

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



NOVEMBER 22, 2005



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

November 22, 2005

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 2005.

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
House Minority Leader
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STATE OF ILLINOIS
REPORT OF THE ILLINOIS DELEGATION TO
THE NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS (NCCUSL)
November 22, 2005

1. PREAMBLE

To the Honorable Rod Blagojevich, Governor, and members of the Ninety-Fourth 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 Pittsburgh, PA in July 2005. Howard J. Swibel is Chair, and Richard C. Edwards is Secretary.

8. CURRENT ACTIVITIES OF THE ILLINOIS DELEGATION.

Howard J. Swibel: President, NCCUSL; Member, Diversity Subcommittee; Member, Executive Committee; Member, Standby Committee to Revise Uniform Securities Act.

Michael B. Getty: Member, Standby Committee on Uniform Child Witness Testimony by Alternative Methods Act; Chair, Committee on Assignment of Rents Act; Division

Chair Member, Standby Committee on Revised Uniform Arbitration Act, Drafting Committee on Discovery of Electronic Records Act, Committee on Federal Regulations, Standby Committee on Uniform Foreign Country Money Judgments Recognition Act, Standby Committee on the Implementation of International Conventions and Treaties, Committee on International Legal Developments, Standby Committee on Administrative Procedures for Interstate Compact Entities, Standby Committee on the Regulation of Medical Examiners, Drafting Committee on the Misuse of Genetic Information in Employment and Insurance Act, Committee on Public Information, Drafting Committee to Revise Model State Administrative Procedures Act, Advisory Committee on Website Technical.

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

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

Steven G. Frost: Member, Joint Editorial Board on Uniform Unincorporated Organization Acts; Member, Study Committee on an Omnibus Business Organization Code; Member, Committee on Public Information; Member, Standby Committee to Consider Adding Divisions to Model Entity Transactions Act; Member, Drafting Committee on Amendments to Uniform Limited Liability Company Act; Chair, Advisory Committee on Website Technical.

Harry D. Leinenweber: Member, Standby Committee on Faithless Presidential Electors; Member, Drafting Committee on Interstate Depositions and Discovery of Documents Act.

Samuel J. Tenenbaum: Member, Study Committee on Faithless Presidential Electors.

Demitri G. Karcazes: Member, Study Committee on the Implementation of International Conventions and Treaties; Member, Drafting Committee on Uniform Statutory Trust Act.

Richard C. Edwards: Member, Legislative Committee.

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, 2005, prepared by NCCUSL. NCCUSL reports that 96 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
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
2006	58,300	-----	---	-----	58,300

No State moneys were authorized for payment in FY93, FY94, FY95, FY03, FY04, FY05, or FY06 for travel expenses or registration fees. Moneys to pay the FY95 annual contribution were appropriated and paid in FY98.

11. SHORT SUMMARIES OF 2005 ACTS

Uniform Assignment of Rents Act (UARA)

Real estate law generally does not provide a consistent creditor's right to rents when a debtor on a real estate loan on property with tenants then defaults on payment. Creditors normally take an assignment of rents upon default as part of the credit transaction, but enforceability of such assignments and their priority over other creditors is often in doubt. The Uniform Assignment of Rents Act seeks to remedy this problem by establishing a comprehensive statutory model for the creation, perfection, and enforcement of a security interest in rents. An assignment of rents creates a security interest in the rents that may be perfected by a filing in the appropriate real estate records. Perfection establishes priority in collection of the rents over competing creditors. Tenants may be required, upon specified notice, to pay rents directly to the assignee as a means of enforcement of the security interest. A receiver may be appointed in the event the assignee can show that direct enforcement is insecure.

Uniform Foreign-Country Money Judgments Recognition Act (UF-CMJRA)

This Act is a revision of the Uniform Foreign Money-Judgments Recognition Act of 1962, which codified the most prevalent common law rules with regard to the recognition and enforcement of money judgments rendered in other countries. Recognition in an American state court is a step towards enforcement of the judgment against assets of the judgment debtor. This revision continues the basic policies and language of the 1962 Act; the main purpose of this modest revision is to correct and clarify gaps in the 1962 Act revealed in the case law. For example, the 2005 Act provides that a petitioner for recognition has the burden of proving that the judgment is entitled to recognition under the standards of the Act, and that any respondent resisting recognition and enforcement has the burden of proof respecting denial of recognition. Burdens of proof were not addressed in the 1962 Act. The 2005 Act has statutes of limitations provisions not found in the 1962 Act at all. The result is a more comprehensive Act and better response to the conditions of international trade.

Uniform Debt-Management Services Act (UDMSA)

The consumer debt management industry has taken many forms over the time since its development in the 1950's. The industry has had a checkered past, with frequent accusations of abuse. The interest in debt counseling and management, however, has been dramatically escalated by the bankruptcy reform legislation passed by Congress in 2005. It mandates counseling by a private agency before an individual may enter into bankruptcy. The Uniform Debt-Management Services Act regulates debt-management companies by requiring them to register with the state. To obtain a certificate of registration, a provider must supply information about itself, must obtain insurance against employee dishonesty, and must post a surety bond to safeguard any money that it receives from individuals for payment of creditors. The Act also regulates interaction with consumers, including steps to be taken before entering an agreement with an individual, the content of an agreement (including limitations on the fees that may be charged), and provisions concerning the performance and termination of agreements. Finally, the Act provides for enforcement both by a public authority and by private individuals, including rule-making power on the part of the administrator and recovery of minimum, actual, and, in appropriate cases, punitive damages in private enforcement actions.

Uniform Certificate of Title Act (UCOTA)

Ownership of motor vehicles is dependent upon registration of motor vehicle titles in every state. Not only ownership rights, but the rights of secured creditors are dependent upon these registrations. A secured creditor with a security interest in a motor vehicle perfects that interest in the title registration records. Though the buying, selling, financing and owning of motor vehicles is clearly interstate in scope, the law providing for registration of certificates of title for motor vehicles is not uniform from state to state. The Uniform Certificate of Title Act is intended to promote uniformity of certificate of title law. This is significant now because the law of secured transactions, under which motor vehicles are financed, is uniform. The Uniform Act provides basic procedures for registering certificates of title for motor vehicles. It is designed to incorporate electronic

registrations of title. It is also designed to incorporate electronic title searches for motor vehicles. While this Act does not cover watercraft or premanufactured homes, nor does it attempt to harmonize state “lemon laws” or title branding systems, it is intended to enable state coordination with federal initiatives to prevent title and odometer fraud. By providing for improved administrative rules and remedies governing title issues, creating better and more consistent data flows and information, and providing increased uniformity in the law, the Act will make certificates of title more meaningful and useful for all parties. The resulting increased integrity of the title system will benefit all involved.

Model Entity Transactions Act (META)

The Model Entity Transactions Act provides procedures for mergers, conversions, interest exchanges, divisions 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. This is a model act because it must be tailored in each enacting state to tie existing entity statutes together. It was initially completed in 2004. Division of entities was added in 2005.

12. 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.

13. 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.

14. 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.

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)
- Environmental Covenants (not 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 and 2002 not adopted)
- Real Property Electronic Recording (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; 1997, 2000 not adopted)
- Prudent Investor (adopted)
- TOD Security Registration (adopted)

Trade Secrets (adopted)
Transfers to Minors (adopted)
Unclaimed Property (adopted)

16. LEGISLATIVE ACTIVITY IN 2004-2005

In 2005 the following were introduced but did not pass both houses: HB3618, Uniform Parentage Act (2000); SB1646, Uniform Commercial Code Article 7 (2003); and Uniform Commercial Code Article 1 (2001).

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

- Amended Version Enacted
- Substantially Similar
- ★ Enacted

Table 1 - Uniform Acts (Continued)

16	International Willis (1977) <i>UPC Article II, Part 10 (1977)</i>	Alabama	★	Alaska	★	Arizona	★	Arkansas	★	California	★	Colorado	★	Connecticut	★	Delaware	★	District of Columbia	★	Florida	★	Georgia	★	Hawaii	★	Idaho	★	Illinois	★	Indiana	★	Iowa	★	Kansas	★	Kentucky	★	Louisiana	★	Maine	★	Maryland	★	Massachusetts	★	Michigan	★	Minnesota	★	Mississippi	★	Missouri	★	Montana	★	Nebraska	★	Nevada	★	New Hampshire	★	New Jersey	★	New Mexico	★	New York	★	North Carolina	★	North Dakota	★	Ohio	★	Oklahoma	★	Oregon	★	Pennsylvania	★	Puerto Rico	★	Rhode Island	★	South Carolina	★	South Dakota	★	Tennessee	★	Texas	★	U.S. Virgin Islands	★	Utah	★	Vermont	★	Virginia	★	Washington	★	West Virginia	★	Wisconsin	★	Wyoming	★	Estate Tax Apportionment (2003) <i>UPC Article III, 3-916 (2003)</i>	Estate Tax Apportionment (1958) (1964) (1982) (1982) <i>UPC Article III, 3-916 (1969) (1982)</i>	Guardianship and Protective Proceedings (1982/1989) (1997) <i>UPC Article V, Parts 1-4 (1969) (1982/1989) (1998)</i>	Durable Power of Attorney (1979) (1987) <i>UPC Article V, Part 5 (1979) (1987)</i>	Nonprobate Transfers on Death (1989) (1998) <i>UPC Article VI, Parts 1-3 (1989) (1998)</i>	Multiple-Person Accounts (1989) (1998) <i>UPC Article VI, Part 2 (1989)</i>	TOD Security Registration (1989) (1998) <i>UPC Article VI, Part 3 (1989) (1998)</i>	Prudent Investor (1994)	Real Property Electronic Recording (2004)	Residential Landlord and Tenant (1972)	Residential Mortgage Satisfaction (2004)	Securities (2002)	Statutory Form Power of Attorney (1988)	Trade Secrets (1979) (1985)	Transfers to Minors (1983) (1986)	Trust Code (2000) (2001) (2003) (2004)	Unclaimed Property (1981) (1995)	Unincorporated Nonprofit Association (1992/1995)	Wage Withholding and Unemployment Insurance Procedure (2004)
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- New Jersey
- New Mexico
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Table II - Model Acts		(Uniformity not necessary but helpful if state desires legislation on the subject)	
1	Adoption (1994)		
3	Anti-Discrimination (1966)	★	
3	Audio-Visual Deposition (1978)		★
2	Class Actions (1976) (1987)		
1	Construction Lien (1987)		
10	Consumer Credit Code (1968) (1974)		★
4	Consumer Sales Practices (1970) (1971)		★
0	Criminal Procedure, Rules of (1974) (1987)		
2	Dormant Mineral Interests (1986)		★
0	Drug Dependence Treatment and Rehabilitation (1973)		
2	Eminent Domain Code (1974)		★
0	Employment Termination (1991)		
0	Entity Transactions (2005)		
1	Exemptions (1976) (1979)		●
1	Extradition and Rendition (1980)		
1	Insanity Defense and Post-Trial Disposition (1984)		
8	Land Sales Practices (1966)		★
2	Management of Public Employee Retirement Systems (1997)		★
10	Mandatory Disposition of Detainers (1958)		★
1	Marital Property (1983)		
0	Marketable Title (1990)		
8	Marriage and Divorce (1970) (1973)		★
7	Minor Student Capacity to Borrow (1969)		★
0	Motor Vehicle Accident Reparations (1972)		
0	Periodic Payment of Judgments (1990)		
1	Planned Community (1980)		
1	Post-Conviction Procedure (1980)		★
0	Punitive Damages (1996)		
1	Real Estate Cooperative (1981)		★
5	Real Estate Time-Share (1980) (1982)		●

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Table III - Other Acts (Recommended for consideration in states having need for legislation in field involved)		Act to Provide for the Appointment of Commissioners (1944)
12
22
3
22
1
4
7
23
26
1
6
0
0
2
0
7
13
44
2

Act to Provide for the Appointment of Commissioners (1944)

Alcoholism and Intoxication Treatment (1971)

Comparative Fault (1977) (1979)

Contribution Among Tortfeasors (1939) (1955)

Criminal History Records (1986)

Cy-Pres (1944)

Duties to Disabled Persons (1972)

Facsimile Signatures of Public Officials (1958)

Fiduciaries (1922)

Information Practices Code (1980)

Joint Obligations (1925)

Land Transactions (1975) (1977) (1983)

Metric System Procedure (1979)

Public Assembly (1972)

Simplification of Land Transfers (1976) (1977) (1983) (1990)

Single Publication (1952)

Vendor and Purchaser Risk (1935)

Veterans' Guardianship (1928) (1942)

Written Obligations (1925)