

To: New Jersey Law Revision Commission
From: Laura C. Tharney, Executive Director
Re: Uniform Law Commission Acts Under Consideration in 2023
Date: February 6, 2023

MEMORANDUM

In November 2022, the Commission considered a Memorandum that discussed the current work of The American Law Institute and the Uniform Law Commission. At the November Commission meeting, Staff was asked to identify, at an upcoming Commission meeting, the Uniform Law Commission (ULC) Acts that it expected to review in 2023.

Staff has identified five ULC Acts that it expects to review and present to the Commission as appropriate this year: (1) the Uniform Telehealth Act (released in 2022); (2) the Uniform Electronic Estate Planning Documents Act (released in 2022); (3) the 2022 Amendments to the Uniform Commercial Code (released in 2022); (4) the Uniform Personal Data Protection Act (released in 2021); and (5) the Uniform Restrictive Employment Agreement Act (released in 2021).

Telehealth Act (2022)

The Enactment Kit available on the website of the Uniform Law Commission explains that, in recent years, improvements in telecommunication technologies transformed healthcare delivery.¹ During the COVID-19 pandemic, practitioners and patients increasingly turned to telehealth.² In this context, that term refers to the use of synchronous and asynchronous telecommunication technology to provide health care to a patient in a different physical location from the healthcare practitioner.³

Telehealth has increased access for individuals in geographic areas underserved by health care facilities and providers, and also for individuals who encounter other types of barriers to accessing healthcare services in person.⁴

A number of states began re-examining their laws regarding telehealth and continue to consider modifications that expand patients' access to care while preserving important patient protections.⁵

The UTA is intended to offer states guidance and a framework to facilitate telehealth

¹ Uniform Law Commission, Enactment Kit, Summary: Uniform Telehealth Act, <https://www.uniformlaws.org/committees/community-home?CommunityKey=2348c20a-b645-4302-aa5d-9ebf239055bf> (last visited February 2, 2023).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

services in a manner that is consistent with the applicable standards of care.⁶ It also provides a mechanism to open state borders so that patients receive convenient and cost-effective assistance.⁷ The ULC describes the UTA as a powerful tool for healthcare equity, facilitating access to timely and effective healthcare, with a qualified practitioner, for patients who otherwise face a variety of barriers to in-person care.⁸

The UTA has two broad goals: (1) to make clear that as a general matter, a practitioner who is licensed or otherwise authorized to provide health care in a state in which a patient is located may provide care through telehealth, if doing so is consistent with the applicable professional practice standards and the practitioner's scope of practice as defined by the patient's state; and (2) to expand the circumstances under which qualified out-of-state practitioners are permitted to deliver telehealth services to patients located in the enacting state, including by implementing a registration system.⁹

There are bills introduced in the current session concerning some aspects of telehealth, and Staff will examine them to assess the overlap between the pending bills and the Act.

Electronic Estate Planning Documents Act (2022)

The Enactment Kit available from the UCC explains that this Act is intended to fill a gap in the law that created uncertainty as to whether some electronic estate planning documents were valid.¹⁰

By way of background for the Act, the ULC explained that the Uniform Electronic Transactions Act (UETA), adopted in 49 states, authorizes the use in commerce of electronic contracts and signatures. The UETA, however, applies only to bilateral agreements between two parties who agree to conduct business electronically.¹¹

Unilateral documents, like those used in estate planning (including trusts and powers of attorney), are executed by a single individual to carry out the individual's wishes regarding property or health care.¹² The legal status of these documents is uncertain since they do not fall

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Uniform Law Commission, Enactment Kit, Summary: Uniform Telehealth Act, <https://www.uniformlaws.org/committees/community-home?CommunityKey=2348c20a-b645-4302-aa5d-9ebf239055bf> (last visited February 2, 2023).

¹⁰ Uniform Law Commission, Enactment Kit, Summary: Uniform Electronic Estate Planning Documents Act, <https://www.uniformlaws.org/viewdocument/enactment-kit-15?CommunityKey=f911ff58-34ae-47a1-8928-68d5396a72b1&tab=librarydocuments> (last visited February 2, 2023).

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within the scope of UETA.¹³ As a result, hard copy documents remain the norm even for clients who prefer conducting business electronically.¹⁴

The goal of the UEEPDA is to provide UETA-like rules for electronic estate plans:

1. The use of electronic estate planning documents and signatures is optional. 2. An estate-planning document may not be denied legal effect solely because it is in electronic form or electronically signed. 3. An electronic signature is attributable to a person if it was created by the act of the person, which can be shown in any manner, including by showing the efficacy of a security procedure applied.

The UEEPDA applies only to non-testamentary documents. Testamentary documents, such as an individual's will, are subject to special rules covered in the Uniform Electronic Wills Act. UEEPDA was drafted to complement that act, which can be inserted as Article 3 of UEEPDA to provide states with a comprehensive set of rules for both testamentary and non-testamentary electronic estate planning documents.¹⁵

There do not appear to be bills pending on this topic, but Staff will confirm that as a part of the initial work in the area.

UCC, 2022 Amendments

The Enactment Kit for the 2022 amendments to the Uniform Commercial Code explains that they are intended to “address emerging technologies, providing updated rules for commercial transactions involving virtual currencies, distributed ledger technologies (including blockchain), artificial intelligence, and other technological developments.”¹⁶

The amendments respond to market concerns about the lack of definitive commercial law rules for transactions involving digital assets, especially relating to (a) negotiability for virtual (non-fiat) currencies, (b) certain electronic payment rights, (c) secured lending against virtual (non-fiat) currencies, and (d) security interests in electronic (fiat) money, such as central bank digital currencies.¹⁷

The amendments also address other technological developments affecting electronic documents, instruments, systems, and transactions. In addition, they are intended to clarify the scope of Articles 2 and 2A “when transactions combine the sale or lease of goods with other

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¹⁵ Uniform Law Commission, Enactment Kit, Summary: Uniform Electronic Estate Planning Documents Act, <https://www.uniformlaws.org/viewdocument/enactment-kit-15?CommunityKey=f911ff58-34ac-47a1-8928-68d5396a72b1&tab=librarydocuments> (last visited February 2, 2023).

¹⁶ Uniform Law Commission, Enactment Kit, Summary Uniform Commercial Code Amendments (2022), <https://www.uniformlaws.org/committees/community-home?CommunityKey=1457c422-ddb7-40b0-8c76-39a1991651ac> (last visited February 2, 2023).

¹⁷ *Id.*

matters, a topic of importance in transactions affected by emerging technologies” and they include provisions unrelated to developments in technology that clarify various UCC provisions.¹⁸

Staff has begun reviewing these amendments, since the Commission generally considers all UCC amendments, and will provide additional information to the Commission at an upcoming meeting.

Personal Data Protection Act (2021)

The Enactment Kit for the Uniform Personal Data Protection Act explains that the Act “applies fair information practices to the collection and use of personal data from consumers by business enterprises.”¹⁹ It is intended to apply to any entity that collects or maintains personal data but to avoid high compliance and enforcement costs.

The Act uses a “risk-based approach to privacy regulation,” to protect “all data subjects from harmful processing” while offering “flexibility for startups and established firms to innovate.”²⁰ It exempts small businesses unless they “use personal data in a manner that a consumer would not expect.”²¹

The Act also attempts to avoid the First Amendment concerns that may arise when privacy laws “greatly restrict information without sufficient justification” and it contains elements designed to “make it more practical, more flexible, and less costly than other models of state privacy legislation.”²²

There are bills introduced in the current session concerning some aspects of data protection, and Staff will examine them to assess the overlap between the pending bills and the Act.

Restrictive Employment Agreement Act (2021)

Finally, the Enactment Kit for the Uniform Restrictive Employment Agreement Act explains that it regulates “restrictive employment agreements.”²³ That term includes agreements that “prohibit or limit an employee or other worker from working elsewhere after the work relationship ends.”²⁴

¹⁸ *Id.*

¹⁹ Uniform Law Commission, Enactment Kit, Summary: Uniform Personal Data Protection Act, <https://www.uniformlaws.org/committees/community-home?CommunityKey=28443329-e343-4cbc-8c72-60b12fd18477> (last visited Feb 2, 2023).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Uniform Law Commission, Enactment Kit, Summary: Uniform Restrictive Employment Agreement Act, <https://www.uniformlaws.org/committees/community-home?CommunityKey=f870a839-27cd-4150-ad5f-51d8214f1cd2> (last visited February 2, 2023).

²⁴ *Id.*

“Noncompetes and other restrictive employment agreements serve valid purposes in the right circumstances but are too often used in ways that limit worker mobility and hinder economic growth.”²⁵ These agreements arise in different contexts, including their use with “officers and top managers, researchers and high-tech workers privy to trade secrets, or salespersons who develop customer relationships.”²⁶ In addition to these more typical scenarios, noncompetes have been “increasingly used to restrain lesser skilled, low-wage employees.”²⁷

Although noncompete agreements tend to “get the most attention, they are part of a family of restrictive agreements that also include nonsolicitation agreements, confidentiality agreements (also known as nondisclosure agreements), payment-for-competition agreements, and training-repayment agreements.”²⁸ The Act covers all of these agreements.

With limited exceptions, the Act prohibits restrictive agreements for “low-wage workers, defined as those making less than the state's annual mean wage.”²⁹ It also provides that these agreements are “unenforceable if the worker resigns for good cause attributable to the employer or the employer terminates the worker for a reason other than willful misconduct or the end of the project or term.”³⁰ The Act imposes procedural requirements, including notice, for an enforceable restrictive agreement, sets maximum durations, and establishes other substantive requirements.³¹

To protect the public interest in labor market competition and mobility, the requirements of the Act are mandatory except under limited circumstances.³²

There do not appear to be bills pending on this topic, but Staff will confirm that as a part of the initial work in the area.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*