

# The Arkansas Lawyer

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**Inside:**

Arkansas Stare Decisis

Arkansas Constitution

Arkansas New Uniform Laws

Arkansas Supreme Court Rule XIV





# A Report From the 2021 National Conference of Commissioners on Uniform State Laws

By J. Cliff McKinney II

The Uniform Law Commission (ULC) held its 130th annual National Conference via a hybrid method of in-person meetings in Madison, Wisconsin, and virtual meetings through Zoom in July 2021. Arkansas was represented by its commissioners, David Nixon, John Thomas Shepherd, Cliff McKinney, and Marty Garrity, who serves as an associate commissioner.

## Arkansas' New Uniform Acts

In 2021, the Arkansas General Assembly adopted three new uniform acts: Revised Uniform Limited Liability Company Act, Uniform Fiduciary Income and Principal Act, and Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images. All three passed the House and the Senate without a single no vote. Below is a brief summary of all three newly-adopted acts:

### Uniform Limited Liability Company Act (Revised)

Act 1041 (SB 601); Ark. Code Ann. §§ 4-38-101 et seq.

The Uniform Limited Liability Company Act (Revised) is a modernized replacement for Arkansas' current limited liability company act, which is known as "The Small Business Entity Tax Pass Through Act," which was adopted in Arkansas on April 1, 1993. This uniform act provides refinements and modern legal updates. Twenty states plus the District of Columbia have adopted this uniform act, most recently Alabama in 2019. Two other states (South Carolina and Wisconsin) introduced the uniform act in their legislatures in 2021. The uniform act was endorsed by the Real Property, Probate, and Real Estate Sections of the American Bar Association.

### Uniform Fiduciary Income and Principal Act

Act 1088 (HB 1693); Ark Code Ann. §§ 28-77-101 et seq.

The Uniform Fiduciary Income and Principal Act is an updated version of the Uniform Principal and Income Act, which has been adopted in 47 jurisdictions. The Act provides rules for allocating receipts and disbursements between income and principal accounts of a trust in accordance with the fiduciary duty to treat all beneficiaries loyally and impartially unless the terms of the trust specify otherwise. This revision includes provisions allowing conversion of a traditional trust with income and principal beneficiaries into a total-return unitrust when all beneficiaries consent.

### Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act

Act 420 (HB 1645); Ark. Code Ann. §§ 16-129-101 et seq.

The Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act addresses an increasingly common form of abuse that causes immediate, and in many cases, irreversible harm. The act creates a cause of action for unauthorized disclosure of private, intimate images. The act also outlines procedures enabling victims to protect their identity in court proceedings. In addition, the act provides various remedies for victims, including actual damages, statutory damages, punitive damages, and attorney's fees.

### The ULC's 2021 Proposed Acts

The ULC's rules for approving proposed uniform acts typically require consideration at two consecutive annual meetings.

Following is a brief description of the acts that were approved on final reading this year.

### Uniform Cohabitants' Economic Remedies Act

The Uniform Cohabitants' Economic Remedies Act is intended to enable 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 is intended to affirm 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.

### Uniform College Athlete Name, Image, or Likeness Act

Until recently, college athletes have not been allowed to receive compensation for the use of their name, image, or likeness (NIL) while still maintaining athletic eligibility. The Uniform College Athlete Name, Image, or Likeness Act allows college athletes to earn compensation for the use of their NIL while also providing reasonable protections to educational institutions, athletic associations, and conferences.

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### **Uniform Community Property Disposition at Death Act**

Community property acquired by a married couple retains its character as community property even when the couple relocates to reside in a non-community-property state. This Act provides a structure for non-community-property states, like Arkansas, to handle these situations. Arkansas currently has the 1971 version of this Act, which this Act is intended to replace.

### **Uniform Personal Data Protection Act**

The Uniform Personal Data Protection Act is intended to apply fair information practices to the collection and use of personal data from consumers by business enterprises. The Act is intended to provide a reasonable level of consumer protection without incurring the compliance and regulatory costs associated with some existing state regimes.

### **Uniform Restrictive Employment Agreement Act**

This Act regulates restrictive employment agreements, which are agreements that

prohibit or limit an employee or other worker from working for other employers after the work relationship ends. The Uniform Restrictive Employment Agreement Act addresses the enforceability of these agreements, notice and other procedural requirements, choice of law issues, and remedies.

### **Uniform Unregulated Child Custody Transfer Act**

In some cases, parents find that, after the birth or adoption of their child, they experience considerable difficulty or even inability in caring for or effectively managing the child's behavior, which sometimes leads to families transferring a child to another person outside of the courts and the child welfare system. Without specific regulations directed at these types of unregulated transfers, a transfer of custody might go unnoticed within the child welfare system. The Act addresses the transfer of children in these types of cases.

### **Amendments to the Uniform Common Interest Ownership Act**

The Uniform Common Interest Ownership Act governs the formation, management, and termination of common interest communities, including condominiums, homeowner associations, and real estate cooperatives. The 2021 amendments to the Act update it to address recent legal and technological developments.

You can find more information about each of these acts at [www.uniformlaws.org](http://www.uniformlaws.org). This website has a copy of each act along with supporting information. The Arkansas delegation is honored to represent our state at the Commission and is happy to assist with any questions. ■

**Editor's Note:** See the Fall 2021 issue of *The Arkansas Lawyer* for articles on the Uniform Limited Liability Company Act and the Uniform College Athlete Name, Image or Likeness Act.

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