
WEST VIRGINIA – 108	WISCONSIN – 142
WYOMING – 103	

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