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September 27, 2018

Honorable Dennis Daugaard
Office of the Governor
500 East Capitol Avenue
Pierre, SD 57501-5070

Jason Handcock, Director
Legislative Research Council
Capitol Building 3rd Floor
500 East Capitol Avenue
Pierre, SD 57501-5070

Dear Governor Daugaard & Director Handcock:

On behalf of the South Dakota Uniform Laws Commissioners, I am pleased to submit to you the South Dakota Commission on Uniform Legislation 2018 Report. This report is being submitted pursuant to SDCL 2-11-8.

On behalf of the other South Dakota Commissioners, we wish to express our thanks to you and the South Dakota Legislature for your continued support of the Uniform Laws Commission.

We would request that Director Handcock make copies of the report available to the members of the South Dakota Legislative Research Council Executive Board and other legislators as the Board may see fit.

Very Truly Yours,

/s/ Michael B. DeMersseman
Michael B. DeMersseman
DEMERSSEMAN JENSEN
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SOUTH DAKOTA
COMMISSION ON UNIFORM LEGISLATION
2018 ANNUAL REPORT

I. PREAMBLE

To the Honorable Governor Dennis Daugaard and members of the Legislative Research Council Executive Board. The South Dakota Commissioners on Uniform State Laws respectfully submit this annual report.

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 for the uniformity of state laws since 1892. 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. The statutory authority governing South Dakota's uniform law commission can be found at Chapter 2-11 of South Dakota Codified Laws.

There is only one fundamental requirement for the more than 300 uniform law commissioners: that they are 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 Uniform Law Commission.

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. The ULC can only propose – no uniform law is effective until a state legislature adopts it.

While protecting our federal system 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 Uniform Law Commission. By 1912, every state was participating in the ULC. The U.S. Virgin Islands was the last jurisdiction to join, appointing its

first commission in 1988. South Dakota appointed its first Commissioners in 1893, and there have been a total of forty-five (45) South Dakota Commissioners who have served since then.

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, and Souter, Sandra Day O'Conner, Ruth Bader Ginsburg and former Chief Justice Rehnquist. Legal scholars have served in large numbers, including Professors Wigmore, Williston, Pound, and Bogert. Many more distinguished lawyers have served since 1892, though their names are not as well known in legal affairs and the affairs of the U.S.

In each year of service, the ULC steadily increased its contribution to state law. Since its founding, the ULC has drafted more than 200 uniform laws on numerous subjects and in various fields of law, setting patterns for uniformity across the nation. Uniform Acts include the Uniform Probate Code, the Uniform Partnership Act, the Uniform Limited Partnership Act, the Uniform Anatomical Gift Act, the Uniform Interstate Family Support Act, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Prudent Management of Institutional Funds Act.

Most significant was the 1940 ULC decision to attack 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, the UCC took ten years to draft and another 14 years before it was enacted across the country. It remains the signature product of the ULC.

Today 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 Uniform Law Commission 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 under our federal system. The law of American Indian Tribes and Nations has also been assisted by the creation of the Model Tribal Secured Transactions Code and the Model American Indian Probate Code.

IV. DIVERSITY STATEMENT

Each member jurisdiction determines the number of uniform law commissioners it appoints to the Uniform Law Commission, the terms of uniform law commissioners and the individuals who are appointed from the legal profession of that jurisdiction. The Uniform Law Commission encourages the appointing authorities to consider among other factors, diversity of membership

in their uniform law commissions. The Uniform Law Commission does its best work when the uniform law commissioners are drawn from diverse backgrounds and experiences.

V. PROCEDURES

The ULC is convened as a body once a year. It meets for a period of seven or eight days, usually 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 must be considered over a substantial period of 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 caucus has one vote.

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 the 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 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 all ULC drafting committees and many ULC study committees. Liaison is also maintained with the American Law Institute, the Council of State Governments, the National Conference of State Legislatures, the Conference of Chief Justices, and the National Center for State Courts on an on-going basis. Liaison and activities are conducted with other organizations as interests and activities necessitate.

VI. ACTIVITIES OF THE SOUTH DAKOTA COMMISSIONERS

A. The South Dakota Commissioners and years of their first appointments are:

Michael B. DeMersseman (1997)
Marc S. Feinstein (2011)
Thomas E. Geu (2007
Brian G. Gosch (2011)
Gene N. Lebrun (1976)
Timothy R. Johns (2016)
Arthur L. Rusch (2017)

B. The ULC current committee assignments for Commissioners from South Dakota are:

Michael DeMersseman
-Liaison with American Indian Tribes and Nations
-Study Committee on Firearms Information
-Study Committee on Direct Consumer Sales of Wine, Beer and Distilled Spirits

Marc S. Feinstein
-Drafting Committee on Fiduciary Access to Digital Assets
-Drafting Committee on Trust Decanting
-Study Committee on Event Date Records for Cars
-Drafting Committee for Revised Principal and Income Act
-Drafting Committee on Guardianship, Conservatorship and other Protective Arrangements Act
-Drafting Committee on Fiduciary Access to Digital Assets Act
-Drafting Committee on Trust Decanting Act
-Study Committee on Drones
-Study Committee on Computer Database Retrieval Systems for Land Records

Thomas Geu
-Standby Committee on Harmonization of Business Acts
-Drafting Committee Tribal Probate Code
-Enactment Committee for Unincorporated Entity Acts

Brian G. Gosch
-Drafting Committee Wage Garnishment Act
-Joint Study Committee on Harmonization of the Law of Caribbean Nations and the United States Concerning Enforcement of Child Custody and Child Support Orders

Gene N. Lebrun
-Life Member
Committee on Uniform Law Commission History
-Public Information Committee, Chair
Committee on Parliamentary Practice
-Drafting Committee Revise the Uniform Unclaimed Property Act
-Liaison with the American Bar Association
-Standby Committee on Uniform Presidential Electors Act
-Study Committed on Direct Consumer Sales on Wine, Beer and Distilled Spirits

Timothy R. Johns
-Legislative Liaison
-Study Committee on Conservation Easements

VII. A SUMMARY OF NEW ACTS

At its One-Hundred-Twenty-Sixth Year Annual Meeting in Louisville, Kentucky, the ULC approved the following new Acts:

- Uniform Criminal Record Accuracy Act
- Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act
- Uniform Fiduciary Income and Principal Act
- Revised Uniform Law on Notarial Acts
- Uniform Non-Parental Custody and Visitation Act
- Uniform Supplemental Commercial Law for the Uniform Regulation of Virtual-Currency Business Act
- Amendments to UCC Articles 1, 3, 8, and 9

Short Summaries of those Acts are attached to this Report. Longer summaries, the Acts themselves and other information regarding the Uniform Laws Commission, including three videos under "About ULC," can be found at the ULC website: http://uniformlaws.org

VIII. RECOMMENDATIONS FOR ENACTMENT

The South Dakota Commissioners recommend that the following Uniform Acts or Amendments to Uniform Acts be considered in the 2019 legislative session:

- Uniform Durable Power of Attorneys Act
- Uniform Unclaimed Property-Revised
- Uniform Principal and Interest Act
- Uniform Non-Parental Custody and Visitation Act
- Amendment to Uniform Notarial Act

IX. SOUTH DAKOTA PARTICIPATION IN THE ULC

South Dakota's participation, both in terms of appointing uniform laws commissioners and contributing funds, is essential. South Dakota benefits for the excellent body of law created for its consideration. The ULC and all the states benefit from having South Dakota's direct participation and contribution to the work of the ULC. South Dakota's ideas and experience influence the whole, and the uniform law process is not complete without them. Value contributed returns value, and everybody in every state benefits.

Since joining the ULC in 1893, South Dakota has enacted One-Hundred-Twenty-Nine (129) Uniform and Model Acts promulgated by the ULC. That is one of the highest enactment records in the Nation. Uniform Acts are especially important to states of small population and part time legislature.

X. CONCLUSION

The South Dakota Commissioners on Uniform State Laws thank the Executive Board of the Legislative Research Council, the Legislature, the Governor, the Supreme Court, and the people of South Dakota for the support given to the Uniform Laws Commission and its South Dakota Commissioners. We are honored and privileged to represent South Dakota in the Uniform Laws Commission.

This 2018 Annual Report is submitted as part of its duty and the South Dakota Commissioners look forward to continuing their statutory duties as set forth in Chapter 2-11 of South Dakota Codified Laws.

Respectfully submitted this 25th day of September, 2018.

Michael B. DeMersseman

SOUTH DAKOTA COMMISSION ON UNIFORM LEGISLATION

Commissioner Michael B. DeMersseman
Commissioner Marc S. Feinstein
Commissioner Thomas E. Geu
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