

Colorado Commission on Uniform State Laws

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MINUTES

October 30, 2024, 1:00 p.m.

Committee Room: House Committee Room 0112

Roll was taken and Commissioner Tipper was excused. Commissioners Gardner, Levy, Love, McGihon, Mielke, Pike, Snyder, and Whitfield were present.

1. 2024 legislative session recap/possible carry-over acts for consideration for 2025:

Consumer Debt Default Judgments Act (2023). *Ms. Makyla Moody, representing Colorado Creditors Bar Association, testified. There are some laudable things about the act, but there are also concerns regarding the act's compatibility with Colorado law. Colorado law has evolved over the past five years and is tailored to specific types of debt instead of broad areas of debt. In addition, there are procedural requirements in the act that may be better addressed and harmonized through updating court rules. Would like to have stakeholder meetings to address any issues, looks forward to working with any interested parties. Scott Allely, president of Associated Collection Agencies of Colorado, Wyoming, and New Mexico, testified. He concurred with Ms. Moody's testimony, adding that Colorado has three independent ways to deal with the three separate types of consumer debt and it is not practicable to put them into one bucket. Stakeholders worked with the attorney general last year to pass new legislation that has just gone into effect. He asked that the act not be re-introduced this session to give the recently enacted laws a chance to work. Andy Toft, Colorado Bar Association (CBA) Business Law Section, testified. He noted that one reason that last year's act may not have passed may have been due to the fiscal note, which may continue to be an issue this next year. He added that the section would want to see the act significantly amended were it to be introduced. There appears to be substantive issues with Colorado law and the language is inconsistent with Uniform Commercial Code. The section asks that if the commission wants to proceed with the act to first allow for additional stakeholder input. The commission acknowledged that the act has complexities but also noted that last year's bill was a good and balanced bill, but was not pursued after other similar legislation passed. The commission discussed that fiscal notes on bills may be an issue for bills this next session due to the pending ballot issues and considered that the commission keep working on the act but not introduce it this session. When asked on the status of the act in other states, Libby Snyder, Uniform Law Commission (ULC) staff, reported that several states are looking at the act and holding stakeholder meetings but it has not been introduced in any state.*

Commissioner Snyder moved that the **Uniform Debt Default Judgments Act** not be

introduced this session and instead the commission convene a work group to continue working on it to integrate it into Colorado law and report back to the commission next year. The working group should include members of the ULC, CBA, creditor associations, consumer protection advocates, and collection agencies. The motion passed without objection. Commission Snyder was asked to assist the working group. The commission thanked the witnesses and the stakeholders for their testimony and ongoing input.

- a. **Guardianship, Conservatorship, and Other Protective Arrangements Act (2017).** Ms. Elizabeth Moran, representing *The Arc of Colorado*, testified. She thanked Commissioner Gardner for sponsoring [Senate Bill 24-136](#) and those involved in last year's stakeholder meetings. It's been 23 years since Colorado has made a comprehensive update of guardianship law and although current law is largely uniform, it is outdated and not in line with national best practices. Updates are primarily needed for professional and judicial practices, policies, and procedures to ensure greater balance for those subject to guardianships and conservatorships. Last year's stakeholder group engaged more than 70 organizations and agencies, were able to make almost all the requested amendments, and learned a lot about what is and isn't working in the system. The largest hurdle the act faced was funding so the focus this year will be on the fiscal impact of implementing the act. The stakeholder group has already been meeting with judiciary on fiscal impact and would like the chance to try to pass the act this year. Mr. Ben Orzeske, representing *Uniform Law Commission (ULC)*, testified. He thanked Ms. Moran and her coalition for their hard work on the act. The ULC expects at least five other states to work on introducing the act this year. The act is complex, but the updates to state laws are needed and he is happy to support this effort again. Maureen Welch, representing *Navigating Disability Colorado*, testified. Her company supports the community in how to navigate and access Medicaid benefits, and supports exploring updates to Colorado statutes in this area. There is a need for comprehensive updates as small tweaks have not resulted in the changes needed for the thousands of individuals under guardianship and conservatorship in Colorado. The commission also thanked Commissioner Gardner and the stakeholders for their time and work on last year's bill. The commission discussed the part that the fiscal note played in the act not passing last session and ways to address that this session. Some suggestions included a closer look at the organization of the state guardianship system and to use phase-ins on portions of the act to help reduce the fiscal impact. Commission consensus was to reintroduce the act starting with the last version of the bill in the House.

Commissioner Gardner moved that the Senate Bill 24-136 reengrossed version of the uniform act be introduced this year as a commission bill. The motion carried 8-0. **The sponsor of the bill will be determined later.** The commission thanked the witnesses and the stakeholders for their testimony and ongoing input.

2. Colorado Bar Association review/reports on Uniform Acts:

- a. **Health-Care Decisions Act (2023).** Leia Ursery, *CBA Trusts and Estates Section*, testified. She is chairing a subcommittee that has been reviewing the act since last year. The CBA does not yet have a formal position on the act. The subcommittee looks forward to the

opportunity to use the act to bring together various statutory provisions, in title 15 in particular, but as with any transformative act, additional stakeholder involvement is needed. Upon initial review of the act, the subcommittee has identified at least 48 provisions in current Colorado law that will need to be addressed or altered and there are other portions of law not included in the act. Some roadblocks include the inclusion of an advanced mental health care directive and allowing an option to make the directive irrevocable. In addition, cardio-pulmonary, medical scope of order treatments, and behavioral scope of order treatments are not included in the act. Additional feedback from the medical community and judicial is needed. *Matthew Fowls, CBA Health Law Section, testified.* The section is excited about UHCDA, it provides Colorado with an exceptional opportunity to consolidate some things scattered throughout our statutory framework and to use as a potential avenue for some strategic frameworks to be implemented for the betterment of Colorado. But it is missing stakeholder feedback, from the health care community in particular, and asks that introduction on the act be postponed. *Jonathan Caldwell, CBA Elder Law sections, testified.* His firm works with people who are searching for or have had experience with the intersection of mental health and the law. Would like some time to ensure that this law works well for people which requires additional stakeholder input and asked introduction be postponed to allow for more discussion regarding policy and medical ethics, in addition to the new directives in the act. *Saskia Young, Colorado Hospital Association (CHA), testified.* The CHA is not as enthusiastic as the CBA on the act and respectfully requests that the act not move forward this year. Colorado has a unique landscape of laws in this area which calls for consideration from the medical community before changes are contemplated. They are looking forward to more robust conversations about how the uniform act would interact with current law. *Mr. John Conklin, Colorado Medical Society (CMA), testified.* He echoed the CHA concerns and the request to defer introduction of the act. He welcomes the opportunity to engage in future discussions. Right now, from the physician's perspective, the bill could be very confusing regarding exceptions to exceptions and internal cross references. They want to make certain that bedside providers clearly know what they are supposed to do and that patient care is facilitated by the act. He also voiced concerns with the act's interaction with current Colorado law and its silence in many areas that have been the focus of advanced directives for the past five to ten years, such as the CPR advanced directive. The transition from the existing framework to something new has to be carefully thought out and safeguarded. The commission noted that efforts were made earlier this year to bring the medical community in on discussions regarding the act's introduction in Colorado and encouraged the CHA and CMA to assist the CBA moving forward. Commission discussion included that the act could make it easier for people to arrange for advanced directives by putting all the information in one place and that sometimes the best way to get stakeholder input is to introduce a bill. Commission consensus was to wait to introduce the act but asked for a commitment from the witnesses and their organizations to work together to make the bill better. The commission thanked the witnesses for their time and testimony and ongoing input. When asked about other state interest in the act, *Libby Snyder, ULC staff,*

responded that the act was enacted in Delaware, Nebraska introduced the act, and seven other states are actively working toward its introduction in 2025. The commission asked about other states making state specific amendments to the act and whether adding amendments in the mental health area make the act non-uniform. Ms. Snyder replied that she would have the appropriate ULC staff member reach out to the commission and the working group with answers and to help unwind those issues. The commission asked for clarification from the CBA regarding the need for this legislation. Ms. Ursery replied that there is not an immediate need for legislation as Colorado law is not broken; it just needs some updating, improvement, and consolidation to make the statutes more user friendly. The commission thanked the witnesses for their testimony, the subcommittee on its hard work, acknowledged that it is a big project, and tasked them with reaching out to colleagues to have serious constructive engagement in moving the act to introduction.

Commissioner Gardner moved that the commission defer introduction of **Uniform Health-Care Decisions Act** for a year and request that stakeholders engage vigorously to resolve issues in view of introduction next year. The motion passed without objection.

- b. **Nonparent Custody and Visitation Act (2018).** *Kaela Zihlman, CBA Family Law Section, testified* regarding an unofficial position on act. The act does not expand the rights of individuals that aren't already covered by Colorado law, either under title 19 or title 14. Since the act was written pre-COVID it also doesn't contemplate nonfamily members living in the same place, nor contemplate circumstances where roommates, tenants, other family members could be acting as a child's caregiver. It doesn't include step-parents and only codifies two classifications of parents, which may be overly broad. A consistent issue seems to be limitations in judicial resources, requiring parents to understand legalize, and contains conflicting terms. There is room to expand current Colorado law to contemplate nontraditional families and how children are establishing relationships with meaningful adults in their lives and how that is in their best interest, but does not think the act necessarily does that. *Chelsea Augelli, CBA Family Law Section, testified.* Colorado already has law regarding psychological parents, grandparent rights, child support, and some of the same standards regarding the harm to the child if a nonparent is not in the child's life. In some cases, Colorado law is more expansive than the uniform act. Some of the caregiver provisions in the uniform act may lead to additional litigation. Recommends that the act not move forward, but if it does the section would like to participate as stakeholders. When the commission asked about the application of the act in other states, *Libby Snyder, ULC staff*, responded that she was not aware of any states going beyond the scope of what was intended in the act. It has been enacted in North Dakota and Kansas with only the nonparent visitation language adopted in Kansas.

Commissioner Levy moved that the **Uniform Nonparent Custody and Visitation Act** not be introduced in 2025. The motion passed without objection. The commission thanked the witnesses for their testimony.

3. 2024 Uniform or Model Acts for discussion:

a. **Amendments to Unincorporated Organization Act.** *Andy Toft, CBA Business Law Section, testified.* He noted that Colorado has not enacted the Uniform Unincorporated Organization Act. Title 7, article 90 has a variety of definitions and rules that apply to all business entities regarding mergers, conversions, filing of documents, registered agents, board entities, and delinquency, dissolution, and reinstatement. Passage of these amendments would result in significant inconsistencies and require many amendments to the business entity laws. The section does not see a need for the amendments to be enacted in Colorado, but if the commission wants to move forward with them the section asks for time to complete a review and analysis. When asked about passage of the Uniform Unincorporated Organization Act in Colorado, *Libby Snyder, ULC staff*, confirmed that Colorado has not passed it as a whole, but has enacted the Uniform Limited Cooperative Association Act in 2011, the Uniform Limited Partnership Act in 1981, and the Uniform Partnership Act in 1997. She added that the amendments being considered in this year's act amend those three uniform acts and are meant to be tweaks to correct inconsistencies between the three acts. She added that as there may have been Colorado amendments to the enacted language since their passage, waiting a year for further review may be a good idea. The commission suggested that it might be useful for the CBA drafting committee to, along with analyzing the act, see what might be done conceptually from it and received confirmation that the drafting committee would be able to report back next year on their work.

Commissioner Gardner moved the commission defer consideration on **Amendments to Unincorporated Organization Act** until next year. The motion passed without objection.

b. **Antitrust Pre-Merger Notification Act.** The commission asked the ULC for a status report on the act, *Libby Snyder, ULC staff*, responded that four states are working towards introducing the act, three of which were doing so in consultation with their state attorney general office. *Tyler Mounsey, CBA Legislative Liaison*, referred to an email sent to the commission with some initial written testimony regarding the act and confirmed that the CBA informal opinion is that it does not support proceeding forward with the act, but if the bill does move forward the CBA would like to help with drafting. The commission noted that concerns discussed at the annual meeting regarding the act seemed to be narrow in scope and that one of the act's stated goals was not to create more pre-merger notification requirements but to standardize them with federal requirements. In addition, evidence indicates that having some states left out of the notification loop that don't find out about a merger until afterward causes problems and delays, it seems like getting this information accessible to all the relevant parties is in everyone's best interest. *Libby Snyder, ULC staff*, when asked, confirmed that the ULC considered enacting the act a priority.

Commissioner Snyder moved that the **Uniform Antitrust Pre-Merger Notification Act** be drafted and introduced as a commission bill. The motion passed 8-0. **The sponsor of the bill will be determined later.**

c. **Mortgage Modification Act.** *Seth Holley, CBA subcommittee within the real estate counsel,*

testified. Of the nine safe harbors listed in the act, the assessment is that three are already are already governed under Colorado law, two present a high likelihood of being materially prejudicial to junior lien holders, and two include ambiguous terms. The three already in statute are extension maturity date (§38-39-202, C.R.S.), advance funds (§38-39-106, C.R.S.), and maintaining escrow in title 4, article 9. The perceived materially prejudicial harbors include the capitalization of interest creating a compounding effect and the modification to a financial covenant because those conditions govern the financial ability of the borrower to repay their loan. The ambiguous harbors include the inclusion of terms allows for broad interpretation. Based on the subcommittees analysis seven of the nine safe harbors are not recommended for Colorado and therefor the act should not move forward. When asked about other states considering the act, *Libby Snyder, ULC staff*, responded that four states are considering it for introduction. The commission asked for clarification regarding the capitalization of interest effect on junior lien holders. The commission discussed moving the act forward or tabling it for now and working with the CBA, in conjunction with bankers, to see what might need to be modified for Colorado.

Commissioner Pike moved that the **Uniform Mortgage Modification Act's** introduction be deferred for a year. The motion passed without objection.

4. **Other business or public comment regarding items not on the agenda.** The commission discussed some other acts that were not pursued last year and asked for a status report regarding the Model Public Health Emergency Authority Act. *Libby Snyder, ULC*, responded that no state had yet introduced it. Commission consensus was that there was no need to consider it for introduction in Colorado.
5. **Next meeting.** Since there was no further action needed to finalize the 2025 legislative agenda, it was decided to wait until the new commission appointments are made in January to schedule the next meeting.