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Recommended Citation

Byington, Jonathon S. and Powell, Karen, "Uniform Law Commission Completes 7 New Acts or Amendments in 2016" (2016). *Faculty Journal Articles & Other Writings*. 120.

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Uniform Law Commission completes 7 new acts or amendments in 2016

By Jonathon S. Byington and Karen Powell

Uniform laws impact the lives of Montana citizens every day — from a simple transaction such as a teenager buying a candy bar to a complex partnership agreement — these and many more transactions and disputes are governed by uniform laws enacted by the Montana Legislature. Although lawyers in Montana use uniform laws every day, many are unfamiliar with the origins of these laws.

Most uniform laws are the product of the Uniform Law Commission (ULC), known until 2008 as the National Conference of Commissioners on Uniform State Laws. The ULC is a nonprofit unincorporated association consisting of more than 300 uniform law commissioners who must be licensed attorneys and appointed by every state. The ULC was originally created as a way to consider state law, determine in which areas of the law uniformity is important, and then draft uniform and model acts for consideration by the states. The ULC has worked for the uniformity of state laws since 1892. Montana has been a member of the ULC since 1893.

The ULC convenes as a body once a year, meeting for a period of seven days, usually in July. At each annual meeting, proposed acts are read and debated line by line, before all commissioners sitting as a committee of the whole. The ULC spends a minimum of two years on each draft, but no act becomes officially recognized as a uniform act until the ULC is satisfied that it is ready for consideration by the legislators of every state. In the interim between annual meetings, drafting committees composed of commissioners, observers, and American Bar Association advisors meet to prepare working drafts that are to be considered at the annual meeting. Work on large-scale

Montana's Uniform Law Commission

Montana's Uniform Law Commission consists of three members: Karen Powell, a business, regulatory and tax attorney in Helena; Johnathon Byington, an associate professor at the Alexander Blewett III School of Law at the University of Montana; and the Honorable Gregory Pinski, Eighth Judicial District Court judge.

The ULC can only propose. No uniform act can take effect unless and until it is adopted by a state legislature.

If you are interested in any uniform or model acts proposed by the ULC, contact any of Montana's commissioners. You can contact Powell at kp@renthelena.com or 406-439-8309. You can contact Judge Pinski at gpinski@mt.gov or 406-454-6894. You can contact Jonathon Byington at jonathon.byington@umontana.edu or 406-243-6773.

projects, such as revisions to the Uniform Commercial Code, can take many years to complete.

The ULC can only propose. No uniform act can take effect unless and until it is adopted by a state legislature.

Montana has enacted over 150 uniform acts, including the landmark Uniform Commercial Code.¹ In recent years, Montana has enacted the Uniform Collaborative Law Act,² the Uniform Interstate Family Support Act,³ the Uniform Power of Attorney Act,⁴ the Uniform Unsworn Foreign Declarations Act,⁵ the Uniform Powers of Appointment Act,⁶ the Uniform Trust Code,⁷ and amendments to the Uniform Commercial Code.⁸

Montana's Uniform Law Commission consists of three members each appointed by the Montana Legislative Council.⁹ Montana's current commissioners are: Karen Powell, a business, regulatory, and

tax attorney in Helena; the Honorable Gregory Pinski, a district judge in the 8th Judicial District in Great Falls; and Jonathon Byington, an associate professor at the Alexander Blewett III School of Law at the University of Montana in Missoula. In addition, the Montana delegation has one member who was recently elected by the ULC to be a life member, E. Edwin (Ed) Eck, the former dean of the law school and the current Deputy Attorney General and Chief of the Office of Consumer Protection at the Montana Department of Justice in Helena. Todd Everts, who is Montana's Code Commissioner and the Director of the Montana Legislative Legal Services Office, serves as an associate commissioner on the ULC. Commissioners donate their time and expertise as a pro bono service, receiving no payment for their work with the ULC.

In July 2016, the 125th Annual Meeting of the ULC convened in Stowe, Vermont. Seven new acts or amendments to acts were completed in 2016, including:

■ **Uniform Family Law Arbitration Act:** States' laws vary when it comes to arbitrating family law matters such as spousal support, division of property,

1 M.C.A. § 30-1-101.

2 M.C.A. § 25-40-101.

3 M.C.A. § 40-5-1001.

4 M.C.A. § 72-31-301.

5 M.C.A. § 26-1-1101.

6 M.C.A. § 72-7-101.

7 M.C.A. § 72-38-101.

8 M.C.A. §§ 30-4A-108 and 30-9A-503.

9 M.C.A. § 1-12-101.

child custody, and child support. The Uniform Family Law Arbitration Act standardizes the arbitration of family law. It is based in part on the Revised Uniform Arbitration Act (“RUAA”), though it departs from the RUAA in areas in which family law arbitration differs from commercial arbitration, such as: standards for arbitration of child custody and child support; arbitrator qualifications and powers; and protections for victims of domestic violence. This act is intended to create a comprehensive family law arbitration system for the states.

■ **Revised Uniform Unclaimed Property Act:** The ULC first drafted uniform state legislation on unclaimed property in 1954. Since then, revisions have been promulgated in 1981 and again in 1995. Many technological developments in recent years as well as new types of potential unclaimed property, such as gift cards, are not addressed in the most current uniform act. The Revised Uniform Unclaimed Property Act updates provisions on numerous issues, including escheat of gift cards and other stored-value cards, life insurance benefits, securities, dormancy periods, and use of contract auditors.

■ **Uniform Wage Garnishment Act:** States have different wage garnishment laws and processes. This means that employers who do business across multiple states must know and abide by a different and often complex law for each jurisdiction. If employers make processing errors calculating garnishments they may face civil penalties. The Uniform Wage Garnishment Act seeks to simplify and clarify wage garnishments for employers, creditors, and consumers by standardizing how the wage garnishment process works and offering plain-language notice and garnishment calculation forms.

■ **Uniform Employee and Student Online Privacy Protection Act:** The growing use of social media has implications in both employment and educational contexts. Some employers and educational institutions ask current and prospective employees and students to grant the employer or school access to social media or other name and password protected accounts. The Uniform Employee and Student Online Privacy Protection Act addresses both employers’ access to employees or prospective

employees’ social media and other online accounts accessed via username and password or other credentials of authentication as well as educational institutions’ access to students’ or prospective students’ similar online accounts.

■ **Uniform Unsworn Domestic Declarations Act:** The Uniform Unsworn Domestic Declarations Act builds upon the Uniform Unsworn Foreign Declarations Act, which covers unsworn declarations made *outside* the United States. The Uniform Unsworn Domestic Declarations Act permits the use of unsworn declarations made under penalty of perjury in state courts when the declaration was made *inside* the United States.

■ **Uniform Unsworn Declarations Act:** The Uniform Unsworn Declarations Act combines the Uniform Unsworn Foreign Declarations Act and the Uniform Unsworn Domestic Declarations Act into one comprehensive act.

■ **Revised Uniform Law on Notarial Acts: Amendment on Foreign Remote Notarization:** The Amendment to the Revised Uniform Law on Notarial Acts authorizes notaries public to perform notarial acts in the state in which they are commissioned for individuals who are located outside the United States. The amendment is optional for the states. The amendment requires the use of audio and video technologies for real-time communication and requires the notary to record the interaction. It authorizes the commissioning agency to regulate the technologies used. The act of the individual in making the statement or signing the record must not be prohibited in the foreign state in which the individual is physically located. The certificate affixed by the notary to the record must indicate that the notarial act took place while the individual was located in a foreign state.

State to consider Revised Fiduciary Access to Digital Assets in 2017

The Revised Uniform Fiduciary Access to Digital Assets Act (“Revised UFADAA”) will be considered for enactment in the upcoming 2017 Montana legislative session as bill draft number LC0085. A fiduciary is a trusted person with the legal authority to manage another’s property and the duty to act in that person’s best interest. Revised

UFADAA addresses four common types of fiduciaries: executors or administrators of deceased persons’ estates; court-appointed guardians or conservators of protected persons’ estates; agents appointed under powers of attorney; and trustees. Revised UFADAA gives Internet users the power to plan for the management and disposition of their digital assets in a similar way as they can make plans for their tangible property. In case of conflicting instructions, the act provides a three-tiered system of priorities. First, if the custodian provides an online tool, separate from the general terms of service, that allows the user to name another person to have access to the user’s digital assets or to direct the custodian to delete the user’s digital assets, Revised UFADAA makes the user’s online instructions legally enforceable. Second, if the custodian does not provide an online planning option, or if the user declines to use the online tool provided, the user may give legally enforceable directions for the disposition of digital assets in a will, trust, power of attorney, or other written record. Third, if the user has not provided any direction, either online or in a traditional estate plan, the terms of service for the user’s account will determine whether a fiduciary may access the user’s digital assets. If the terms of service do not address fiduciary access, the default rules of Revised UFADAA will apply. Revised UFADAA is an overlay statute designed to work in conjunction with existing laws on probate, guardianship, trusts, and powers of attorney.

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For further information on uniform acts or the ULC, please go to the ULC’s website at www.uniformlaws.org.

Jonathon S. Byington is an associate professor at the Alexander Blewett III School of Law at the University of Montana in Missoula. Karen Powell is a business, regulatory, and tax attorney in Helena. Both serve as commissioners on the Uniform Law Commission.