

HOUSE No. 42

The Commonwealth of Massachusetts

COMMISSION ON UNIFORM STATE LAWS
125 SUMMER STREET, 8TH FLOOR
BOSTON, MASSACHUSETTS 02114

The Honorable Steven T. James
Clerk of the House of Representatives
State House, Room 145
Boston, Massachusetts 02133

January 23, 2017

Dear Mr. James:

HOUSE No. __
The Commonwealth of Massachusetts
COMMISSION ON UNIFORM STATE LAWS
c/o Stephen Y. Chow, Commissioner
125 Summer Street, 8th Floor
Boston, Massachusetts 02114

November 1, 2016

The Honorable Steven T. James
Clerk of the House of Representatives
State House, Room 145
Boston, Massachusetts 02133
Dear Clerk James:

The attachments to this letter contain summaries of the proposed recommendations and the actual legislative drafts incorporating the recommendations.

The proposed bills are:

AN ACT MAKING UNIFORM THE LAW REGARDING TRADE SECRETS

AN ACT MAKING AMENDMENTS TO THE UNIFORM COMMERCIAL CODE COVERING PROVISIONS DEALING WITH NEGOTIABLE INSTRUMENTS AND BANK DEPOSITS AND COLLECTIONS

AN ACT ADOPTING THE UNIFORM ASSIGNMENT OF RENTS ACT

AN ACT RELATIVE TO THE UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT

AN ACT REVISING THE UNIFORM ARBITRATION ACT FOR COMMERCIAL DISPUTES

AN ACT MAKING UNIFORM CERTAIN ASPECTS OF MEDIATION

AN ACT TO ESTABLISH UNIFORM COLLABORATIVE LAW

AN ACT REVISING THE LAW RECOGNIZING FOREIGN-COUNTRY MONEY JUDGMENTS

AN ACT RELATIVE TO THE UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

AN ACT RELATIVE TO THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

AN ACT RELATIVE TO THE UNIFORM ELECTRONIC LEGAL MATERIAL ACT

In accordance with the provisions of Section 33 of Chapter 30 of the General Laws and under the authority granted to it by the provisions of Section 27 of Chapter 6 of the General Laws, the Board of Commissioners on Uniform State Laws herewith respectfully submits the following legislative recommendation for filing and action in the 2017-2018 legislative session.

1. AN ACT MAKING UNIFORM THE LAW REGARDING TRADE SECRETS.

This legislation would adopt the Uniform Trade Secrets Act (UTSA) promulgated by the Uniform Law Commission (the ULC) in 1979 (and revised in 1985) with some modifications recommended by the Boston Bar Association and presented in the previous legislative sessions.

The legislation would codify the common law, with proper clarification, on rights and remedies arising from the misappropriation of trade secrets, which may have significant commercial value for a business or other enterprise. Forty-seven States and the District of Columbia have enacted the UTSA.

2. AN ACT MAKING AMENDMENTS TO THE UNIFORM COMMERCIAL CODE COVERING PROVISIONS DEALING WITH NEGOTIABLE INSTRUMENTS AND BANK DEPOSITS AND COLLECTIONS.

The proposed legislation makes certain amendments to Articles 3 and 4 of the Uniform Commercial Code promulgated by the ULC in 2002. Article 3 deals with negotiable instruments, such as checks and negotiable promissory notes. Article 4 deals with bank deposits and collections. The proposed legislation would clarify existing rules for lost negotiable instruments and how a maker of a negotiable note obtains a discharge on payments when the note has been sold. It also removes various barriers to electronic commerce, protects consumers who have claims or defenses on negotiable promissory notes issued for the purchase of consumer goods, conforms the state law rules on telephonically generated checks to newly issued federal regulations, and updates the provisions of Article 3 dealing with guaranties on negotiable instruments. Eleven States and the District of Columbia have adopted these amendments.

3. AN ACT ADOPTING THE UNIFORM ASSIGNMENT OF RENTS ACT.

This legislation would adopt the Uniform Assignment of Rents Act (UARA) promulgated by the ULC in 2005. The legislation provides basic rules that establish the "security interest" of a creditor in the rent (income) from rental property, the rights of tenants to notice and the effect of notice, and the priority of the security interest against other creditors. The bill removes a number of uncertainties under current law, thereby facilitating the extension of credit secured by interests in real estate rents. Five States have enacted the UARA.

4. AN ACT TO RENAME THE UNIFORM FRAUDULENT TRANSFER ACT AND MAKE OTHER AMENDMENTS THERETO.

The proposed legislation would adopt the amendments to the Uniform Fraudulent Transfer Act promulgated by the ULC in 2014. The amendments would, among other things, rename the Act as the "Uniform Voidable Transactions Act", and substitute the word "voidable" for "fraudulent" throughout the Act, to clarify that the elements of common law fraud need not be proven in order for the Act to provide a remedy. The amendments also provide uniform burdens and standards of proof for an action under the Act and a choice of law rule and would clarify certain defenses to actions under the Act. It has been enacted by nine States.

5. AN ACT RELATIVE TO THE UNIFORM CHILD-CUSTODY JURISDICTION AND ENFORCEMENT ACT.

This legislation would update and add to Chapter 209B, of the General Laws, which was based on the 1968 Uniform Child Custody Jurisdiction Act, with the 1996 Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA), which among other things provides for a rebuttable presumption of continuing exclusive jurisdiction in the home State. Massachusetts is the last of the fifty States that has not enacted the UCCJEA (also enacted in the District of

Columbia and the U.S. Virgin Islands), leaving it in the odd position that children subject to child custody orders from other States would presumptively remain subject to the jurisdiction of the order-issuing court after removal from the State, but those subject to Massachusetts orders would not.

6. AN ACT REVISING THE UNIFORM ARBITRATION ACT FOR COMMERCIAL DISPUTES.

This legislation would adopt the Revised Uniform Arbitration Act (UAA) promulgated by the ULC in 2000 as a replacement for the Uniform Arbitration Act that it previously promulgated in 1955. Massachusetts adopted the prior act in 1960, which appears as Chapter 251 of the General Laws as the Uniform Arbitration Act for Commercial Disputes. The proposed legislation would modernize the existing statute, particularly in light of the Federal Arbitration Act and the rise in use of the arbitration approach. Specialized matters such as arbitration of labor disputes would remain outside the scope of this legislation. Eighteen States and the District of Columbia have adopted the revised UAA.

7. AN ACT MAKING UNIFORM CERTAIN ASPECTS OF MEDIATION.

This legislation would adopt the Uniform Mediation Act (UMA) promulgated by the ULC in 2001. The legislation focuses on communications (notices) and privileges in the mediation process to promote confidence in, and the integrity of, that form of alternative dispute resolution. The bill adopts optional text that specifically requires a mediator to be impartial unless agreed otherwise. The UMA would promote mediation across State lines and has been enacted by twelve States and the District of Columbia.

8. AN ACT TO ESTABLISH UNIFORM COLLABORATIVE LAW.

This legislation would standardize the most important features of collaborative law, a form of alternative dispute resolution that is becoming more popular in the states. Collaborative law is now used mainly in family law disputes, but its practice has spread to other areas of the law, including the settlement of contract and insurance disputes. The Act encourages the development and growth of collaborative law as an option for parties that wish to use it. The Act mandates the essential elements of disclosure and discussion between prospective parties in order to guarantee that all parties enter into the collaborative agreement with informed consent. Since its promulgation in 2009, fourteen States and the District of Columbia have enacted the Uniform Collaborative Law Act.

9. AN ACT REVISING THE LAW RECOGNIZING FOREIGN-COUNTRY MONEY JUDGMENTS.

This legislation would update Chapter 235, Section 23A, of the General Laws, which was based on the 1962 version of the Uniform Foreign Money-Judgments Recognition Act, with the 2005 Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA), which adds provision on burden of proof, procedure, and a statute of limitations. The UFCMJRA has been enacted by twenty-one States and the District of Columbia.

10. AN ACT RELATIVE TO THE UNIFORM UNSWORN FOREIGN DECLARATIONS ACT.

This legislation, prompted by the difficulty of obtaining consular certifications in the security regime post-9/11, would extend to state proceedings the same flexibility that federal courts have employed for since 1976 under 28 U.S.C. § 1746, allowing an unsworn declaration executed outside the U.S. to be recognized and valid as the equivalent of a sworn affidavit if it substantially includes the language declaring truth under penalty of perjury. The 2008 Uniform Unsworn Foreign Declarations Act has been enacted in twenty-one States and the District of Columbia.

11. AN ACT RELATIVE TO THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT.

This legislation would add to the General Laws the Uniform Real Property Electronic Recording Act (URPERA) promulgated by the ULC in 2004 to extend to real property recording the benefits of the Uniform Electronic Transactions Act (UETA) promulgated by the ULC in 1999, which was enacted by the General Court in 2003 as Chapter 110G of the General Laws.

URPERA does three fairly simple things to facilitate electronic recording of real property. First, it establishes that any requirement for originality, for a paper document or for a writing manually signed before it may be recorded, is satisfied by an electronic document and signature. This is essentially an express extension of the principles of UETA to the specific requirements for recording documents relating to real estate transactions in any state. Second, it establishes what standards a recording office must follow and what it must do to make electronic recording effective. For example, the office must comply with standards set by the board established in a state to set them. It must set up a system for searching and retrieving electronic documents. There are a minimum group of requirements established in URPERA. Third, URPERA establishes the board that sets statewide standards and requires it to set uniform standards that must be implemented in every recording office. URPERA has been enacted by twenty-nine States, the District of Columbia and the U.S. Virgin Islands. This bill adds URPERA as a new chapter 36A following chapter 36 addressed to the registers of deeds, which the General Court may address to the recorders of the Land Court under chapter 185 by adopting bracketed language in the bill.

12. AN ACT RELATIVE TO THE UNIFORM ELECTRONIC LEGAL MATERIAL ACT.

This legislation would enact the Uniform Electronic Legal Material Act (UELMA) promulgated in 2011 by the ULC in response to an increasing number of states publishing statutes and other legal materials in electronic format only in order to conserve financial resources. UELMA does not require publication in electronic format and does not prescribe particular technologies. However, where the relevant official publisher of legal material chooses to publish an official version of the material electronically, that material must be authenticated by providing a method to determine that it is unaltered; preserved, either in electronic or print form; and accessible, for use by the public on a permanent basis. The bill proposes certain materials and official publishers that may be amended upon further study. In the five years since its promulgation, thirteen States have enacted UELMA.

Sincerely,

[Filer Name]

[Filer Title]