

Unsuccessful Efforts to Adopt the Uniform Trust Code by Courtney Kelley

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The Uniform Trust Code represents an attempt at codifying the modern common law of trusts. Formulated by Uniform Laws commissioners from around the country, the UTC tracks the American Law Institute's *Restatement (Third) of the Law of Trusts*. Versions of the UTC are adopted in 33 states. But the statute is not yet the law in Oklahoma.

Attempts were made to adopt the UTC in Oklahoma in 2004. The Oklahoma Bar Association approved a version of the UTC, which was then introduced and passed in the House. The bill was defeated in the Senate Judiciary Committee after the primary sponsor withdrew his support. Commentators attribute the defeat to a number of factors. Some were concerned that the bill would reduce asset protection features of various types of trusts. Charities were not convinced that the bill would be friendly to trusts naming a charity as beneficiary. Others believed that the UTC had not adequately addressed certain tax issues.

Oklahoma tried again in 2008. Attorneys and trustees from around the state assembled a modified version of the UTC that, they believed, better fit the state legislature and various interest groups. This was not a complete adoption of the UTC. The legislation added nine new provisions to Oklahoma's trust statutes, supplementing the existing Oklahoma Trust Act with definitions of key terms, new provisions on venue and notice requirements, and otherwise conforming Oklahoma law to the developing law of trusts around the country. The legislature added this slimmed-down version of the UTC to a broader bill adopting a number of uniform statutes, including new provisions of the Uniform Commercial Code.

Unfortunately, this version of the UTC was the law in Oklahoma for less than a month. The provisions became effective on November 1, 2008. But on November 24, 2008, the Oklahoma Supreme Court struck the entire bill on the basis of logrolling.

The Oklahoma Supreme Court's decision in *Weddington v. Henry* left many trust and estate practitioners thinking that the UTC might need to be introduced and adopted in piecemeal fashion. And some provisions have been adopted on a piecemeal basis. But with the UTC gaining momentum around the country, and otherwise maturing as a body of law, it might be time to try again.

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