

DRAFT
FOR REVIEW

Model State Uniform Law Commission Act

Uniform Law Commission

June 3, 2025 informal Session



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National Conference of Commissioners
on Uniform State Laws

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May 29, 2025

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1 (1) [Three] individuals appointed by the Governor.

2 (2) [One] member of the [Senate] appointed by the [President Pro Tempore of the
3 Senate]. If no member of the [Senate] is eligible to be a commissioner, or the [President Pro
4 Tempore] does not appoint a member of the [Senate] who is eligible, the [President Pro Tempore]
5 shall appoint an individual who is eligible.

6 (3) [One] member of the [House of Representatives] appointed by the [Speaker of
7 the House of Representatives]. If no member of the [House of Representatives] is eligible to be a
8 commissioner, or the [Speaker] does not appoint a member of the [House of Representatives]
9 who is eligible, the [Speaker] shall appoint an individual who is eligible.

10 (4) The [Director] of [insert name of the state legislative reference bureau or other
11 agency charged by law with the duty of drafting legislation]. If the [Director] is not eligible to be
12 a commissioner or declines to serve, the [Director] shall designate an employee of [insert name
13 of the state legislative reference bureau or other agency charged by law with the duty of drafting
14 legislation] who is eligible.

15 (5) Any individual who, while a commissioner, becomes a life member of the
16 ULC.

17 [(6) Insert any other eligible individual the enacting state chooses to include as a
18 member of the Commission.]

19 (d) A commissioner appointed under subsection (c)(1) serves a term of [four] years and
20 serves until the commissioner's successor is appointed or the position is vacant under subsection
21 (e) or (f). Any other commissioner, other than a commissioner appointed under subsection
22 (c)(4)[,] [or] (5)[, or (6)], serves until a successor is appointed or the position is vacant under
23 subsection (e) or (f).

(e) On an appointed commissioner's death, removal, or resignation, the position is vacant. The commissioner's appointing authority shall make an appointment to fill the vacancy. If the commissioner was appointed under subsection (c)(1), the appointment is for [a new term][the unexpired term of the former commissioner].

(f) On becoming a life member under subsection (c)(5), the commissioner's position is vacant, the individual continues to serve as a commissioner under subsection (c)(5), and the commissioner's appointing authority shall make an appointment to fill the vacancy.

Legislative Note: In subsection (a), a state should insert the name of the office in the legislature that is the legislative reference bureau or other agency charged by law with the duty of drafting legislation or other appropriate agency or office and should make a corresponding change in subsection (c) and Section 5.

In subsection (c)(1), a state should consider the bracketed suggestion of three gubernatorial appointments as a minimum rather than a recommended maximum, especially if the state currently has more than three gubernatorial appointments on the commission.

In subsection (c)(2) and (3), a state should insert the appropriate number of legislative appointments.

In subsection (c)(2) and (3), a state should insert in the brackets the appropriate term for the chambers of the legislature and appropriate title for the leader of each chamber. In a state or jurisdiction with only one chamber, the state or jurisdiction should make the necessary changes to this subsection.

In subsection (c)(4), a state should replace references to "Director" with the appropriate title for the principal administrative officer of the state legislative reference bureau or other agency charged by law with the duty of drafting legislation.

A state should include subsection (c)(6) if the state wishes to include additional members. Some states include other individuals as members of their commissions based on their role or job, including the Attorney General, members of the judiciary, and law professors. If a state includes subsection (c)(6), the state should consider whether conforming changes are needed in subsections (b), (d) and (e).

In subsection (d), a state should insert the appropriate term of years for a commissioner appointed by the Governor.

In subsection (d), if a state provides for the appointment of commissioners under subsection (c)(6), the state should consider how and when the terms of those commissioners end and amend

1 *subsection (d) accordingly.*

2
3 *In subsection (e), a state should choose the appropriate term of office for a new commissioner*
4 *chosen to fill a vacancy.*

5
6 **Comment**

7 1. In subsection (a), the name of the Commission is made consistent with the name of the
8 Uniform Law Commission and based on the name used by at least 5 states, which name their
9 state commission a “Uniform Law Commission”. The 5 states are AZ, DC, IN, NM, WA.

10
11 2. Since the Uniform Law Commission’s adoption of the 1944 Act, many state
12 legislatures have created nonpartisan legislative services offices to assist the legislature in its
13 work. Subsection (a) provides that the Commission is to be established in the nonpartisan
14 legislative services office in the state legislature.

15
16 3. Subsection (b) states that a member of the state Commission must be a member of the
17 bar of the state in good standing on first appointment. A requirement for Bar membership is in
18 the 1944 Act and every state law. Section 2.04 of the Constitution of the Uniform Law
19 Commission states: “When first appointed, each Commissioner must be a member of the bar of a
20 State.” and subsection (d) adopts this approach.

21
22 4. The median number of commissioners currently in state delegations is 5. Subsection
23 (c) proposes appointments for the states consistent with this number. While the appointing
24 authority for membership can vary, historically the Governor has been the authority most often
25 charged with making appointments. In this proposed structure, appointments by the leader of
26 each chamber of the state legislature are included because the Uniform Law Commission
27 believes the appointment of legislators to the Commission is beneficial. The primary purpose of
28 the Uniform Law Commission is to achieve uniformity of state laws where uniformity is
29 beneficial and practicable. Commissioners have a duty to work with the state legislature to
30 ensure passage of uniform acts. Many states that currently require the appointment of
31 Commissioners who are legislators have found the appointment of legislator Commissioners to
32 be helpful for this purpose.

33
34 5. In subsections (c)(2)-(3) and (c)(6) the reference to “eligible” is meant to refer to
35 subsection (b).

36
37 6. When including legislators in the membership structure, it is likely necessary to
38 consider allowing the leader of each chamber the authority to appoint an individual other than a
39 member of that chamber to ensure the state has a full delegation. This alternative appointment
40 authority is necessary because the chamber may not have a legislator who is a member of the Bar
41 or the only legislator who is a member of the Bar may not be an individual the leader wants to
42 appoint.

43
44 7. A representative of the nonpartisan legislative service agency is included in the
45 proposed membership structure because at least 12 states provide by law that a representative of

1 the nonpartisan legislative service agency is a member of state commissions and Section
2 2.02(a)(2) of the Constitution of the Uniform Law Commission provides that “the principal
3 administrative officer of each state legislative reference bureau or other agency charged by law
4 with the duty of drafting legislation, or an alternate named by the officer” is a Commissioner.
5

6 8. A life member is included in the proposed membership structure because the 1944 Act,
7 the laws of 26 states (AZ, AR, CA, CO, DE, DC, FL, KS, ME, MD, MS, MT, NE, NM, ND, OK,
8 OR, RI, SD, TN, TX, UT, VA, WA, WV, WI), and the Constitution of the Uniform Law
9 Commission (see Section 2.03) provides that an individual elected to be a life member of the
10 Uniform Law Commission is also a member of the state commission.
11

12 9. Subsection (c)(2) and (3) gives the leader of each chamber of the state legislature the
13 authority to appoint one Commissioner. Some states have expanded legislative appointments to
14 guarantee partisan balance. Illinois, Indiana, and Pennsylvania give the minority leader of each
15 chamber the authority to appoint one Commissioner. Michigan requires the leader of each
16 chamber to appoint two legislators and require one appointment from each party. New Mexico
17 requires the Legislative Council to appoint one member from each of the two major political
18 parties in both the House and Senate. Wisconsin is similar but gives the appointing authority to
19 the caucus of the two major political parties.
20

21 10. Subsection (c)(6) is a placeholder for states that wish to include additional members.
22 Common formulations seen in states explicitly require the appointment of judges, law professors,
23 the attorney general, etc.
24

25 11. Subsection (d) is included to provide for the term of a Commissioner appointed by the
26 Governor. Some statement of the term of a Commissioner appointed by the Governor is included
27 in the majority of states. For states with a term based on years, the terms for appointments range
28 from 2 to 6 years. Four years is the most popular with 20 states providing for 4-year terms (AL,
29 AR, FL, HI, ID, IL, IA, ME, MD, MT, NE, NV, NH, ND, OK, OR, UT, VA, WV, WI). The next
30 most popular is 3 years, with 8 states providing this term (DC, LA, NJ, OH, PA, RI, SD, WY).
31

32 12. Subsection (d) includes a term based on the pleasure of the appointing authority for
33 all appointments other than gubernatorial appointments and life memberships.
34

35 13. Subsection (e) provides a mechanism for filling a Commissioner’s vacancy and
36 specifies that election to life member status by the Uniform Law Commission is an event that
37 triggers a vacancy in the original appointment. This is based on Section 2 of the 1944 Act.
38

39 14. While the intent of this act is to create the opportunity for the appointment of new
40 commissioners on a commissioner becoming a life member, an appointing authority may
41 reappoint a commissioner who has become a life member to an appointed position.
42

43 **Section 4. Duties; Annual Report**

44 (a) A commissioner shall attend the annual meeting of the ULC.

1 (b) The Commission shall:

2 (1) review efforts nationally to enact uniform state laws and recommend the
3 enactment of uniform acts approved by the ULC that the Commission deems desirable and
4 practicable; and

5 (2) promote uniformity in state laws in subjects in which uniformity is desirable
6 and practicable.

7 (c) The Commission shall annually submit a report to the [Legislature][,] [and]
8 Governor[, and any other appointing authority under Section 3(c)]. The report must include:

9 (1) a summary of the Commission's activities;

10 (2) a summary of the activities of the ULC;

11 (3) the Commission's recommendations for legislation; and

12 (4) any other information deemed relevant by the Commission.

13 **Legislative Note:** *In subsection (c), a state should insert the name for the state legislature or*
14 *titles of legislative leaders or staff in the state legislature whom the state desires to receive the*
15 *report required under this section.*

16
17 **Comment**

18 1. Subsection (a) comes from the 1944 Model Act which stated that "Each
19 Commissioners (sic) shall attend the meeting of the National Conference of Commissioners on
20 Uniform State Laws. . ." This requirement should extend to the entirety of the annual meeting.
21 Particularly, at least one Commissioner from each state should be present at the annual meeting
22 to vote on behalf of their state in the vote by states.

23
24 2. Subsection (b)(1) is borrowed from Arizona's statute. The intent in including this
25 language in the Duties of Commissioners section is to require commissioners to work toward the
26 enactment of uniform laws. Reviewing efforts nationally to enact uniform laws assists the
27 commissioners in their efforts to recommend acts desirable and practicable for their states. This
28 is not intended to require commissioners to create their own 50-state surveys of enactments or
29 engage in substantial legal research. This requirement would be satisfied by participating in the
30 delegation's annual legislative planning discussion, reviewing the ULC's website, and working
31 with ULC staff. This Act does not address its interaction with state lobbying laws because
32 engaging in this work should not be considered lobbying under state statute. A state may consider
33 whether to further clarify that commissioners fulfilling their duties are not engaged in the

1 practice of lobbying.

2
3 3. Subsection (b)(2) is borrowed from the 1944 Act which required commissioners to “do
4 all in his power to promote uniformity in State Laws, upon all subjects where uniformity may be
5 deemed desirable and practicable.”

6
7 4. Subsection (b)(3) is based on language found in the 1944 Act.

8
9 5. Subsection (c) requires the state delegation to submit a report of its activities to the
10 governor or legislature. This is currently required in 37 states. This report should be distributed
11 to the state legislature, the governor, and any other appointing authority authorized to appoint
12 commissioners under Section 3.

13
14 6. This report also serves as a mechanism for state delegations to inform the legislature,
15 governor, and other relevant appointing authorities of any vacancies on the delegation and when
16 a commissioner is elected to life member status. This is the type of information a state
17 Commission should include in the report pursuant to subsection (c)(4).

18
19 **Section 5. Annual Dues; Commissioner Expenses**

20 (a) The amount required to pay the state’s annual dues to the ULC and the
21 commissioners’ expenses is authorized to be funded in accordance with the state’s appropriation
22 process.

23 (b) A commissioner serves without compensation. The [insert name of the state
24 legislative reference bureau or other agency charged by law with the duty of drafting legislation
25 or other appropriate agency or office charged with administering the Commission] shall
26 reimburse a commissioner for the commissioner’s expenses of attending the annual meeting of
27 the ULC and any other actual and necessary expenses incurred in the performance of the
28 commissioner’s duties under Section 4.

29 (c) The [insert name of the state legislative reference bureau or other agency charged by
30 law with the duty of drafting legislation or other appropriate agency or office] shall:

31 (1) pay under subsection (a) the state’s dues to the ULC;

32 (2) reimburse under subsection (b) a commissioner for expenses incurred; and

(3) provide other reasonable administrative assistance to the Commission.

Comment

1. This subsection requires the state to contribute to the ULC annually.

2. Subsection (b) requires the reimbursement of expenses. Many states with an existing provision like this specify that commissioners may not be compensated for services as a Commissioner.

3. Subsection (c) provides that the nonpartisan legislative services office is responsible for payment of dues to the Uniform Law Commission, reimbursement of expenses of the Commissioners for attending the Uniform Law Commission's annual meeting, and other, reasonable administrative assistance required by the Commission. The nonpartisan legislative services office's assistance is intended to be limited to that which will not cause undue cost or expense for the office. Such assistance may include providing information to the state's Commissioners related to the need or feasibility of adopting a uniform law or assisting with the preparation or printing of the Commission's annual report.

[Section 6. Transitional Provision

[(a)] The term of a member of [insert name of state's former commission on uniform state laws] under [cite to former law] continues as follows:

(1) If appointed for a term of years, until the expiration of the term [and the individual's successor is appointed].

(2) If serving at the pleasure of an appointing authority under [cite to former law] who is an appointing authority under Section 3(c), until the appointing authority determines otherwise.

(3) If serving as a member of the commission by virtue of holding a position other than commissioner, until vacating the position.

[(b) If an individual is a member of [insert name of state's former commission on uniform state laws] under [cite to former law] and serves at the pleasure of an individual who is not an appointing authority under Section 3(c) or by virtue of holding a position not made a member of the Commission, the individual's term expires on [the effective date of this [act]]].]

Legislative Note: Include this section only if the state is replacing an existing appointment statute with this act.

In subsection (a)(1), a state should include the bracketed term if the state does not otherwise have a hold-over provision in statute or the state constitution.

A state should include subsection (b) only if the state's prior commission on uniform state laws has members to which this subsection would apply.

Section 7. Consistency of Application and Construction

In applying and construing this model act, a court shall consider the promotion of consistency of the law among states that enact this model act or any provision of this model act.

[Section 8. Severability]

[If a provision of this [act] or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]

Legislative Note: Include this section only if the state lacks a general severability statute or a decision by the highest court of the state stating a general rule of severability.

[Section 9. Repeals; Conforming Amendments]

[(a) . . .

(b) . . .]

Legislative Note: A state should examine its statutes establishing or governing a predecessor state commission to determine the extent of repeals or conforming revisions required by the state's adoption of part or all of this act.

Section 10. Effective Date

This [act] takes effect [...].