The meeting of the Committee on Scope and Program was convened at the Hotel DuPont in Wilmington Delaware by Chairperson Martha Lee Walters. Commissioners Richard T. Cassidy, Harry J. Haynsworth, Dale G. Higer, Lane H. Kneedler, Harry L. Tindall, Michael Houghton were present. Also present were Fred H. Miller, President, Howard J. Swibel, Chair of the Executive Committee, William H. Henning, Executive Director, John M. McCabe, Legislative Director/Legal Counsel, Michael R. Kerr, Deputy Executive Director/Deputy Legal Counsel, Elizabeth J. Cotton-Murphy, Chief Executive Officer, and William Pierce, Executive Director Emeritus.

The meeting was called to order at 8:15 a.m.

1. Upon a motion duly made, the minutes from the August 2003 meeting were approved.

2. Study Committee on Amendments to the Uniform Anatomical Gift Act
   (Carlyle Ring, Chair) -- Scope Liaison Lane Kneedler
   External proposal for state tax credit for donors (Oral Report – Mike Kerr)
   
   The Committee received the report of the study committee and forwarded the tax credit proposal to the committee for its independent consideration. Commissioner Kneedler will continue to act as liaison to the study committee. A report is expected prior to the next Annual Meeting of the Conference.

3. Study Committee on Representation of Children in Custody Disputes
   (Rhoda Billings, Chair) -- Scope Liaison Harry Tindall

   Rhoda Billings, chair of the Study Committee on the Representation of Children in Custody Disputes appeared before the Committee on Scope and Program to present her report. The Committee discussed the background of the project, which started with the related ABA Standards on this subject, and the study committee’s recommendation that the drafting effort begin with a broad scope. Chairperson Billings noted that the act defines the roles of an attorney (best interest attorney vs. attorney for the child – no dual roles), but does not mandate appointment or change the current role of non-attorney ad litems. The committee discussed the nature of the potential project, the need for uniformity and the enactability of such an Act. Members noted the importance of carefully examining the relationship of this project, should it...
go forward, with the existing ABA effort.

Upon motion duly made, the Committee voted unanimously as follows:

**RESOLVED**, that the Committee on Scope and Program recommends to the Executive Committee that a drafting committee be formed to draft an act on the role of attorneys representing children in custody disputes, and that the committee be initially charged to cover custody matters broadly (including the full spectrum of custody matters, including abuse, neglect, dependency, and termination cases, but not delinquency).

4. Study Committee on **Prevention of Child Abduction in International Child Custody Disputes** *(Lyle Hillyard, Chair)* -- Scope Liaison Harry Tindall

The Committee discussed the recommendation of the Study Committee on the prevention of child abduction in international child custody disputes. Following an introduction to the issue from Harry Tindall, the Committee discussed the Study Committee's report on the need for the act, the need for uniformity, and the enactability of such an Act. Members discussed the need to draft on a clean slate so as to avoid potential constitutional problems seen in existing state statutes on this subject, and the possibility of federal agency participation and/or funding.

Upon motion duly made, the Committee voted unanimously as follows:

**RESOLVED**, that the Committee on Scope and Program recommends to the Executive Committee that a drafting committee be formed to draft an act to provide standards for the protection of children from international abduction.

5. Study Committee on **Computer-generated Demonstrative Evidence** *(Chuck Ehrhardt, Chair)* -- Scope Liaison Richard Cassidy

The committee received the report of the study committee and Commissioner Cassidy will continue to act as liaison to the study committee. A further report is expected prior to the next Annual Meeting of the Conference.

6. Study Committee on **Marine Insurance** *(Richard Long, Chair)* -- Scope Liaison Richard Cassidy

The Committee discussed the Study Committee's recommendation that the NCCUSL, for the first time in its history, to draft a statute for introduction and enactment by the U.S. Congress. President Miller commented on the pros and cons of going forward with a federal statute drafting effort. Members noted the vital importance of confirming the interest of Congress in participating in such a venture. Also noted was the need to have the federal relations committee coordinate on this front. Several members indicated a preference to not go beyond the traditional charter of NCCUSL – i.e. to draft laws on behalf of the states.
Upon motion duly made, the Committee voted unanimously as follows:

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the study committee on Marine Insurance Act be discharged.

7. Study Committee on Amendments to the Uniform Guardianship and Protective Proceedings Act (Lyle Hillyard, Chair) -- Scope Liaison Harry Tindall

The Committee discussed the report of the Study Committee on the Amendments to the Uniform Guardianship and Protective Proceedings Act. John McCabe reported on a conference call. Harry Tindall will continue to monitor developments.

8. Study Committee on Public Health Emergency Response Authority (Ray Pepe, Chair) -- Scope Liaison Lane Kneedler

The Committee discussed the report of the Study Committee on the Public Health Emergency Response Authority. The Committee discussed the Study Committee's report on the continuing need for consulting interested groups, especially input from contacts at the CDC. Howard Swibel also noted the possible utility of involving the federal relations committee. Commissioner Kneedler will continue to act as liaison to the study committee. A finalized report is expected prior to the next Annual Meeting of the Conference.

9. Study Committee on Misuse of Genetic Information (Harvey Feldman, Chair) -- Scope Liaison Dale Higer

The Committee discussed the recommendation of the Study Committee on the Misuse of Genetic information to commence a drafting project directed toward genetic information privacy. President Miller indicated his reservations about NCCUSL projects concerning privacy and his preference for an act focused on the control of genetic information. The Committee discussed the possibility of federal preemption and the enactability of such an Act in the current environment. John McCabe noted the importance of ensuring that in input of *all* interested groups be taken prior to moving forward, especially commercial and scientific sectors.

Upon motion duly made, the Committee voted unanimously to request that the study committee continue its work and respond to specific questions to be formulated by a subcommittee of the committee on Scope and Program and to respond prior to the annual meeting.

10. Study Committee on Conflicts of Law - Limitations Act (Fred Stamp, Chair)
The Committee discussed the report of the Study Committee on the Conflicts of Law - Limitations Act. Executive director Henning indicated his intent to appoint a study committee reporter to assist with this project with an eye towards presenting a report prior to the next Annual Meeting of the Conference. Chairperson Walters will continue to act as liaison to the study committee.

11. Study Committee on Electronic Payments Systems
    (James White, Chair) -- Scope Liaison Harry Haynsworth

    The Committee discussed the report of the Study Committee on the Electronic Payments Systems. President Miller gave some background on this issue, especially in relation to ongoing projects at the ABA and the federal check21 legislation introduced at the behest of the Federal Reserve. Commissioner Haynsworth will continue to act as liaison to the study committee. A report is expected prior to the next Annual Meeting of the Conference.

12. Study Committee on Internet Private Law
    (Bion Gregory, Chair) -- Scope Liaison Harry Haynsworth

    The Committee discussed the report of the Study Committee on the Internet Private Law. Executive director Henning indicated his intent to appoint a study committee reporter to assist with this project. Commissioner Haynsworth will continue to act as liaison to the study committee. A report is expected prior to the next Annual Meeting of the Conference.

13. Study Committee on Recognition of Foreign Judgments
    (Robert Cornell, Chair) – (oral report by Fred Miller)

    President Miller gave background on this committee’s work and on the concurrent project underway at the American Law Institute. The initiation of the drafting project was delayed at the behest of the state department to review international developments; since that time, events indicate it is appropriate to now go forward.

    The committee renewed the prior approved resolution on this subject from August 2003, which read:

    “RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a drafting committee be formed to draft amendments to the Uniform Recognition of Foreign Money Judgments Recognition Act, with the scope of the project limited to those issues necessary to correct problems created by the current act and its interpretation by the courts. “
14. Study Committee on Expansion/Revision of the Uniform Money Services Act
   (Tom Bolt, Chair) -- Scope Liaison Dale Higer (oral report by Mike Kerr)

   The Committee discussed the recommendation of the Study Committee on the
   Expansion/Revision of the Uniform Money Services Act. The Committee discussed the
   background of the act and developments in the law since 9/11. Mike Kerr presented Tom Bolt’s
   view that this project can be completed in short order. The committee discussed the value of
   improving the act and securing the support of, and possible funding by, the Department of
   Homeland Security.

   Upon motion duly made, the Committee voted unanimously as follows:

   RESOLVED, that the Committee on Scope and Program recommends to the
   Executive Committee that a drafting committee be formed to draft amendments to the
   Uniform Money Services Act.

15. Study Committee on Omnibus Business Organization Code
   (Justin Vigdor, Chair) – (project deferred)

   Executive Director Henning delivered an oral report on the status of this project and
   recommend continued deferral of this project until a number of ongoing developments related to
   the entity transactions act and efforts to coordinate with the corporate law committee of the ABA
   business law section are clarified.

16. JEB-Uniform Family Laws

   The Joint Editorial Board on Family Law Acts put forward several proposals. Harry
   Tindall, chair of the JEB-UFL, discussed the following subjects:

   A.- Relocation (oral report – Harry Tindall)
   The committee received the report on this subject from the JEB-UFL, and Harry Tindall
   gave background on the issue. The committee decided not to undertake a project in this
   area.

   B.- Third Party Access and Visitation (oral report – Harry Tindall)
   The committee received the report on this subject from the JEB-UFL, and Harry Tindall
   gave background on the issue. The committee decided not to undertake a project in this
   area.

   C.- Collaborative Law (oral report – Harry Tindall)
   Harry Tindall delivered a report on developments in this area of law and indicated that
   the JEB-UFL may again bring this topic before Scope in the future. The committee
decided not to undertake a project in this area.
D. Needs of Deployed Military Personnel Issues (ABA Task force) – President Miller gave an oral report and recommended that this subject remain on the agenda for the next Annual Meeting of the Conference pending further development of the issues involved. The committee agreed with this recommendation.

17. JEB-Uniform Real Property Acts (Report Regarding Home Inspector Proposal)

The committee noted that the review of this subject is still ongoing.

18. JEB-Uniform Trusts and Estates Acts

Inheritance rights of committed partners

The committee discussed the background and current status of the JEB-UTEA’s review of intestacy issues in nonmarital relationships and noted that the JEB had not taken a position and was still reviewing the report generated by Tom Gallanis. [This topic was combined with and discussed alongside topic 30-C (below)]. Per the discussion of Item 30-C, the committee decided by consensus to postpone this issue until the next Annual Meeting of the Conference in anticipation of the report from the JEB-UTEA on those issues.

19. Collateral Sanctions and Disqualifications in Criminal Sentencing

Rich Cassidy discussed the proposal and gave its background at the ABA, where the Criminal Justice Section appears to be engaged in a continuing effort to address this issue. The Committee also discussed topic 24 (voting rights) as a part of this proposal. The committee discussed the need for this act and whether such a project might be a good candidate for a model act.

Upon motion duly made, the Committee voted unanimously as follows:

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee the formation of a study committee to investigate the feasibility of an act on collateral sanctions and disqualifications in criminal sentencing, with an initial charge of gathering information on these issues, coordinating with the efforts of the Criminal Justice Section of the ABA, and examining all issues including substantive remediation procedures, procedural notice requirements, and rehabilitation for the purpose of voting.

20. Recognition of Foreign Country Business Entities

Harry Haynsworth discussed this proposal, which would be the domestic component of a multilateral international effort to provide for the recognition of foreign business organizations.
By consensus this proposal was forwarded for further consideration by the Committee on International Legal Developments.

21. Administrative Procedure Act for Interstate Compact Entities

   Michael Houghton discussed this proposal and noted that many interstate agencies might prefer flexibility, to the extent it exists. Lane Kneedler pointed out that the availability of an applicable APA for interstate entities may be useful.

   By consensus, this topic was forwarded for consideration by the drafting committee for amendments to the model state administrative procedure act. The committee is also asked to communicate with the ongoing ABA project inform the ABA of our action.


   The committee reviewed this proposal. Harry Haynsworth noted that in his opinion, the problems cited boil down to problem created by the rule against perpetuities, which is already addressed by a Uniform Act.

   By consensus, this proposal is forwarded to the JEB-UTEA for further consideration and a request to report its recommendation on this proposal.

23. Model Civil Unions Act (See also item #18)

   [This topic was combined with and discussed alongside topic 30-C (below)]

24. State Voting Rights Proposal

   [This topic was dealt with as a subset issue of topic 19]

25. State implementation of Interstate Compact for the Placement of Children – Amendments

   The committee discussed this issue and was uncertain about the subject matter which would make up a potential statute. By consensus, this issue was referred to the JEB-UFL for further review.

26. State Regulation of Online Tobacco Sales to Minors

   Harry Haynesworth discussed the background of this issue and indicated that existing
regulatory vehicles address this topic do not adequately work in the context of internet sales of tobacco. Lane Kneedler noted that NAAG has significant funding to address issues related to this subject.

*By consensus, Harry Haynsworth and Lane Kneedler will consult with NAAG, gather further information, and further develop this proposal for consideration at the Annual Meeting.*


Bill Henning gave some background on this issue and described his conversations with representatives of banking and consumers groups as well as several experts in this area. He indicated there were no strong opinions for or against this proposal. There was some discussion as to the true scope of this project; it could be a broad recodification of the law of garnishment or a narrow procedural statute dealing with a specific subset of creditor remedies.

By consensus, Executive Director Henning will contact Prof. Gene Henig in Minnesota to attempt to determine how the law in Minnesota allowing pre-judgment garnishment is working and report back to the committee prior to the next Annual Meeting of the Conference, at which time the committee will further consider this proposal.


The committee discussed this proposal and decided not to undertake a project in this area.


No report submitted.

30. New/Other Business

A Proposals by Barry Evenchick

The committee discussed each of these proposals (ethics in government, corporate audit standards, and public contracting).

(i) As to the ethics proposal, the committee discussed whether there was really any need for uniformity in this area; Lane Kneedler discussed the possibility of a model “standards” statute which would establish citizens’ expectations. Other members of the committee identified significant risks relative to such a project. There was some discussion as to whether this might be a suitable
model project, on the other hand it was also debated whether a conference contribution would be welcome. Lane Kneedler may submit this question to his students for possible insight and bring the proposal back to the committee prior to the next Annual Meeting of the Conference. (action deferred)

(ii) With regard to corporate audit standards, the consensus of the committee was that this field was fully (and increasingly) occupied by federal law and that the committee would not undertake a project in this area

(iii) With regard to public contracting, John McCabe told the committee that the ABA writes and maintains a public procurement code and thus per our agreement the subject remains in their bailiwick. The committee therefore decided not to undertake a project in this area.

B – Franchise Agreement Act –

The committee discussed a proposal to consider a franchise agreement act and decided not to do so based on the Conference’s prior experience in this area.

C – Uniform Unmarried Partner Act proposal by Harry Haynesworth (and related proposals)

Harry Haynesworth gave background on this topic and differentiated between the omnibus approach that creates an analog to marriage (i.e. Vermont, Ontario, Netherlands) and approaches which might address discrete subsets of the issues involved. He identified a potential approach (premised on the ALI restatement approach) which focuses simply on the property and inheritance issues of *unmarried* couples generally, creating default disposition rules to fit these situations. The committee discussed whether it is proper to shift the burden of default rules in favor of property intervention. Other comments were whether such a change in the law would amount to a disincentive to marriage generally. The committee questioned whether the fact that no state had made a statutory effort to address this issue (the residue of common law marriage caselaw notwithstanding) is in fact an indication that there was no demand for a statutory resolution of this problem by the Conference. Rich Cassidy made the point that an elective legal status could be created and made available rather than a default status. Chairperson Walters noted that a study of jurisdictional issues alone might be appropriate.

*By consensus, this topic was postponed until the Annual Meeting in anticipation of the report from the JEB-UTEA on these issues.*

D. Uniform Act on Wine Sales

The committee indicated a desire to work in this field, but the consensus of the committee was that these rules are so localized and the stakeholders so entrenched that a project would be very unlikely to have much success. The committee therefore decided not to undertake
a project in this area.

E. Article on Conference process.

The committee discussed an article presented by John McCabe concerning the enactment failures of the model employment termination act. The committee discussed the criteria used to judge proposals for projects and how to balance the twin goals of innovation and enactability. The committee also discussed how the conference measures success and ideas for generating new projects. Several proposals were made with respect to these goals, including the augmentation of staff and the use of a facilitator. President Miller will consider the ideas that arose in this discussion.

F. Compelling Out of State Depositions

The committee discussed whether there was a need for an act in this area and whether the Conference had already produced an act covering this issue. The committee referred the question to the Review of Conference Act Committee.

Upon a motion duly seconded, Chairperson Walters adjourned the meeting at 3:00 p.m.

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