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111 N. Wabash Ave.
Suite 1010
Chicago, IL 60602
(312) 450-6600 tel
www.uniformlaws.org

THE UNIFORM RESTRICTIVE EMPLOYMENT AGREEMENT ACT (2021)

-A Summary-

The Uniform Restrictive Employment Agreement Act regulates restrictive employment agreements, which are agreements that prohibit or limit an employee or other worker from working elsewhere after the work relationship ends. The Act does not regulate what a worker can or cannot do while working for the original employer. Noncompete agreements and other restrictive covenants arise in several typical scenarios. Examples include officers and top managers, researchers and high-tech workers privy to trade secrets, or salespersons who develop customer relationships. Recently, noncompetes are increasingly used to restrain lesser skilled, low-wage employees. 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.

The scope of this Act is wide. The most stringent of the restrictive employment agreements is a noncompete, which expressly prohibits the worker from creating, joining, or working for a competing firm upon termination of employment. While noncompete agreements 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. All these agreements are covered by this Act. There may be other agreements that fall within the scope of the Act as well.

The Act prohibits restrictive agreements (except confidentiality agreements and training-reimbursement agreements) for low-wage workers, defined as those making less than the state's annual mean wage. Additionally, 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.

The Act requires advance notice and other procedural requirements for an enforceable noncompete or other restrictive agreement. An employer must give both general notice of the Act's requirements and bespoke notice of the particular restrictive agreement it is requesting of each employee. This notice enables the worker to fully evaluate how the restrictive employment agreement will affect future work and make a fully informed decision of whether to sign the agreement.

The Act sets maximum durations for restrictive agreements that range from six months to five years and establishes other substantive requirements for valid agreements. To protect the overall public interest in competition and mobility in labor markets, the Act's requirements are mandatory and cannot be waived except under limited circumstances.

The Act prohibits a court from broadly rewriting an overbroad agreement rather than declaring it unenforceable, with two alternatives. Under Alternative A, if the restrictive employment agreement does not comply with the Act, the agreement is prohibited and unenforceable and a court will not enforce the agreement. Alternative B allows judicial reformation if the employer entered the agreement reasonably and in good faith thinking it was enforceable.

The Act creates penalties and enforcement by state departments of labor and private rights of action, to address the chilling effect of unenforceable agreements. Finally, the Act requires that an agreement's choice of venue provision requires that a dispute be decided in the state where the worker primarily works or resides. This gives a worker a realistic opportunity to challenge a restrictive employment agreement that violates this Act.

For further information about the Uniform Restrictive Employment Agreement Act, please contact Legislative Counsel Kari Bearman at (312) 450-6617 or kbearman@uniformlaws.org.

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WHY YOUR STATE SHOULD ADOPT THE UNIFORM RESTRICTIVE EMPLOYMENT AGREEMENT ACT (2021)

The Uniform Restrictive Employment Agreement Act provides states with rules for determining when noncompete and other restrictive agreements will be unenforceable. In the past five years, many states have recognized the importance of utilizing legislation to provide workers and employers with clarity for drafting and entering into these agreements. This flurry of legislative activity inspired the ULC to act. After all, with workers moving across state lines at a growing frequency and the increasingly national focus of employers, this is an area of the law that greatly benefits from a uniform approach.

- **The Act promotes economic innovation by limiting the use of over-broad restrictive agreements.** Many credit the rise of Silicon Valley's technological prominence to California's strict policy against enforcing restrictive employment agreements. Indeed, these agreements have the potential to limit innovation by stifling worker creativity and removing the opportunity for workers to work in their most productive setting. The adoption of this act will ignite an American start-up and small business culture. Indeed, some credit the current enforcement of over-broad restrictive employment agreements as a primary reason for the historically low number of new businesses.

- **The Act provides for detailed notice requirements that ensure workers understand what a restrictive employment agreement prohibits.** Many states rely on the common law to regulate restrictive employment agreements, but the common law is not the best vehicle for crafting strict notice requirements. Similarly, states that have enacted an act in this domain have yet to include truly comprehensive notice requirements. This act provides for detailed mechanisms to ensure that workers are aware of the agreements in which they sign, and thus increases their bargaining power and limits the worker from being blindsided by their restrictive employment agreement.

- **The Act provides for penalties if an employer enters into a noncompete or similar agreement with a worker that violates the act.** Even in states where there is a near blanket prohibition on the use of restrictive employment agreements, many employers continue to use such devices. This is in part due to the dearth of consequences. If an agreement is found to violate state law, then it is often merely unenforceable. By providing for additional penalties in the case of such use, this act serves as a stronger deterrent.

- **The Act was drafted by a bipartisan group of experts with the goal of national uniformity.** Both employers and workers benefit from clarity on this issue. Employers want to hire workers away from competitors and worker advocate groups want to see greater mobility in the workforce. Indeed, the contentious nature that is typical of many employment-related types of legislation is

mostly absent. Experts from all sides of the issue worked together to draft an act that allows restrictive employment agreements that benefit competition and reduces or eliminates those that do not. Furthermore, the drafters of this act understood and considered the consequences of uniformity to workers and employers, both of whom typically operate or will operate across state lines.

- **The Act regulates a wide array of persons and agreements.** While the common law, in theory, can regulate all types of persons and agreements, the various state legislative activity has overall been relatively narrow in scope. This act considers the consequences of a variety of restrictive employment agreement types as well as the diversity of parties that may enter into such agreements and thus attempts to provide a robust framework for determining whether such individual agreements should or should not be enforceable.

For further information about Uniform Restrictive Employment Agreement Act, please contact Legislative Counsel Kari Bearman at (312) 450-6617 or kbearman@uniformlaws.org.

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(312) 450-6601 fax
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THE UNIFORM COLLEGE ATHLETE NAME, IMAGE, OR LIKENESS ACT (2021)

– A Summary –

Intercollegiate sports have grown into a billion-dollar industry, with massive television deals, multi-million-dollar coaching contracts, extravagant facilities, and lucrative commercial licensing agreements, all of which have historically provided huge sums of money to *almost* everyone involved. Coaches, universities, television networks, and brands have been financially benefitting from an industry built on the backs of college athletes who, until recently, were prohibited from earning compensation for the use of their name, image, or likeness. This all changed in 2019 when California enacted a first in the nation bill to give college athletes a right to earn money from the use of their name, image, or likeness ("NIL"). Since that time an additional 25 states have enacted NIL legislation and three states have expanded college athletes' rights via executive order. In addition, the NCAA announced a new interim NIL policy on June 30, 2021, that permits college athletes "to engage in NIL activities that are consistent with the law of the state where the school is located," and allows "[c]ollege athletes who attend a school in a state without a NIL law to engage in NIL activity without violating NCAA rules relating to NIL."

The lack of uniformity in the state laws presents significant challenges for educational institutions, athletic associations, conferences, coaches, administrators, college athletes, and high school athletes attempting to select which university to attend. As one of many examples, the Athletic Coast Conference encompasses four states with disparate NIL state laws, two states with differing NIL executive orders, and four states with no NIL state legislation at all. The importance of having a uniform set of rules governing intercollegiate athletic competitions is well established, as is the notion that intercollegiate sports cannot effectively function with conflicting or inconsistent rules from state to state. Given the interdependence of the institutions across the country, the impact of a change in one state's laws could have a ripple effect on schools and athletes in other states.

A uniform law across all states would prevent this instability and ensure that schools in each state are playing under the same general rules. Although existing state NIL laws share many similarities, there are significant differences among the laws that create inconsistent and conflicting NIL regulation across the states. Since the NCAA announced its interim NIL policy, athletes in states without NIL laws have been able to engage in a wide variety of NIL activity that is prohibited under most state laws. The patchwork of state laws has thus led to disparate NIL benefits and opportunities for college athletes dictated almost entirely by the state law (if any) that governs their institution. These differences may become even more magnified during the upcoming recruiting cycle and influence the enrollment decisions of prospective college athletes.

The Uniform College Athlete Name, Image, or Likeness Act will provide a uniform framework for state-level NIL regulation that will provide college athletes with robust protections for their NIL rights while also creating a level playing field for athletes and institutions across state lines. Specifically, the Act does the following:

- **Protects college athlete NIL rights** by prohibiting educational institutions, conferences, and athletic associations from preventing or restricting college athletes from receiving NIL compensation, entering into NIL agreements, engaging in NIL activity, obtaining the services of a NIL agent, or creating or participating in a group license. The Act also prohibits educational institutions, conferences, and

athletic associations from interfering with the formation or recognition of a collective representative to facilitate or provide representation to negotiate a group license.

- **Prohibits the use of logos/trademarks in NIL activity** by stating that a college athlete may not include in NIL activity an institution, conference, or athletic association name, trademark, service mark, logo, uniform design, or other identifier of athletic performance depicted or included in a media broadcast or related game footage. In addition, the Act states that a college athlete may not express or imply that an institution, conference, or athletic association endorses or is otherwise affiliated with the athlete's NIL activity.

- **Allows educational institutions to prohibit NIL activity** in certain circumstances. The Act states that an institution may only adopt policies to prevent college athletes from engaging in NIL activity that is illegal or, if the institution complies with the same policy, that the institution determines has an adverse impact on its reputation.

- **Clarifies institutional involvement in NIL activity** by stating that institutions, conferences, or athletic associations may provide education about NIL compensation, agreements, and activity to college athletes. In addition, institutions, conferences, or athletic associations may: assist a college athlete in evaluating the permissibility of NIL activities, including compliance with state law and institution, conference, and association rules; with the disclosure requirements included in the Act; and by providing a good-faith evaluation of a NIL agent or third party.

- **Creates a framework for college athlete disclosure to university athletic departments** for all NIL agreements that meet a certain threshold that is determined by the enacting state. Only college athletes who engage in NIL activity that, for example, amounts to more than $300 for one NIL agreement or more than $2,000 in aggregate in a calendar year must be disclosed. These thresholds, which are set by the enacting state, can ease the compliance burden on college athletes who only engage in small dollar NIL deals or who enter NIL agreements infrequently.

- **Harnesses existing state laws on athlete agent registration** for registration and regulation of NIL agents. Under the Act, all NIL agents are athlete agents and would be subject to the registration provisions of the Uniform Athlete Agents Act (2000), Revised Uniform Athlete Agents Act (2015), or other comparable state law governing registration of athlete agents.

- **Includes optional provisions on registration of third parties** that follows the same framework created by the Uniform Athlete Agents Act. A state that wishes to have oversight of third parties may enact these sections which would require third parties to register with the same agency in the state that oversees athlete agent registration.

- **Provides institutions and college athletes with a cause of action for damages** against a NIL agent or third party if the institution or athlete is adversely affected by an act or omission of the agent or third party in violation of the Act.

For further information about the Uniform College Athlete Name, Image, or Likeness Act, please contact ULC Legislative Counsel Libby Snyder at (312) 450-6619 or lsnyder@uniformlaws.org.

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(312) 450-6601 fax
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WHY YOUR STATE SHOULD ADOPT THE UNIFORM COLLEGE ATHLETE NAME, IMAGE, OR LIKENESS ACT (2021)

The Uniform College Athlete Name, Image, or Likeness Act provides states with a comprehensive, uniform framework for state-level regulation of college athlete name, image, or likeness (NIL) activities that will provide college athletes with robust protections for their NIL rights while also creating a level playing field for athletes and institutions competing across state lines. This Act seeks to correct the competitive imbalances created by the patchwork of inconsistent state NIL laws and exacerbated by the NCAA's interim NIL policy that allows college athletes to engage in NIL activities that are consistent with the law of the state where the school is located and allows college athletes who attend school in a state without a NIL law to engage in NIL activity without violating NCAA rules relating to NIL. The specific provisions built into the Act to correct the competitive imbalances include:

- ***Prohibiting the use of school logos in NIL activity.*** The Act states that a college athlete may not include in NIL activity an institution, conference, or athletic association name, trademark, service mark, logo, uniform design, etc. Because some university logos are inherently more valuable to advertisers than others, the use of university logos in NIL activity could lead to discrepancies in the amount of NIL compensation offered to college athletes based solely on the school the college athlete attends and not the value of the college athlete's NIL.

- ***Prohibits educational institutions from limiting NIL activities*** based on the institution's own sponsorships or advertising deals. Many state NIL laws allow an institution to prohibit NIL activity that conflicts with the sponsorships or advertising deals of the institution or its athletic department (i.e., a Nike school prohibiting college athletes from entering NIL agreements with Adidas). The drafting committee felt that college athletes' NIL rights should not be limited by the existing sponsorships of their educational institution.

- ***Prohibits educational institutions from limiting specific types of NIL activities*** that the institution determines has an adverse impact on its reputation *unless* the institution complies with the same policy with respect to its sponsorships and advertising deals. Some state laws list categories of NIL activity that are prohibited (alcohol, tobacco, marijuana, gambling, etc.) while others allow the institution to ban any NIL activity that it determines has an adverse impact on its reputation. The Uniform Act's approach has the effect of allowing an institution to prohibit college athletes from entering NIL deals with, for example, an alcohol company, only if the institution refrains from engaging in sponsorships or similar commercial activity with alcohol companies.

- ***Does not expressly require NIL activity to be commensurate with the fair market value*** of the college athlete's NIL. Many of the existing state NIL laws contain some sort of "fair market value" requirement, with a smaller subset allows institutions to require, and establish procedures for ascertaining, that a college athlete's NIL use is commensurate with the fair market value. The drafting committee felt that any such requirement would be nearly impossible to measure given the ever-evolving landscape and myriad factors including differences in value based on the student's state, city, and region, sport(s) played, existing social media following, etc.

- ***Permits institutional, conference, and athletic association involvement*** in NIL activity. Under the Act, educational institutions, conferences, or athletic associations may educate college athletes about NIL compensation, agreements, and activity, and assist college athletes in evaluating the permissibility of NIL activities, including compliance with state law and institution, conference, and association rules, assist with the disclosure requirements under the Act, and assist by providing good-faith evaluations of NIL agents or third parties. Some existing state laws expressly prohibit institutional involvement in college athlete NIL activity, while other states implicitly permit institutions to arrange or facilitate NIL opportunities for college athletes.

- ***Provides remedies for college athletes and educational institutions*** by giving college athletes and educational institutions the right to sue NIL agents or third parties for damages caused by violation of the act.

For more information on the Uniform College Athlete Name, Image, or Likeness Act, please contact ULC Legislative Counsel Libby Snyder at (312) 450-6619 or lsnyder@uniformlaws.org.

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THE UNIFORM COHABITANTS' ECONOMIC REMEDIES ACT (2021)

-A Summary-

The Uniform Cohabitants' Economic Remedies Act provides a mechanism to address the division of cohabitants' property interests when the cohabitation ends. The act does not create any special status for cohabitants. The act enables cohabitants to exercise the usual rights of individual citizens of a state to contract with others and to bring equitable claims against others in appropriate circumstances by affirming the capacity of each cohabitant to contract with the other and to claim a contract or equitable remedy against the other. Such claims may proceed without regard to any intimate relationship that exists between the cohabitants and without subjecting them to hurdles that would not be imposed on litigants of similar claims. Significantly, the act recognizes the value of non-sexual services, activities, and efforts of a party to the relationship as a basis for contractual and equitable claims. The Act has no effect on marriage or state law governing marriage. Marriage is a formal legal status that provides spouses with rights and remedies unavailable to cohabitants under the act.

For purposes of the act, a "cohabitant" is defined as one member of a couple if the two individuals live together "as a couple" and are not married to each other. The term does not set a time limit as to how long the individuals must cohabit to meet the definition. Individuals who are minors and those who are too closely related to marry cannot be cohabitants. A cohabitant might be married to someone else. Living "as a couple" is an intentionally fact-specific and broad standard. A sexual element is not required. If individuals living together are "mere roommates," including them within the act does no harm; their claims and remedies will generally be identical whether under this act or other state law. On the other hand, had the act included an elaborate definition litigants would spend considerable time and money attempting to establish that they were (or were not) cohabitants within the definition. The point of the act is to ensure that the nature of the parties' relationship is not a bar to their ability to bring claims against one another.

The act recognizes that contractual and equitable claims can be based on the provision of non-sexual services, activities, and efforts by a party to the relationship. Courts have not always recognized the value of non-material contributions to the relationship, such domestic services, as an adequate basis for recovery, reasoning instead that they are part of the cohabiting relationship and are thus rendered gratuitously.

The act protects third parties. The interests of secured creditors of, and good faith purchasers from, a cohabitant, cannot be adversely affected by a remedy granted under the act. Child support obligations may not be affected by a claim under the act. The spouse of a cohabitant represents a special interest third party. Any transfer of property by a married cohabitant to the other cohabitant necessarily reduces the pool of assets potentially available to spouse of the married cohabitant. The Act offers states five different approaches to address the situation when

a cohabitant is married, ranging from protecting the spouse against any diminution of value to treating the spouse as simply one more creditor.

The remedies provided in this act are not the only remedies available to cohabitants. Cohabitants may have claims against one another based on other state law that are not covered by the act, including, for example, tort claims and partnership claims. The act, in most instances, supplements and does not replace existing state law. An enacting state's procedural law will generally govern the claims between cohabitants.

For further information about Uniform Cohabitants' Economic Remedies Act, please contact Legislative Counsel Libby Snyder at (312) 450-6619 or lsnyder@uniformlaws.org.

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WHY YOUR STATE SHOULD ADOPT THE UNIFORM COHABITANTS' ECONOMIC REMEDIES ACT (2021)

The Uniform Cohabitants' Economic Remedies Act enables cohabitants to exercise the usual rights of individual citizens of a state to contract and to successfully maintain contract and equitable claims against others in appropriate circumstances. The Act affirms the capacity of each cohabitant to contract with the other and to maintain claims with respect to "contributions to the relationship" without regard to any intimate relationship that exists between them and without subjecting them to hurdles that would not be imposed on litigants of similar claims. Some important reasons why your state should adopt this Act include:

- **The Act responds to an increasingly relevant issue in modern American life.** Data shows a significant rise in the number of nonmarital cohabitants in the United States over the past half-century. Cohabitants may share financial responsibilities during their cohabitation, or they may keep their finances separate. One cohabitant may move into a dwelling the other had acquired separately. They may acquire property together. Both may work, neither may work or one may work and the other might take care of the household. As cohabitation and its acceptance has changed over the years, so too have available claims and remedies at separation and death that derive from cohabitation.

- **The Act enhances predictability for cohabitants by providing states with a consistent approach to addressing claims when a cohabitation ends.** Today, a number of states recognize rights between nonmarital cohabitants, some states allow cohabitants to assert claims based on both express or implied contracts as well as equitable claims, some states have imposed writing requirements on cohabitants' agreements, and a few states refuse to accept domestic or household services as lawful consideration, reasoning that such services are inextricably intertwined with the sexual relationship and are typically provided without expectation of compensation when a couple shares a residence. There is thus no predictable result when cohabitants dissolve their relationship or when one cohabitant dies. This unpredictability is enhanced when cohabitants move from state-to-state. This Act provides much-needed statutory direction for courts and individuals.

- **The Act clears barriers for cohabitants to assert claims, without creating a special status for cohabitants.** The Act enables cohabitants to exercise the usual rights of individual citizens of a state to contract with others and to bring equitable claims against others in appropriate circumstances. The Act ensures that the nature of the relationship of the parties is not a bar to a successful claim.

- **The Act gives states flexibility and guidance to states in term of addressing claims involving a cohabitant that is married.** The Act offers states five different approaches to address the situation. Commentary to the Act discusses differing approaches in order to assist a state in choosing which is appropriate for its residents.

- **The Act has no effect on marriage or state law governing marriage.** Marriage is a formal legal status that provides spouses with rights and remedies unavailable to cohabitants under the act.

- **The Act is intended to supplement, not displace existing state law, in most instances.** The remedies provided in this Act are not the only remedies available to cohabitants. Cohabitants may have claims against one another based on other state law that are not covered by the Act, including, for example, tort claims and partnership claims.

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THE UNIFORM PERSONAL DATA PROTECTION ACT (2021)

- A Summary -

The Uniform Personal Data Protection Act, promulgated by the Uniform Law Commission in 2021, applies fair information practices to the collection and use of personal data from consumers by business enterprises. The act applies broadly to any entity that collects or maintains personal data but avoids the high compliance costs for businesses and the substantial enforcement costs for states associated with regulatory regimes modeled after the California Consumer Privacy Act and the European General Data Privacy Regulation. And the act exempts small businesses unless they use personal data in a manner that a consumer would not expect. The act also avoids the First Amendment concerns that arise from privacy laws that greatly restrict information without sufficient justification. By adapting a risk-based approach to privacy regulation, the act protects all data subjects from harmful processing and also offers the flexibility for startups and established firms to innovate.

The Act has several elements that make it more practical, more flexible, and less costly than other models of state privacy legislation. Specifically, the Uniform Personal Data Protection Act does the following:

- Authorizes some data practices, called "compatible data practices", that may be performed without consent. Data processing is a "compatible data practice" if reasonable consumers would expect it to occur, or if the consumer directly benefits from the practice.
- Prohibits data practices that may cause a substantial risk of harm to data subjects, including processing likely to cause embarrassment, harassment, or financial harm and data storage that fails to provide reasonable data security.
- Permits "incompatible data practices"—that is, processing that is neither "compatible" nor prohibited—to be performed, but only with notice and consent.
- Promotes transparency and accountability by requiring companies to post a privacy policy identifying their uses of personal data and by giving data subjects the right to access and correct their data.
- Avoids the substantial First Amendment conflict associated with the right to data deletion.
- Authorizes personal data to be used for tailored messaging (including advertising) as a compatible use. (This provision does not cover the use of personal data to make tailored decisions about the terms of an offer to, agreement with, or treatment of an individual.)

- Requires businesses to engage in a privacy and security self-assessment, and encourages honest self-reflection by shielding the content of the self-assessment from disclosure in subsequent litigation.
- Allows businesses to avoid the costs of multiple compliance protocols by recognizing compliance with similar, or more restrictive, laws from other jurisdictions as compliance with this act.
- Limits the scope of the act to companies that collect non-public data maintained in a system of records designed for individualized treatment of or communication with data subjects, thus avoiding applicability to unstructured forms of information such as email communications.
- Exempts data processing that is already regulated by major federal privacy regimes.
- Encourages the development of voluntary consensus standards by which data controllers, processors, data subjects and other interested stakeholders can engage together to develop standards tailored to the context of particular industries.
- Incorporates enforcement provisions of existing state Consumer Protection Acts that authorize state attorneys general to monitor personal data practices and to seek redress for violations of the act.
- Encourages uniformity of enforcement in the enacting states by authorizing state attorneys general directly or through the National Association of Attorneys General, to coordinate their regulatory and enforcement policies.
- Encourages states to determine for themselves whether a private right of action should be authorized for violation of the act and provides bracketed language to prohibit such rights of action.

The Act uses subtle incentives to encourage more responsible data use. Small businesses are exempt as long as they use only "compatible" data practices. Use of personal data that is pseudonymized (data with personal identifiers removed) is subject to fewer restrictions than data with personal identifiers, thus encouraging entities to convert identified data into a form that offers more privacy and security. The act also authorizes companies to use or disclose data for general research purposes and prohibits the re-identification of pseudonymized or de-identified data. Moreover, in order to avoid unintended increased risk to data subject privacy, the act requires only those controllers who have directly collected data from consumers and who are best position to authenticate their identify, to respond to access and correction requests. All other downstream recipients of personal data must respond to requests that are transmitted by the collecting controller.

For more information about the Uniform Personal Data Protection Act, please contact ULC Legislative Counsel Libby Snyder at (312) 450-6619 or lsnyder@uniformlaws.org.

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WHY YOUR STATE SHOULD ADOPT THE UNIFORM PERSONAL DATA PROTECTION ACT (2021)

The Uniform Personal Data Protection Act, promulgated by the Uniform Law Commission in 2021, applies fair information practices to the collection and use of personal data from consumers by business enterprises. By adapting a risk-based approach to privacy regulation, the act protects all data subjects from harmful processing and also offers the flexibility for startups and established firms to innovate.

The Act has several elements that make it more practical, more flexible, and less costly than other models of state privacy legislation. Specifically, the Uniform Personal Data Protection Act does the following:

- Applies broadly to any entity that collects or maintains personal data but exempts small businesses unless they use personal data in a manner that a consumer would not expect.
- Gives consumers the right to access and correct their personal data held by others and protects them from unexpected, potentially risky uses of their data without their consent.
- Allows businesses to avoid the costs of consent if they use data exclusively in ways that are compatible with consumer expectations and best interests.
- Provides incentives for businesses to pseudonymize personal data to enhance consumer protection and directs consumer requests for access to businesses best able to authenticate their identity.
- Reduces the compliance costs for businesses and the enforcement costs on state governments required by other more regulatory models such as the European General Data Privacy Regulation and the California Data Privacy Act.
- Respects First Amendment limitations on the regulation of personal data (Sorrell v. IMS Health Inc., 564 U.S. 552 (2011)).
- Promotes compatibility by recognizing compliance with existing state and federal personal data privacy regimes as compliance with this act.
- Addresses the variety of contexts and needs for different sectors by allowing data users and data subjects to negotiate voluntary consensus standards for data use.

- Uses existing enforcement mechanisms in state consumer protection laws for enforcement of this act.

- Leaves to each state the question of whether to authorize a private cause of action for violation of the act.

Altogether, the provisions of this act provide substantial protection to data subjects while reflecting pragmatism and optimism about the data-driven economy. The Act is pragmatic by keeping compliance costs manageable and by avoiding obvious conflicts with the First Amendment. The Act is optimistic by leaving room for unexpected, beneficial innovations in the creative use of personal data. And the Act avoids high compliance and regulatory costs associated with more restrictive regimes.

For more information on the Uniform Personal Data Protection Act, please contact ULC Legislative Counsel Libby Snyder at (312) 450-6619 or lsnyder@uniformlaws.org.

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UNIFORM UNREGULATED CHILD CUSTODY TRANSFER ACT (2021)

-A Summary-

The Uniform Unregulated Child Custody Transfer Act provides states with a uniform legal framework to prohibit unregulated child custody transfers. An unregulated child custody transfer is a transfer by a parent or guardian of a child or an individual with whom a child has been placed for adoption that is performed without state agency or court oversight that assures the new custodian is safe and appropriate for the child. The act also requires child-placing agencies to provide prospective adoptive parents with important information and guidance regarding adoptions that have a heightened degree of risk for a disruption or dissolution.

Article 2 of the act prohibits a parent from transferring custody of a child to someone beyond family members and other specified categories of individuals if the parent intends to abandon the parent's rights and responsibilities regarding the child. The prohibition applies to a parent or guardian with custody of a child as well as to an individual with whom a child has been placed for adoption. It also prohibits solicitation and advertising for the purpose of transferring or finding a child to transfer in violation of the article, or to facilitate such a transfer. The article provides the child protection agency with authority to perform home visits to investigate probable violations of the act and to take appropriate action to protect the child. It further provides law enforcement authority with the power to investigate and take legal action to enforce the article.

Article 3 of the act deals with the adoption of children whose physical or psychological health or other circumstances at the time of a proposed placement for adoption would predict that the adoptive parent might face challenges in caring for the child. It assures that prospective adoptive parents are informed about, and are given instruction on dealing with, the physical and psychological health of the child as well as other issues. It requires a child-placing agency through which an adoption is facilitated to provide the prospective adoptive parent with: (1) general information about adopting a child with certain health or behavioral issues; (2) specific information about the physical and psychological health of their prospective adoptive child; (3) guidance and instruction on dealing with the challenges that may present themselves in rearing the child placed with them; and (4) information on accessing certain post-placement and post-adoption financial assistance and support services to help preserve the adoption. It provides law enforcement authority with the power to investigate an alleged violation of the article by a child-placing agency and to commence action to enforce the article. It also provides the state licensing agency with authority to suspend or revoke the license of a child-placing agency that has violated the article.

For further information about the act, please contact Legislative Counsel, Libby Snyder at (312) 450-6619 or lsnyder@uniformlaws.org.

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Suite 1010
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WHY YOUR STATE SHOULD ADOPT THE UNIFORM UNREGULATED CHILD CUSTODY TRANSFER ACT (2021)

The Uniform Unregulated Child Custody Transfer Act provides a uniform regulatory framework to deal with two issues: (1) the unregulated custody transfer of children, and (2) provision of better information and guidance to prospective adoptive parents of children in certain adoptions. An unregulated child custody transfer occurs when a parent or guardian of a child or an individual with whom a child has been placed for adoption transfers custody of the child without state agency or court oversight to assure the new custodian is safe and appropriate for the child.

- **The act addresses certain child custody transfers that might present dangers of various kinds to a child.** A custody transfer to an unrelated person who is unknown to the child might expose the child to a transferee who is unfit or unable to care for the child. It might cause or exacerbate existing psychological problems for the child. The transferee might not have the authority required by law to make everyday decisions regarding the child's health, education, and welfare. In some cases, the child might be exposed to a child molester or sex trafficker.

- **The act is consistent with recommendations from a U.S. Working Group composed of representatives from several federal agencies, state child welfare organizations, and the National Association of Attorneys General.** This group identified the need for legislation that addresses issues regarding unregulated child custody transfers. This act directly addresses those issues and provides clear answers.

- **The act protects children by prohibiting a parent from transferring custody of a child to someone beyond family members and certain other specified categories of individuals if the parent intends to abandon the parent's rights and responsibilities regarding the child.** The prohibition applies to a parent or guardian with custody of a child as well as to an individual with whom a child has been placed for adoption. It prohibits a prospective transferee from receiving custody of a child in an unregulated transfer and an intermediary from arranging the unregulated child custody transfer. The act prohibits a parent from using various forms of advertising or solicitation (social media, chatrooms, etc.) to identify a prospective transferee of the child. The act also prohibits a prospective transferee or intermediary from advertising or soliciting to find a child or facilitate the child's transfer.

- **The act provides the state child protection agency and law enforcement with authority to investigate alleged transfers in violation of the act, to enforce the act and other state law, and to punish violators.**

- **The act supports families by providing information and training to prospective adoptive parent regarding the adoption of children with special needs.** A subset of children who are the subject of unregulated child custody transfers are adopted children with certain special needs. Due to an adoptive parent's unexpected difficulties in caring for and supervising a child, the parent might seek to transfer custody of the child through an unregulated custody transfer. In an effort to avoid these unexpected difficulties, the act requires the provision of information and training to the prospective adoptive parent regarding the adoption of children with special needs and specific information about the proposed adoptive child. It also requires a child placing agency or the child protection agency to provide the adoptive parent or child with information on how to obtain financial assistance or support services on certain matters to preserve the adoption.

For further information about this act, please contact Legislative Counsel, Libby Snyder at (312) 450-6619 or lsnyder@uniformlaws.org.

Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

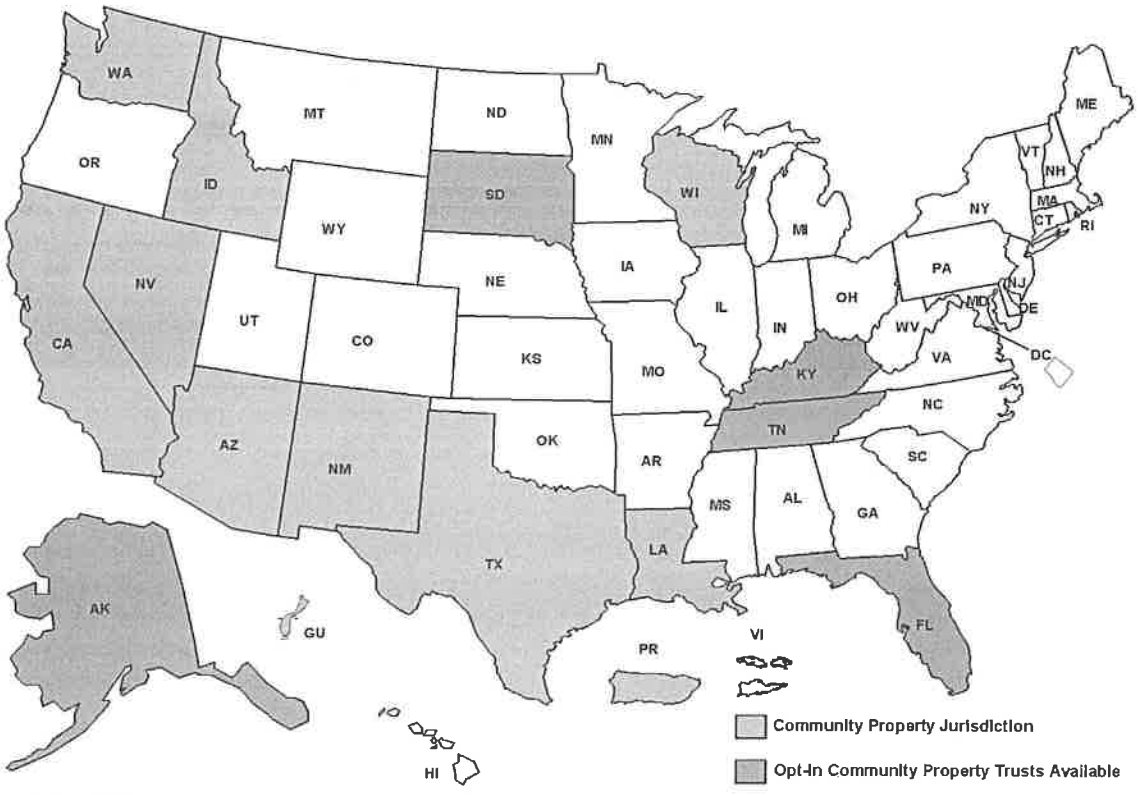
111 N. Wabash Ave.
Suite 1010
Chicago, IL 60602
(312) 450-6600 tel
(312) 450-6601 fax
www.uniformlaws.org

THE UNIFORM COMMUNITY PROPERTY DISPOSITION AT DEATH ACT

- A Summary -

The law of martial property in the United States is far from uniform. The majority of jurisdictions use a system of property rights based on English common law, but nine states and two U.S. territories use a system based on civil law instead. In those jurisdictions, a married couple's property is generally presumed to be "community property," unless the couple agrees to a different distribution in writing. At the time of the first spouse's death, 50% of the community property is owned by the surviving spouse and 50% by the deceased spouse's estate. Additionally, a few states have enacted laws that permit couples to opt-in to a community property system by creating a trust.

COMMUNITY PROPERTY JURISDICTIONS



As of October 2021

Non-uniform property laws can create problems when a married couple moves to another state. Though the governing law may be different, the nature of the couple's previously acquired property is not changed. It stands to reason that many couples will accumulate both community and non-community property over time, complicating estate administration when the first spouse dies.

The Uniform Community Property Disposition at Death Act (UCPDDA) is appropriate for enactment in ***non-community property states*** (i.e., the states shown in white and purple on the map above) where trustees, judges, and estate administrators may be unfamiliar with the rules governing distribution of community property.

The UCPDDA provides a set of default rules to ensure the equitable distribution of community property when the first spouse dies. It assists courts in determining the character of property when there is a dispute between potential heirs. The act also clarifies the process for partitioning and reclassifying community property for couples who mutually agree to separate their interests, and provides a remedy to address bad-faith transfers intended to impair the property rights of one spouse.

The UCPDDA is an update of a 1971 law that specifically governed the *probate* of estates containing community property. The update was necessary due to the increased popularity of trusts and other vehicles for nonprobate transfers, and also because of the recognition of same-sex marriage throughout the United States. The act is intended for enactment in non-community property states where the legal status of community property may otherwise be unclear.

For more information about the Uniform Community Property Disposition at Death Act, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.

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WHY YOUR STATE SHOULD ADOPT THE UNIFORM COMMUNITY PROPERTY DISPOSITION AT DEATH ACT

The Uniform Community Property Disposition at Death Act (UCPDDA) clarifies the legal status of property owned by a married couple when the first spouse dies. It should be adopted in non-community property states because:

- ***The UCPDDA protects property rights for married couples.*** The United States has two different systems of property law. Nine states and two U.S. territories treat all property acquired by a married couple during their marriage as community property – the remaining states do not. The UCPDDA ensures spouses will retain their rights in community property even if they relocate to a non-community property state.

- ***The UCPDDA prevents unnecessary litigation.*** If the legal status of a married couple's property is unclear at the time the first spouse dies, disputes between potential recipients can arise. The UCPDDA clarifies the status of property with a set of default rules that apply unless the couple made other arrangements in their estate plan. Clear rules lead to fewer disputes and help preserve court resources

- ***The UCPDDA modernizes the law.*** The increased popularity of nonprobate transfers and the recognition of same-sex marriage have made obsolete many older statutes in non-community property states governing the disposition of community property. The UCPDDA addresses these issues in a manner consistent with modern estate planning practices.

- ***The UCPDDA is flexible.*** Every couple's situation is different. The UCPDDA allows married couples to make their own plans for property distribution by deferring to valid pre-marital and post-marital agreements between spouses. The UCPDDA's default rules apply only if the couple has not made their own arrangements.

- ***The UCPDDA is more necessary than ever.*** In our increasingly mobile world, many couples live in multiple states over the course of their marriage. Therefore, these couples will often acquire a mix of community property and non-community property, complicating the distribution to heirs when one spouse dies. The UCPDDA provides clear and effective rules that will prevent distributions of property to persons who are not entitled to receive it.

For more information about the UCPDDA, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.